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## THE MISSING INGREDIENT: INCORPORATING DOMESTIC VIOLENCE ISSUES INTO THE LAW SCHOOL CURRICULUM

### I. INTRODUCTION

This Article is an expression of solidarity with the American Bar Association and its recent report calling for the incorporation of domestic violence issues into the law school curriculum.<sup>1</sup> Further, in a recent symposium on the issue of domestic violence in legal education, several professors expressed their support for this objective.<sup>2</sup> This Article expands upon these ideas and argues, from a student perspective, why and how domestic violence issues should be treated in the modern law school. This Article will first explain the domestic violence problem and its effects on society and the practice of law. Secondly, the Article examines the degree to which domestic violence issues are currently treated in law school, acknowledges the potential challenges of teaching domestic violence, and calls for law schools to expand coverage of these issues. Finally, the article extols the benefits of incorporating domestic violence issues into the law school curriculum.

### II. FRAMING THE ISSUE: WHAT'S THE BIG DEAL?

“[T]here has been an increased awareness of the frequency, intensity, and commonality of domestic violence in the United States as evidenced by the number of articles on the subject, the assignment of special task forces and workshops attempting to address the problem, and the general discussion of the topic in the media.”<sup>3</sup>

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1. COMM'N ON DOMESTIC VIOLENCE, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES (2003), available at <http://www.abanet.org/leadership/2003/summary/120.pdf> [hereinafter ABA REPORT ON DOMESTIC VIOLENCE].

2. See Symposium, *Domestic Violence in Legal Education and Legal Practice: A Dialogue Between Professors and Practitioners*, 11 J.L. & POL'Y 409 (2003) [hereinafter *Domestic Violence in Legal Education*].

3. M. Mercedes Fort, *A New Tort: Domestic Violence Gets the Status it Deserves in Jewett v. Jewett*, No. 93-2-01846-5 (Wash. Super. Ct. Spokane County April 21, 1993), 21 S. ILL. U. L.J. 355, 355 (1997) (footnotes omitted). The authors conducted both WESTLAW and LEXIS/NEXIS searches for periodicals as well as for television and radio coverage of domestic violence, which resulted in hundreds of legal articles and thousands of transcripts. *Id.* at 355 nn.2-4. “In *Jewett v. Jewett* [sic], the Superior Court of Spokane County, Washington, . . .

“Because of all the attention focused on domestic violence in the wake of headline-grabbing stories such as the O.J. Simpson trials, legislatures and law enforcement agencies have been busy crafting ‘get tough’ policies . . .”<sup>4</sup> In fact, a 1992 United States Senate Report issued “a clear call to action for our nation to face up to this catastrophe.”<sup>5</sup> While many lawyers *are* becoming aware of the tremendous impact domestic violence has on the legal system and on society as a whole, they often find themselves ill-equipped to handle these difficult issues when confronted by them.<sup>6</sup> One thing has become abundantly clear: “The time has come to recognize the prevalence of domestic violence in our society and its relevance to routine legal matters.”<sup>7</sup>

The best, and only, place to begin to address this growing problem is in law school. In particular, domestic violence issues should be integrated into the first-year Criminal Law course. Law schools must ensure that their students attain an adequate understanding of domestic violence issues. Continuing legal education programs can train lawyers to handle domestic violence cases, but they often come too late in one’s career to have a meaningful impact.<sup>8</sup> Unfortunately, many law schools and law professors, for a variety of reasons, choose not to address this issue. The purpose of this Article is to help raise awareness and to urge the academic legal community to work more aggressively to address domestic violence issues, especially within the law school curriculum.

#### A. *What Is Domestic Violence?*

“It is startling how many lawyers do not know what the legal definition of domestic violence is or what abusive behaviors are covered by the law.”<sup>9</sup> The most obvious forms of domestic violence include physical threats and assaults. Domestic violence encompasses a much broader range of acts, however, and

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allowed for a new cause of action which specifically provides a remedy giving the injured spouse the chance for full recovery.” *Id.* at 356.

4. Gena L. Durham, *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, 71 S. CAL. L. REV. 641, 642 (1998) (footnotes omitted).

5. Fort, *supra* note 3, at 358 (citing Violence Against Women: A Week in the Life of America, S. Rep. No. 102-142, pt. 4 (1992)).

6. See Jo Ann Merica, *The Lawyer’s Basic Guide to Domestic Violence*, 62 TEX. B.J. 915 (1999).

7. *Id.* at 919.

8. DEBORAH GOELMAN & ROBERTA VALENTE, COMM’N ON DOMESTIC VIOLENCE, AM. BAR ASS’N, WHEN WILL THEY EVER LEARN? EDUCATING TO END DOMESTIC VIOLENCE: A LAW SCHOOL REPORT 1 (1997), available at <http://www.ojp.usdoj.gov/ovc/publications/infores/etedv/etedvpdf.pdf>. This report was the result of a two-day meeting of experts conducted at the American Bar Association on December 9–10, 1996, with support also from the Office for Victims of Crime. *Id.* at I-6.

9. *Id.* at 1.

has been described as “a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, and emotional, sexual or economic abuse to control and change the behavior of the other partner.”<sup>10</sup> Domestic violence has also been defined as “any act occurring between two individuals who live or have lived together that is intended or perceived to be intended to cause physical or psychological harm.”<sup>11</sup>

Victims of domestic violence, rather than confronting the problem, will often minimize the violence—blaming themselves and rationalizing the batterer’s behavior.<sup>12</sup> “Domestic violence is behavior that is learned through observation, experience, or cultural reinforcement; it is rarely caused by genetics, substance abuse, illness, or stress, although these factors are often cited as excuses.”<sup>13</sup> Because domestic violence is a pattern of actions that are often difficult to identify, law students must be trained to focus on outwardly innocuous behaviors to detect signs of abuse.<sup>14</sup>

#### B. *Domestic Violence: Myths vs. Reality*

##### 1. Myths about Domestic Violence

“At the heart of the difficulties we have experienced in formulating a consistently effective response to domestic violence is a societal ambivalence about the crime and the parties involved.”<sup>15</sup> There are “many stereotypes held in our society about abusive relationships generally and about the victims of such crimes.”<sup>16</sup> Some lawyers believe that domestic violence does not affect their practice because of the myth that it occurs only in poor urban areas or among racial minorities.<sup>17</sup> Other myths include the belief that affluent men are not perpetrators of domestic violence, that “[d]omestic violence does not affect children unless they, too, are abused,” and that it is pointless to try to help victims of domestic violence because they will not seek help and will refuse it if offered.<sup>18</sup>

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10. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 3 (citing Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, FLA. B.J., OCT. 1994, at 26 (1994)).

11. Fort, *supra* note 3, at 358 (citing Domestic Violence, 209 ACOG TECH. BULL. 1 (August 1995) and R.D. Ward & D.A. Suci, *A Leader in the Fight Against Domestic Violence*, 93 MICH. MED. 5, 26-27 (1994)).

12. Merica, *supra* note 6, at 915 (citing Judicial Checklist, American Bar Association Commission on Domestic Violence, prepared by the Judicial Subcommittee).

13. *Id.*

14. GOELMAN & VALENTE, *supra* note 8, at 1.

15. Durham, *supra* note 4, at 642.

16. *Id.*

17. *See* GOELMAN & VALENTE, *supra* note 8, at 2.

18. Merica, *supra* note 6, at 915.

## 2. The Reality of Domestic Violence in America

The reality is that domestic violence affects all ethnic, racial, age, religious, and socioeconomic groups.<sup>19</sup> “Victims of domestic violence may be doctors, professionals, scientists, or judges, among others.”<sup>20</sup> Perpetrators of domestic violence include people from all walks of life, including “professional men who are well-respected in their jobs and in their communities . . .” such as “doctors, psychologists, lawyers, ministers, and business executives.”<sup>21</sup>

Fifty percent of all of the homeless women and children on the streets are there because of violence in the home.<sup>22</sup> Children who witness violence at home display a variety of emotional and behavioral disturbances, which include: low self-esteem, nightmares, self-blame, and violence towards their peers, family members, and even property.<sup>23</sup> Most perpetrators first witnessed domestic violence in their own families while growing up.<sup>24</sup> The reality is that most victims actually make many efforts to stop the violence or to seek help, but they are often met with responses that actually encourage them to reunite with the abuser or even ignore the abuse altogether.<sup>25</sup>

### III. PREVALENCE OF DOMESTIC VIOLENCE IN SOCIETY AND THE LAW

Domestic violence is recognized “as a criminal justice issue, a public health crisis, and a costly drain on economic productivity.”<sup>26</sup> Medical expenses from domestic violence total at least \$3 to \$5 billion each year, and businesses forfeit another \$100 million in lost wages, sick leave, absenteeism and non-productivity that result from domestic violence.<sup>27</sup>

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19. *Id.* at 916 (citing David M. Zlotnik, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1162-63, 1215 (1995), and Kathleen Finley Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23 (1996)).

20. *Id.* (citing Comm'n on Domestic Violence, Am. Bar Ass'n, *Who is Most Likely to be Affected by Domestic Violence?*, available at <http://www.abanet.org/domviol/whois.html>).

21. *Id.*

22. *Id.* (citing Sen. Joseph Biden, U.S. Senate Committee on the Judiciary, *Violence Against Women: Victims of the System*, 1991).

23. Merica, *supra* note 6, at 916 (citing ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN (Peled et al. eds., 1995)).

24. *Id.* (citing Gerald T. Hotaling and David B. Sugarman, *An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge*, 1(2) VIOLENCE AND VICTIMS 101, 106 (1986)).

25. *Id.* (citing SUSAN SCHECHTER, GUIDELINES FOR MENTAL HEALTH PRACTITIONERS IN DOMESTIC VIOLENCE CASES 133 (1987)).

26. GOELMAN & VALENTE, *supra* note 8, at I-5.

27. Merica, *supra* note 6, at 915 n.1 (citing COLORADO DOMESTIC COALITION, DOMESTIC VIOLENCE FOR HEALTH CARE PROVIDERS, 3d ed., 1991).

Domestic violence has become a very large problem with profound effects on both the law and society as a whole. It is the number one cause of injury to women between the ages of fifteen and forty-four in the United States, causing more injuries to these women than car accidents, muggings, and rapes combined.<sup>28</sup> “By conservative estimates, [one] to [four] million American women are abused by intimate partners each year.”<sup>29</sup> In other words, “[a] woman is beaten every [fifteen] seconds.”<sup>30</sup> And “[a]ccording to the FBI, domestic violence claims the lives of four women each day.”<sup>31</sup> In addition, nearly one out of every three women in America will experience at least one instance of domestic violence during her life.<sup>32</sup> “Over one-half of females murdered in America were killed by their male partners.”<sup>33</sup>

“Domestic violence has an impact on almost every area of legal practice” and is a “primary factor” in areas such as family law and criminal law.<sup>34</sup> Large numbers of family law and criminal law cases involve spousal abuse.<sup>35</sup> Both civil and criminal judges regularly preside over cases in which domestic violence is an issue;<sup>36</sup> however, “[d]espite the presence of domestic violence as [either] an overt or [an] underlying factor” in nearly every area of the law, “traditional law school courses fail to even mention domestic violence as an issue.”<sup>37</sup> To illustrate this point, consider the fact that while many lawyers never practice tort law, nearly every law student is required to take Torts in his

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28. *Id.* at 915 (citing Federal Bureau of Investigation, U.S. Dep’t of Justice, *Crime in the United States 1991: Uniform Crime Reports*, 1992).

29. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 3 (citing Bureau of Justice Statistics, U.S. Dep’t of Justice, *Special Report: Violence Against Women: Estimates from the Redesigned Survey 3* (1995)).

30. Merica, *supra* note 6, at 915 (citing Bureau of Justice Statistics, U.S. Dep’t of Justice, *Report to the Nation on Crime and Justice: The Data*, (1983)).

31. *Id.* (citing *Violence Against Women: A National Crime Victimization Survey Report*, U.S. Department of Justice, January 1994).

32. *Id.* (citing AM. PSYCHOL. ASS’N, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 10* (1996)).

33. Fort, *supra* note 3, at 358-59 (footnote omitted).

34. GOELMAN & VALENTE, *supra* note 8, at 3. *See also* ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 3 (stating that family lawyers, criminal defense lawyers, labor lawyers, corporate lawyers, bankruptcy lawyers, tort lawyers, trust and estate lawyers, and real property lawyers “all will represent victims or perpetrators of domestic violence”); *see also* Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027, 1027-29 (1995).

35. GOELMAN & VALENTE, *supra* note 8, at 3 (citing Linda Dakis & Lauren Lazarus, *Attacking the Crime of Domestic Violence*, FAM. ADVOC., Spring 1997, at 46, 47 (reporting that in Dade County there were approximately 7,000 misdemeanors involving domestic violence in 1996)).

36. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 3 (citing GOELMAN & VALENTE, *supra* note 8, at I-5).

37. GOELMAN & VALENTE, *supra* note 8, at 3.

or her first year. Yet, most law students never learn about domestic violence issues that could potentially affect the rest of their lives “as [both] professionals and as human beings.”<sup>38</sup>

Unfortunately, many lawyers fail to provide adequate representation for many victims by hesitating to take such cases or by failing to address domestic violence issues when they arise in other contexts.<sup>39</sup> A lack of adequate legal training on this subject is a large part of the problem.<sup>40</sup> When lawyers or judges are not knowledgeable about domestic violence, they can seriously endanger their clients or the litigants appearing before them.<sup>41</sup> Because domestic violence is so widespread throughout America, “all legal professionals should be educated about the implications of domestic violence on their cases and clients.”<sup>42</sup>

#### IV. THE ROLE OF CRIMINAL LAW CASEBOOKS

The casebook is the core of any Criminal Law course and the point of reference from which the first-year law student develops a perspective on the myriad issues implicated in the study of criminal law. It is not only the student’s window into the world of practice and a primer for an exchange of ideas regarding the philosophical basis for the criminal justice system, but also an illustration of the spectrum of behavior sanctioned by criminal law. Professor Stacy Caplow<sup>43</sup> commented on the importance of the casebook when she stated:

Casebooks do not just limit the subjects taught; they flag certain perspectives based on which cases are chosen and how those particular cases are edited. By the language used, cases reveal what the judge is thinking about the particular facts of the case. However, to impressionable first-year students, in particular, who tend to accept uncritically the perspective presented in the case, the cases shape the very way in which the issues are internalized.<sup>44</sup>

Many introductory Criminal Law casebooks include treatment of a few issues within the realm of domestic violence.<sup>45</sup> Violence between spouses or

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38. *Id.* at 11.

39. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 3.

40. *Id.* (citing GOELMAN & VALENTE, *supra* note 8, at I-5).

41. *Id.*

42. *Id.*

43. Professor Stacy Caplow is a Professor of Law at Brooklyn Law School and the Director of the Law School’s Clinical Education Program. Professor Caplow was a contributing panelist to the Symposium, *Domestic Violence in Legal Education*, *supra* note 2.

44. *Domestic Violence in Legal Education*, *supra* note 2, at 424.

45. *See, e.g.*, JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW (2d ed. 1999) (devoting an entire chapter to rape (Ch. 8) and discussing both the defense of battered woman syndrome (Ch. 9, § C(2)(b)(iii) at pp. 486-506) and the cultural defense (Ch. 9, § E(3) at pp. 683-694); JOHN KAPLAN ET AL., CRIMINAL LAW: CASES AND MATERIALS (4th ed. 2000) (devoting an

intimate partners is often present in the underlying facts of cases employed for the illustration of separate doctrines such as the defenses of extreme emotional disturbance<sup>46</sup> or to examine the issue of what constitutes culpable conduct.<sup>47</sup> Some issues associated with domestic violence such as the defense of battered woman's syndrome<sup>48</sup> and the so-called "cultural defense"<sup>49</sup> are afforded more thorough treatment.

Every casebook we examined included a lengthy section on rape.<sup>50</sup> While the issue of rape generally, excluding marital<sup>51</sup> and intimate-partner rape, does

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entire chapter to rape (Ch. 15) and discussing the battered spouse defense syndrome (Ch. 8, §A(2) at pp. 581-91) and the cultural defense (Ch. 8, §A(2) at pp. 599-600 n.11); MYRON MOSKOVITZ, *CASES AND PROBLEMS IN CRIMINAL LAW* (4th ed. 1999) (including materials on the defense of battered women's syndrome (pp. 394-422) and devoting a chapter to rape (Ch. 21)); PHILLIP E. JOHNSON, *CRIMINAL LAW: CASES, MATERIALS AND TEXT* (6th ed. 2000) (also including material on the defense of battered woman's syndrome (Ch. 5, at pp. 385-93 and 403-08)).

46. See *People v. Casassa*, 404 N.E.2d 1310 (N.Y. 1980), in DRESSLER, *supra* note 45, at 256-60. *Casassa* involved a man who killed a woman with whom he was in love because she did not have similar feelings for him. *Id.* at 256-57.

47. See *State ex rel. Kuntz v. Montana Thirteenth Judicial District Court*, 995 P.2d 951 (Mont. 2000), in SANFORD H. KADISH & STEPHEN J. SCHULHOFER, *CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS* 197 (7th ed. 2001). *Kuntz* involved a woman who stabbed her boyfriend after he physically abused her. *Id.*

48. The defense of battered woman's syndrome is employed to justify the violent acts of battered women against their abusers. Many Criminal Law casebooks cover this issue within materials on self-defense. See *supra* note 45. See also John W. Roberts, *Between the Heat of Passion and Cold Blood: Battered Woman's Syndrome as an Excuse for Self-Defense in Non-Confrontational Homocides*, 27 *LAW AND PSYCHOL. REV.* 135 (2003); Sharan K. Suri, *A Matter of Principle and Consistency: Understanding the Battered Woman and Cultural Defenses*, 7 *MICH. J. GENDER & L.* 107 (2000).

Professor Dressler offers some interesting thoughts on the defense of battered woman's syndrome in his contribution to this issue of the *Law Journal*. See Joshua Dressler, *Criminal Law, Moral Theory, and Feminism: Some Reflections on the Subject and on the Fun (And Value) of Courting Controversy*, 48 *ST. LOUIS U. L.J.* 1143 (2004) [hereinafter *Criminal Law, Moral Theory, and Feminism*]. For a thorough analysis of the battered woman's experience and the "cycle of violence" present within abusive relationships, see generally LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

49. The cultural defense is often used by defendants to attempt to lessen culpability for a criminal act by presenting the facts through the lens of the norms and expectations of the defendant's own culture. Several casebooks cover the cultural defense. See *supra* note 45. For a discussion of teaching the cultural defense, see Susan S. Kuo, *Culture Clash: Teaching Cultural Defenses in the Criminal Law Classroom*, 48 *ST. LOUIS U. L.J.* 1297 (2004). See generally, ALISON DUNDES RENTELN, *THE CULTURAL DEFENSE* (2004). See also Suri, *supra* note 48; Jisheng Li, *The Nature of the Offense: An Ignored Factor in Determining the Application of the Cultural Defense*, 18 *U. HAW. L. REV.* 765 (1996) (arguing that many women would suffer loss of legal protection if abusers could use cultural defenses to avoid punishment); Alice J. Gallin, *The Cultural Defense: Undermining the Policies Against Domestic Violence*, 35 *B.C. L. REV.* 723 (1994) (arguing that the cultural defense strategy actually promotes the violence that the battered women's defense is attempting to condemn).

50. See *supra* note 45; *Domestic Violence in Legal Education*, *supra* note 2, at 421-22.



not fit within the definition of domestic violence for purposes of this article,<sup>52</sup> the vastly increased coverage of this topic within the casebooks represents significant progress in the recognition of gender issues in Criminal Law courses.<sup>53</sup> One casebook, for example, devotes an entire section to feminist legal theory.<sup>54</sup> Gender issues pervade the domestic violence landscape. Such perspectives are invaluable to the education of future lawyers and encourage first-year students to evaluate different approaches to issues within the Criminal Law course and their interplay with other substantive areas of the law, perhaps moving them to re-examine their own pre-conceived notions with regard to domestic violence and sex-bias within criminal law. Thus, an infusion of these complex and important issues into the general law school curriculum would do much to advance the objective of training students to “think like lawyers.”

Although Criminal Law casebooks have progressed somewhat over the last decade in their treatment of issues associated with domestic violence,<sup>55</sup> authors should resolve to expand coverage of this endemic issue. Until then, professors must venture beyond the casebook to provide students with a mature understanding of crimes of domestic violence and their impact on society and the practice of law.

#### V. INCORPORATING DOMESTIC VIOLENCE INTO THE LAW SCHOOL CURRICULUM

The crux of our argument is essentially that domestic violence issues receive inadequate coverage, not only in first-year Criminal Law courses, but throughout the law school experience. So, as two third-year students armed with a wealth of knowledge gained over the course of three years of rigorous study, we must have an easy solution to the challenges encountered by professors as they endeavor to impart upon their students a modern understanding of the criminal law universe. To be sure, we do not. There is no panacea for this dilemma encountered by professors in every area of the law; however, the nominal coverage of domestic violence issues in the law school curriculum, in relation to the profound impact the domestic violence problem has on society, is an inadequacy in American legal education that must be

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51. *E.g.*, *People v. Liberta*, 474 N.E.2d 567 (N.Y. 1984), *in* KAPLAN ET AL., *supra* note 45, at 1156.

52. *See supra* notes 10-11 and accompanying text.

53. *Domestic Violence in Legal Education*, *supra* note 2, at 422.

54. *Id.* at 424 (citing STEPHEN A. SALTZBURG ET AL., *CRIMINAL LAW: CASES AND MATERIALS* 90-96 (1994)).

55. *Id.* at 420. Professor Stacy Caplow notes that “newer editions contain more topics, expand familiar topics, and generally give at least lip service to the notion that domestic and intimate violence issues present complicated questions that deserve a distinct place in the study of criminal law.” *Id.*

addressed. It is professors such as those who love teaching Criminal Law enough to contribute to this issue of the *Law Journal*, individuals deeply passionate about the education of competent, discerning, and compassionate lawyers, to whom we direct this charge to expand treatment of these issues. Perhaps, with their efforts, this movement may spread to their less innovative and pedagogically stagnant colleagues. It must begin in the first-year Criminal Law course and continue into upper-level courses and clinical experiences.

A. *Acknowledgement of Possible Challenges and Some Suggestions for Incorporating Domestic Violence into First-Year Courses*

1. “Emotional Land-Mines”:<sup>56</sup> The Volatile Potential of Class Discussion

One obstacle with which professors are likely to be confronted in addressing these issues in first-year courses is discussing the topic with students for whom domestic violence or sex-based crime has been a real part of their lives. Professor Caplow explained:

You never know when there is somebody in the class for whom a case resonates, who has had a personal experience or similar event in their lives, whether directly as a crime victim, or whether they identify with either the victim or the defendant in some way. These are very touchy issues . . . .

. . . These issues [may] create class divisions at the outset, and, for the instructor, it is very hard to steer tactfully and diplomatically through the class’s turbulent discussion. Moreover, it is difficult to remain objective about many of these subjects in front of the room. It is particularly hard to refrain from either discrediting or sanctioning certain deeply held points of view. Ideology and partisanship always create a risk of alienating a portion of the students. Because the semester will outlast any single class or discussion, there may be a big price to pay for taking sides or even appearing biased. This is especially true for a woman professor whom the students undoubtedly assume has a “female” perspective . . . .<sup>57</sup>

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56. *Id.* at 425.

57. *Id.* at 425-26. Professor Caplow further stated:

In my first-year class, the anxiety students already feel about speaking out is compounded by the nature of the subject matter. Some students are silenced by the sad and violent facts of the cases and their emotional content, while others are emboldened to speak out about their beliefs even though their comments have a tenor that departs from typical classroom atmosphere. Either way, they often speak or fail to speak for reasons largely related to emotions or feelings. This compounds the stress of the class. Not only are students concerned about whether they understand the material, they also worry about how they are reacting to it emotionally, and how their classmates are reacting to them. Moreover, during their first-year adjustment period, they generally struggle with the basic question of whether and to what degree their personal beliefs, past histories, and feelings

Undoubtedly, tackling these issues poses challenges absent from discussion of concepts such as the Rule Against Perpetuities. Professors must draw upon different skills to handle these provocative issues, taking great care to navigate potentially volatile class discussions with sensitivity, neutrality, and respect.

## 2. The Coverage Dilemma

We must acknowledge the existence of restrictive time limitations that prohibit professors from achieving complete coverage of a casebook over the course of a single semester, much less offering students a comprehensive picture of every important issue within criminal law. Whether the contents of a casebook or the components of a course syllabus, authors and professors must make difficult decisions that may significantly influence the way in which students approach their future practice. Professors should work to incorporate more than standard doctrine into their courses in order to expose students to the social ramifications of criminal behavior such as domestic violence. Students should complete the course equipped with at least an awareness of these issues transcending elements of crimes and theories of criminal law. We challenge professors to “acknowledge the responsibility of shaping the consciousness of [their] students.”<sup>58</sup>

## 3. Thinking Outside the Casebook Box

In 1990, feminist legal scholar Nancy Erickson published two articles examining sex-bias issues in Criminal Law courses and conducted a survey of professors regarding the degree to which they incorporate these issues into their courses.<sup>59</sup> When Erickson questioned professors about why a certain issue was not covered in their course, many responded, “Because it is not in the textbook.”<sup>60</sup> We suspect that many professors would offer the same response almost fifteen years later. Professors are limited by the “editorial—and possibly ideological—choices” of casebook authors “unless they have the energy and creativity to supplement the materials.”<sup>61</sup> While it is clear that

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can and should play a role in their legal studies. As they try to learn to “think like a lawyer,” they often overcompensate by being too objective and neutral. In a criminal law class, this suppression of genuine feelings and beliefs contributes to the self-doubt experienced by many first-year students . . . .

*Id.* at 426.

58. *Domestic Violence in Legal Education*, *supra* note 2, at 430 (remarks of Professor Stacy Caplow).

59. *Id.* at 419. See Nancy S. Erickson & Nadine Taub, *Final Report: “Sex Bias in the Teaching of Criminal Law”*, 42 RUTGERS L. REV. 309 (1990), and Nancy S. Erickson & Mary Ann Lamanna, *Sex-Bias Topics in the Criminal Law Course: A Survey of Criminal Law Professors*, 24 MICH. J.L. REFORM 189 (1990)).

60. *Domestic Violence in Legal Education*, *supra* note 2, at 424.

61. *Id.*

many professors simply stick to the script in strict adherence to the casebook, some find creative ways to incorporate issues into their courses that do not receive adequate treatment in the casebook. Saint Louis University School of Law Assistant Professor Camille Nelson continues to employ teaching tools independent of the casebook by using recent newspaper articles, guest speakers, and other supplemental resources in her Criminal Law course.<sup>62</sup>

To a first-year law student, the casebook's table of contents reads like a comprehensive list of the most important issues in the practice of criminal law. Students may get the impression that issues receiving minimal coverage are merely peripheral elements of the law only to be discovered by those curious enough to delve into supplemental reading (a favorite past-time for some and a loathsome alternative for many others). Domestic violence must be central to the study of criminal law in light of its grave and pervasive consequences in society and on the practice of law. Where it is inadequately treated in the casebook, professors should expand their resources to foster a rich understanding of this critically important issue.

#### B. Educating Students Through Clinical Experiences

Beyond the first-year Criminal Law course, many law schools offer opportunities for learning about domestic violence issues in their civil and criminal clinics.<sup>63</sup> Students participating in the clinical program at Saint Louis

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62. See Camille A. Nelson, *Consistently Revealing the Inconsistencies: The Construction of Fear in the Criminal Law*, 48 ST. LOUIS U. L.J. 1261, 1282 (2004). Professor Nelson has taught both of the authors and has earned their deepest respect and admiration. Many professors utilize The West Education Network (TWEN) to encourage students to extend discussion beyond the classroom. TWEN is an "electronic extension of the classroom, integrating academic tools, Westlaw research, and other resources in an online environment." TWEN homepage, available at <http://lawschool.westlaw.com/shared/signon02.asp?path=%2Ftwen%2Fdefault%2Easp>. See, e.g., Joshua Dressler, *Criminal Law, Moral Theory, and Feminism*, *supra* note 48, at 20 n.40. Professor Caplow also has urged professors to take similar action to improve their courses:

[T]ake a chance on bringing more of the world back into the classroom . . . . Read newspaper articles and relate them to cases in the text so that the issues introduced by cases in the book feel more contemporary and real. Have guest speakers. Go to court and see what is happening in the real world.

*Domestic Violence in Legal Education*, *supra* note 2, at 429-30 (remarks of Professor Stacy Caplow).

63. For several examples of what some law schools have done to incorporate domestic violence into their clinical programs, see generally GOELMAN & VALENTE, *supra* note 8. See also Mary Beck, *Spotlight: Response to Violence Against Women at the University of Missouri at Columbia*, 23 ST. LOUIS U. PUB. L. REV. 227 (2004) [hereinafter *Spotlight*]; Leigh Goodmark & Catherine F. Klein, *Deconstructing Teresa O'Brien: A Role Play for Domestic Violence Clinics*, 23 ST. LOUIS U. PUB. L. REV. 253 (2004); Jacqueline St. Joan & Nancy Ehrenreich, *Putting Theory Into Practice: A Battered Women's Clemency Clinic*, 8 CLINICAL L. REV. 171 (2001); Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 135 (1994).

University School of Law are exposed to domestic violence on a variety of levels. In the civil clinic, students work with the staff of the Catholic Legal Assistance Ministry<sup>64</sup> to assist battered women with legal problems such as divorce, orders of protection, and paternity matters. The Saint Louis University Law Clinic also participates in an inter-university clemency project with the three other law schools in the state of Missouri.<sup>65</sup> The project advocates for battered women imprisoned for killing their abusers and seeks commutation of their sentences.<sup>66</sup>

In the criminal clinic at Saint Louis University School of Law, Professor Sue McGraugh supervises students in their representation of battered women charged with violent acts against their abusers or for disturbing the peace as a result of their screams during the attacks.<sup>67</sup> In the classroom component, entitled Criminal Defense Advocacy, Professor McGraugh incorporates domestic violence by discussing the defense of battered woman's syndrome and advising students on the introduction of the defense at trial, its effect on jury instructions, and strategies for presenting the theory to a jury.<sup>68</sup> Professor McGraugh, commenting on the importance of domestic violence education, stated, "Exposure to domestic violence issues instills a sense of compassion, empathy, and respect for victims. Students get answers to questions like 'Why didn't she just leave?' and an understanding of circumstances that may lead to certain behaviors."<sup>69</sup>

#### VI. POTENTIAL BENEFITS OF AN EDUCATION IN DOMESTIC VIOLENCE TO LAW SCHOOLS, THE LEGAL PROFESSION, AND SOCIETY AS A WHOLE

"The mission of law schools is to educate future lawyers."<sup>70</sup> Including domestic violence issues in legal education will help future lawyers to better serve their clients. Domestic violence should be an integral part of legal

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64. Catholic Legal Assistance Ministry (CLAM), an agency of the Catholic Archdiocese of St. Louis, "provides cost-free legal representation to low income clients in a variety of civil matters, conducts legal education programs throughout the community and advocates on behalf of the poor at the local, state and national levels." Archdiocese of St. Louis, Human Rights Office, available at <http://www.archstl.org/hro/clam.htm> (last visited March 16, 2004).

65. Interview with John Amman, Professor of Law and Director of Clinical Programs, Saint Louis University School of Law (Feb. 20, 2004). Other participating law schools include the University of Missouri at Columbia, the University of Missouri at Kansas City, and Washington University in St. Louis.

66. Mary Beck, a Professor of Clinical Law at the University of Missouri Law School in Columbia, Missouri, noted "[t]he inter-university clemency project is the only such initiative in the nation co-aligning all the law schools in a state." *Spotlight*, *supra* note 63, at 243.

67. Interview with Sue McGraugh, Director, Criminal Clinic, Saint Louis University School of Law (Feb. 17, 2004).

68. *Id.*

69. *Id.*

70. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 4.

education. In fact, law schools themselves will benefit as institutions from incorporating domestic violence into the curricula.<sup>71</sup> “Raising domestic violence issues provides students with an opportunity to engage in profound debate about the law’s role in shaping social policy.”<sup>72</sup> Class discussions will be richer, more stimulating, more challenging, and most importantly, more relevant to the practice of law. Clinical opportunities would attract more applicants and therefore create a more diverse student body.<sup>73</sup> Law school clinics can also enhance the reputation of law schools and even increase the number of employment opportunities for graduates.<sup>74</sup>

The legal profession as a whole will also benefit from treating domestic violence issues in law school curricula because graduates will be far better prepared to meet the challenges they will face once they begin to practice law. Domestic violence training obtained in courses like Criminal Law will make law school graduates much more comfortable with and capable of handling domestic violence issues in their practice.<sup>75</sup> A new generation of competent attorneys, armed with a mature understanding of domestic violence, will be able to “effectively use the law to protect and advocate for their clients.”<sup>76</sup>

“Lawyers have a unique opportunity to address the problem of domestic violence and to effect change for their clients.”<sup>77</sup> Strong advocates for victims can help them to leave violent relationships and maintain their dignity, and those representing batterers can help prevent them from committing acts of violence in the future.<sup>78</sup> A lawyer can help a victim “obtain safer living conditions, custody of their minor children, economic independence, and criminal penalties against the batterer that allow [victims] to live free of violence.”<sup>79</sup> For many victims, seeking legal services is a first step toward getting out of a violent relationship, and it is important that lawyers be able to adequately recognize these problems and offer solutions.<sup>80</sup>

If a lawyer fails to recognize signs of abuse and fails to ask a client difficult questions about an abusive relationship, devastating effects can result.<sup>81</sup> The client may often be too embarrassed to raise domestic violence issues, and a lawyer’s failure to initiate discussion could expose the client to

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71. *Id.*

72. GOELMAN & VALENTE, *supra* note 8, at 2.

73. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 4 (citing GOELMAN & VALENTE, *supra* note 8, at 12).

74. *Id.* (citing GOELMAN & VALENTE, *supra* note 8, at 13-14).

75. *Id.* (citing GOELMAN & VALENTE, *supra* note 8, at 17-19).

76. *Id.* at 5.

77. Merica, *supra* note 6, at 916.

78. *Id.*

79. *Id.*

80. *See id.*

81. *Id.*

further violence.<sup>82</sup> Failure to understand the dynamics of domestic violence could also harm third parties such as children, who are often traumatized by witnessing abuse.<sup>83</sup> Lawyers, “who enjoy positions of power,” must be the ones to step forward against abuse.<sup>84</sup> Equipping future lawyers with tools that will enable them to make a positive impact on the lives of victims of domestic violence can only serve to improve the public’s perception of the legal community.

Furthermore, the actions of well-trained attorneys will benefit not only individual clients but also society at large.<sup>85</sup> Each law student will be able to apply his or her training in domestic violence not only to the legal profession but also to other civic activities he or she may choose to undertake.<sup>86</sup> Public safety will be increased, and judicial, health care and law enforcement costs will be reduced.<sup>87</sup> Law school clinical programs also provide greater resources and access to justice for victims of domestic violence who may be unable to afford legal representation.<sup>88</sup> Also, law students who are exposed to domestic violence issues may be more likely to pursue careers in public interest or devote time to *pro bono* work after graduation.<sup>89</sup>

## VI. CONCLUSION

“Having identified domestic violence as a particularly pernicious crime, it is time that we cut through the rhetoric, take an honest look at the situation, and resolve our own perceptions of the crime.”<sup>90</sup> For years, domestic violence has gone virtually unnoticed by the criminal justice system.<sup>91</sup> Beginning in the 1970s, advocates against domestic violence worked to gain better access to the

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82. Merica, *supra* note 6, at 916.

83. GOELMAN & VALENTE, *supra* note 8, at 10 (citing PETER G. JAFFE, ET AL., CHILDREN OF BATTERED WOMEN 26 (1990)).

84. Merica, *supra* note 6, at 916.

85. *Id.*

86. ABA REPORT ON DOMESTIC VIOLENCE, *supra* note 1, at 4.

87. *Id.* (citing GOELMAN & VALENTE, *supra* note 8, at 21-23).

88. *Id.* at 5 (citing GOELMAN & VALENTE, *supra* note 8, at 17-19).

89. GOELMAN & VALENTE, *supra* note 8, at 8-9.

90. Durham, *supra* note 4, at 665 (1998).

91. Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 2 (1999-2000). While the authors are correct in their observation of a distinct lack of domestic violence filings until the 1970s, it is interesting to point out one of the earliest domestic violence cases, *Fulgham v. The State*, an Alabama case from 1871 in which the court acknowledged: “[T]he privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities is not now acknowledged by our law.” 46 Ala. 143, 146-47 (Ala. 1871).

legal system for victims, and such access has indeed increased.<sup>92</sup> Courts are only one institution in our society that must respond to domestic violence; social service providers, law enforcement, schools (especially law schools), religious organizations and the medical profession must all work to combat domestic violence.<sup>93</sup> However, courts are effectively the “institution of last resort” for victims of domestic violence because they do not become involved until after an act of violence has occurred.<sup>94</sup> This fact makes it absolutely critical that the legal system performs its role well,<sup>95</sup> an endeavor that would be best achieved by training future lawyers and judges on how to handle domestic violence issues while in law school. Therefore, in concert with the American Bar Association and a few dynamic law professors, we humbly and respectfully urge those engaged in educating the legal minds of tomorrow to expand treatment of domestic violence issues throughout the law school curriculum.

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92. *See id.* at 2-4. A study of domestic violence filings in twenty-one states found a 239% increase between 1985 and 1997. *Id.* at 4, n.9.

93. Kaye & Knipps, *supra* note 91, at 12.

94. *Id.* at 13.

95. *Id.*

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