

"Violence against women: Good practices in
combating and eliminating violence against women"

Expert Group Meeting

Organized by: UN Division for the Advancement of Women
in collaboration with:
UN Office on Drugs and Crime
17 to 20 May 2005
Vienna, Austria

COMBATING VIOLENCE AGAINST WOMEN IN THE LEGAL DOMAIN

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I. Introduction

Law has the potential to play a leading role in efforts to combat violence against women. The law's symbolic function in setting standards of right and wrong, as well as its power to incarcerate, impose other remedies, and allocate resources, make the legal arena a crucial site for initiatives to improve a country's response to violence against women. However, the legal system has traditionally not lived up to its potential as a force for the protection and empowerment of women.

In recent decades, advocates and policy-makers have worked to establish a variety of legal reforms that are designed to improve the prevention and redress of domestic violence, rape and sexual assault, sexual harassment, and other forms of violence against women.¹ These reforms have not all been equally successful. The purpose of this paper is to analyze good practices in the response of the legal sector to violence against women

commit additional offenses that are not reported to police or other data collectors; and they may stop engaging in one type of behavior (such as physical abuse of a spouse) but substitute another behavior that is more difficult to monitor (such as emotional abuse).³ Tracking rates of violence against women in the general population, and determining the extent to which changes in those rates are the result of changes in legal practices, are also difficult tasks.⁴ An increase in the number of reported cases may indicate that more women are willing and able to report, not that the rate of violence has actually increased.

B. Legal practices should increase public awareness that violence against women is unacceptable and should contribute to a sense of public responsibility for solving the problem. For example, there is often a tendency to view domestic violence as exclusively a private, family matter.⁵ This attitude undercuts attempts to address the issue effectively and imposes shame and stigma on victims. The law should do all it can to designate violence against women as a serious public concern that requires a commitment of public attention and resources.⁶

C. The legal system should identify violence against women as a form of sex discrimination that is linked to other forms of oppression of women.⁷ Systemic gender inequality is a root cause of violence against women, and violence in turn perpetuates women's unequal status.⁸ The law should recognize that individual acts

³ See Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence 1970-1990*, 83 JOURNAL W

case typically results in money damages, which many victims find more helpful than incarceration of the perpetrator.³⁵

Federal law, unlike state law, applies throughout the country, is highly visible to the general public, and is viewed as embodying principles that are fundamental to the nation as a whole.³⁶ Thus, federal civil rights legislation is a particularly potent vehicle for legal reform.

C. Pro-arrest and pro-prosecution policies for domestic violence

Traditionally, police were reluctant to arrest perpetrators of domestic violence. Instead, they ignored the problem or applied ineffective responses like informal mediation or ordering the offender to “walk around the block and cool off.”³⁷ Similarly, prosecutors were reluctant to prosecute domestic violence cases, in part because they perceived victims as unlikely to cooperate with them.³⁸

In recent years, some states and localities have adopted mandatory arrest policies, which require police to arrest anyone who they have probable cause to believe has committed domestic violence. Some states and localities have also established mandatory “no-drop” prosecution policies, which prevent prosecutors from complying with a victim’s request to drop charges against the abuser.³⁹ By taking the decision of whTj 28 0 TD(e)Tj 26 0-8 0 TD(e)Tj 26 0 TD()Tj 15 0 TD(d)Tj 22 0 TD(

of dangers.⁴¹ Such

awarded her 2.3 million dollars in damages.⁵¹ This huge award was widely publicized, and many police departments immediately strengthened their policies on responding to domestic violence.⁵² Although problems with police enforcement remain (as illustrated graphically by the *Gonzales v. Castle Rock* case),⁵³ most observers agree that police response to domestic violence has improved dramatically in recent years, due in part to police departments' concern about incurring liability for civil damages.⁵⁴

E. Rape shield laws

Many victims of rape and sexual assault have felt “revictimized” when questioned by defense attorneys about details of their private sexual conduct. Rape shield laws are designed to prevent introduction of evidence of a victim’s sexual behavior that is unrelated to the acts that are the subject of the legal proceeding.⁵⁵ Rape shield laws are weakened by loopholes and by unfavorable judicial interpretations.⁵⁶ However, if properly drafted

F. Adopting laws specifically designed to address violence against women

Better enforcement of traditional laws, such as those prohibiting assault and battery, can help many victims of violence against women. However, when existing laws do not fit the circumstances experienced by victims, it is often beneficial to draft new legislation.⁵⁹

A preeminent example of a statute designed especially to combat violence against women is the federal Violence Against Women Act (VAWA) of 1994.⁶⁰ In addition to the civil rights provision discussed in Part IIIB above, this lengthy and ambitious legislation contains dozens of other provisions designed to reduce the frequency of violence against women, provide needed services to victims, hold perpetrators accountable, strengthen law enforcement, and improve research and data collection. Among other measures, the legislation makes it a federal crime to cross state lines in order to commit domestic violence or to violate a protection

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violence against women.⁶² In addition to its other accomplishments, VAWA drew ad

this legacy are interspousal tort immunity, which prevents one spouse from suing the other, and the marital rape exemption, which dictates that the rape of one's spouse is not a crime. Most states have abandoned interspousal tort immunity, but a few have not. All states have abolished the complete marital rape e

legal assistance to domestic violence victims.⁷⁶ However, despite an infusion of federal funding for civil legal assistance to battered women,⁷⁷ many women who are victims of violence continue to lack access to attorneys.⁷⁸

C. Education and training

Education and training are crucial to ensuring that all actors in the legal system perform their jobs effectively.⁷⁹ Lawyers, judges, court clerks, police, prosecutors, and those who serve as expert witnesses or consultants in the legal arena (such as social workers, psychologists and psychiatrists) require specialized training to deal with issues concerning violence against women. Training programs should challenge participants to abandon false assumptions about violence against women and deepen their understanding of the problem in all its dimensions, including the role of violence in maintaining women's subordinate status. Training should also focus on proper techniques and procedures for effective enforcement of existing laws.

The National Judicial Education Program to Promote Equality for Women and Men in the Courts, a non-governmental organization, provides model training curricula for judges and prosecutors on rape and sexual assault, among other topics.⁸⁰ Domestic violence advocacy organizations often participate in training programs for police.⁸¹

Many future lawyers gain exposure to academic and practical knowledge about domestic violence through law school domestic violence legal clinics, volunteer programs providing assistance to applicants for orders of protection, specialized courses on domestic violence, and professors who incorporate domestic violence issues into mainstream law school courses.⁸² The American Bar Association Commission on Domestic Violence has published books containing

⁷⁶ See *infra* Part IVC.

⁷⁷ See Sack, *supra* note 16, at 1729 & n.374.

⁷⁸ SCHNEIDER, *supra* note 1, at 95-96; Goldscheid, *supra* note 7 (manuscript at n.81 and accompanying text); Klein & Orloff, *supra* note 16, at 1058-64.

⁷⁹ See, e.g., FINN & COLSON, *supra* note 16, at 62-63; Epstein, *supra* note 39, at 39-45.

⁸⁰ See <http://www.legalmomentum.org/njep/overview.shtml> (last visited June 7, 2005).

⁸¹ See, e.g., Ellen L. Pence & Coral McDonnell, *Developing Policies and Protocols*, in Shepard & Pence, *supra* note 71, at 59-61.

⁸² For descriptions of law school courses and programs see CONSIDERS

information and recommendations to assist law school faculty and administrators in educating and training students about domestic violence.⁸³ Several commercially published textbooks on violence against women are available for use in law school classes.⁸⁴

D. Specialized domestic violence courts, prosecutors, and police

Establishing courts, police units, and prosecutor departments that specialize in domestic violence appears to hold promise as a way of developing expertise, improving efficiency, minimizing the burdens on victims, and improving case outcomes.⁸⁵

Specialized domestic violence courts take many different forms. The most ambitious combine diverse components of the legal system (such as criminal and civil proceedings) as well as non-legal services, such as providing victims with access to representatives of domestic violence advocacy agencies.⁸⁶ Although specialized courts pose potential problems, including a heavy psychological toll on judges who handle domestic violence cases day after day,⁸⁷ a study by the Center for Court Innovation concluded that New York State's experiment with a domestic

⁸³ AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, *TEACH YOUR STUDENTS WELL: INCORPORATING DOMESTIC VIOLENCE INTO LAW SCHOOL CURRICULA* (2003), available at <http://www.abanet.org/domviol/teachyourstudents.pdf>; DEBORAH GOELMAN & ROBERTA VALENTE, AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, *WHEN WILL THEY EVER LEARN? EDUCATING TO END DOMESTIC VIOLENCE* (1997).

⁸⁴ BEVERLY BALOS & MARY LOUISE FELLOWS, *LAW AND VIOLENCE AGAINST WOMEN: CASES AND MATERIALS ON SYSTEMS OF OPPRESSION* (1994); CLARE DALTON & ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND THE LAW* (2001); NANCY K.D. LEMON, *DOMESTIC VIOLENCE LAW* (2001).

⁸⁵ FINN & COLSON, *supra* note 16, at 30-31; Clark et al., *supra* note 72, at 7, 11; Epstein, *supra* note 39; Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 *FORDHAM LAW REVIEW* 1295 (2000).

⁸⁶ For discussion of different models of specialized domestic violence courts, see sources cited *supra* note 85. See also EMILY SACK, FAMILY VIOLENCE PREVENTION FUND, *CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES* (2002), available at http://endabuse.org/programs/healthcare/files/FinalCourt_Guidelines.pdf; ROBERT V. HOGAN, *THE FEDERAL COURTS* (2002).

violence court has largely been successful. According to the study, the creation of a specialized court resulted in increases in the rate of convictions and rate of issuance of orders of protection and decreases in the rate of case dismissals and rate of probation violations.⁸⁸

E. Monitoring actors in the legal system and holding them accountable

It is important to monitor actors in the legal system and hold them accountable for their conduct with regard to violence against women. A relatively simple method is a court watch project, where volunteers observe legal proceedings to determine whether the rights of victims are being protected and report their findings to the public.⁸⁹ Similarly, a legislative watch can be conducted at times when the legislature is debating issues concerning violence against women.

A more sophisticated version of the same concept is the establishment of a task force on gender bias in the courts. In forty American states and seven federal judicial circuits

The media can be very helpful in uncovering and disseminating information about the performance of actors in the legal system. Journalists have revealed some major scandals, including the failure of police departments in Oakland, California and Philadelphia, Pennsylvania to

