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Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward

ELIZABETH M. SCHNEIDER*

I. Introduction

This Fiftieth Anniversary issue of *Family Law Quarterly* evaluates a half-century of change in the field of family law. It is safe to say that in no aspect of family law has there been more dramatic change than in the law of domestic violence.¹ Fifty years ago, domestic violence was not even recognized as a subject of study or as a legal problem—it was simply invisible. Marriage—the notion that husband and wife were one and that one was the husband—made domestic violence permissible and acceptable.

* Rose L. Hoffer Professor of Law, Brooklyn Law School. Thanks to Sanford N. Katz for including me in this Fiftieth Anniversary issue and to Cheryl Hanna, Judith G. Greenberg, and Clare Dalton for generative collaboration on our casebook and teacher's manual, *Domestic Violence and the Law: Theory and Practice*, that is reflected in the ideas expressed in this essay. Earlier versions of this essay were presented at the Plenary Panel on Gender and Sexuality Law in the Twenty-First Century at the National Association of Women Judges 2007 Annual Conference and at the Senior Roundtable for Women's Justice at the U.S. Department of State in March 2008. My work as a consultant on the *Report of the Secretary-General on an In-depth Study on All Forms of Violence Against Women*, delivered to the United Nations General Assembly in 2006, has also shaped the views that I express here. Thanks also to Christie Susi for helpful research assistance.

1. I use the phrase domestic violence here in the following context:

[T]he term "domestic violence" has become the most often used legal characterization to describe and categorize battering relationships. "Domestic violence" also reflects a growing recognition that while women abused by men are still the primary victims of abuse, battering occurs in same-sex relationships, and that, in some cases, men are abused by women. Furthermore, "domestic violence" focuses our attention on the broader social and legal contexts of battering rather than on victims and their individual psychologies. It also includes material that reaches beyond the narrow phenomenon of physical battering to a definition of violence that includes all forms of power and control used by perpetrators, including sexual, financial, and emotional abuse.

ELIZABETH M. SCHNEIDER ET AL., *DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE* 1-2 (2d ed. 2008).

Today, intimate violence is recognized as a serious harm—a harm within intimate relationships that has an impact on every aspect of the law, including criminal law, torts, reproductive rights, civil rights, employment law, international human rights, and especially family law. We have begun to recognize that it has profound consequences for women’s rights to full citizenship, equality, work, economic independence, and health, not only in this country but around the world. In legal education, we now have separate courses, clinics, and casebooks on the subject. We recognize that courses on family law must include analysis of domestic violence issues and that domestic violence must be more fully integrated into the law school curriculum generally. Issues of domestic violence must also be an essential part of judicial education and continuing legal education for practicing lawyers. We know that there is a special need to educate family law practitioners and judges about these important issues.²

In this essay, I briefly highlight some of the most important developments in law reform concerning domestic violence over the last fifty years. I examine the tremendous changes in recognition of the problem and pervasiveness of intimate violence both in the United States and around the world. Given the profound nature of these changes, I only touch on themes that I have discussed more fully elsewhere.³ I also explore some of the most important contradictions and conflicts in the field that present challenges for legal work going forward. I emphasize the tremendous challenges in making the new visibility of domestic violence meaningful, particularly in family law.

II. The Recognition of Intimate Violence

It was not until the late 1960s or early 1970s that the issue of domestic violence surfaced in U.S. law.⁴ During this time, feminist activism developed concerning domestic violence. Since then, there has been exponential change on these issues. We have seen the formation of national advocacy organizations such as the Family Violence Prevention Fund, state

2. See generally Lisae C. Jordan, *Introduction: Special Issue on Domestic Violence*, 39 *FAM. L.Q.* 1 (2005).

3. See generally ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000) [hereinafter SCHNEIDER, *FEMINIST LAWMAKING*]; SCHNEIDER ET AL., *supra* note 1; ELIZABETH M. SCHNEIDER ET AL., *DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE TEACHER’S MANUAL* (2008); see also Elizabeth M. Schneider, Symposium, *Confronting Domestic Violence and Achieving Gender Equality: Evaluating Battered Women and Feminist Lawmaking*, 11 *AM. U. J. GENDER SOC. POL’Y & L.* 237 (2002); Elizabeth M. Schneider, *Transnational Law as a Domestic Resource: Thoughts on the Case of Women’s Rights*, 38 *NEW ENG. L. REV.* 689 (2004).

4. For the history of the early domestic violence movement, see SCHNEIDER, *FEMINIST LAWMAKING*, *supra* note 3, at 11–28.

coalitions, and local organizations that provide services and develop policies on domestic violence. The proliferation of legal advocacy on domestic violence has resulted in pathbreaking case law, innovative legislation, and legal scholarship, as well as the development of specialized law school courses, clinics, and casebooks on domestic violence. National legal organizations such as the American Bar Association (ABA) have formed special projects such as the ABA Commission on Domestic Violence to promote legal education and law reform.⁵ Congress first passed the Violence Against Women Act (VAWA) in 1994 and has reauthorized it many times to fund a wide range of legal, educational, and service programs to assist battered women.⁶ Family Justice Centers provide legal and social service help and counseling as part of “one-stop shopping” for legal representation on a variety of issues.⁷ There are now specialized family violence courts in some jurisdictions.⁸ Important international human-rights advocacy groups in this country and around the world seek recognition of violence against women as a human rights problem, and many international documents, including the Secretary-General’s Report on all forms of violence against women, reflect this advocacy.⁹ The International Violence Against Women Act, legislation

5. ABA Commission on Domestic Violence provides support and resources to attorneys working with victims of domestic violence, sexual abuse, and stalking. These resources include research assistance, practice tools, model pleadings, and access to experts in the field. The ABA Commission has also sponsored conferences and published several reports on integrating domestic violence education into the law school curriculum. For the most recent report, see ABA COMM’N ON DOMESTIC VIOLENCE & U.S. DEP’T OF JUSTICE, TEACH YOUR STUDENTS WELL: INCORPORATING DOMESTIC VIOLENCE INTO LAW SCHOOL CURRICULA (2003), http://www.abanet.org/domviol/teach_students.pdf.

6. See 42 U.S.C. § 13701 (2000); Violence Against Women Act (VAWA), 18 U.S.C. §§ 2261–2266 (2000). VAWA contains groundbreaking initiatives to improve crisis services for victims and efforts to improve law enforcement response to violence against women and support services for victims. These services include transitional housing and training for health care providers who treat victims of violence. Also, VAWA contains provisions for training and services specifically geared toward helping victims in rural areas, women with disabilities, and elder women. Rape prevention and education and grants to combat violence on college campuses are also included.

7. Family Justice Centers provide centralized community resources and services for victims of domestic violence in one location. See Family Justice Center Alliance, <http://www.familyjusticecenter.org/> (last visited Oct. 16, 2008). These services may include speaking with an advocate, filing for a restraining order, and receiving medical attention. *Id.* The first Family Justice Center opened in 2002 in San Diego and today over thirty operational centers exist in the United States with many others in the works. See San Diego Family Justice Center, <http://www.sandiego.gov/sandiegofamilyjusticecenter/> (last visited Oct. 16, 2008); Alameda County Family Justice Center, <http://www.acfjc.org/> (last visited Oct. 16, 2008).

8. See generally Lowell D. Castleton et al., *Ada County Family Violence Court: Shaping the Means to Better the Result*, 39 FAM. L.Q. 27 (2005).

9. The Secretary-General, *Report of the Secretary-General on an In-depth Study on All Forms of Violence against Women*, delivered to the Security Council and the General

that would provide U.S. aid funds to help eradicate violence against women around the globe and would be administered by the U.S. Department of State, has been proposed in Congress.¹⁰

Yet deep contradictions continue about what domestic or intimate violence is and who experiences it. Originally, the central idea was about hitting and beating; physical abuse was central to the notion of “battered women.” We now have a far more extensive understanding of forms of abuse that go beyond physical abuse. The core concept is the exercise of power and control, for domestic violence involves a wide range of behaviors including physical abuse, verbal abuse, threats, stalking, sexual abuse, coercion, and economic control.¹¹ However, there are critical problems in translating these broader perspectives on abuse to lawyers, judges, and other professionals who still tend to see a physical focus, minimize other aspects of abuse, and fail to see the more subtle aspects of power and control as abusive and connected with physical abuse. Although violence is still overwhelmingly a problem for women, some continue to argue that it affects both women and men equally.¹² There are deep and pervasive attitudes that affect every aspect of domestic violence that make the question “Why don’t they leave?” the central issue.¹³ This reflects a deep failure in understanding. “Separation assault” is a critical dimension of violence because “separation” from the abuser in any way—acts of independence like seeking work, having contact with friends or family, actual physical separation, or threats to leave—often precipitates and exacerbates abuse and puts women and children’s lives at risk.¹⁴ Despite efforts

Assembly, U.N. Doc. A/61/122/Add.1 (July 6, 2006). For an overview of the study, see UN.org, <http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm> (last visited Oct. 16, 2008).

10. The International Violence Against Women Act (I-VAWA) seeks to address the global crisis of violence against women and girls. The I-VAWA would apply the force of U.S. diplomacy and foreign aid over five years towards preventing abuse and exploitation by authorizing more than \$200 million annually in foreign assistance for international programs that prevent violence, support health programs and survivor services, encourage legal accountability and change public attitudes, promote access to economic opportunity and education, and better address violence against women in humanitarian situations. The Act would address violence in all its forms, including honor killings, bride burnings, acid burnings, dowry deaths, genital mutilation, mass rapes in war, and domestic violence. Senate legislation was introduced by Senators Joseph Biden and Richard Lugar in October 2007. S. 2279, 110th Cong. (2007). In the House of Representatives, Foreign Affairs Committee Chair Howard Berman introduced the I-VAWA in May 2008. H.R. 5927, 110th Cong. (2008).

11. See SCHNEIDER ET AL., *supra* note 1, ch. 2.

12. See *id.*

13. See generally Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a. Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999).

14. See SCHNEIDER ET AL., *supra* note 1, ch. 2 (discussing “separation assault” in the context of abuse). See generally Martha Mahoney, *Legal Images of Battered Women: Redefining Issues of Separation Assault*, 90 MICH. L. REV. 6 (1991). For a discussion of “separation assault,” see generally DOMESTIC VIOLENCE AND THE LAW, *supra* note 1, ch. 2.

to explain these dilemmas in a broader context, we see the pervasiveness of woman-blaming.

We know that abuse does not just occur in heterosexual relationships, but in same-sex relationships as well. The development of lesbian, gay, bisexual, and transgender/transsexual (LGBT) advocacy around violence has been important and has opened the door to many new avenues of reform.¹⁵ We also know that violence occurs across the board, affecting all classes, races, and ethnicities.¹⁶ There are special problems of violence in LGBT relationships, communities of color, and immigrant populations.¹⁷ There are extreme pressures that operate in these communities to restrict disclosure and identification and hamper intervention.¹⁸

Intimate violence is now recognized as affecting every aspect of women's lives and every aspect of law. In the last several years, for example, there have been numerous U.S. Supreme Court decisions on issues relating to domestic violence. There was promising language in *Planned Parenthood of Southeastern Pennsylvania v. Casey*¹⁹ that showed sensitivity to the depth and pervasiveness of domestic violence and the degree to which domestic violence influenced other issues involving women's equality, such as reproductive rights.²⁰ But in *United States v. Morrison*,²¹ the Supreme Court held that the VAWA civil rights remedy was unconstitutional and that domestic violence was not a national problem that the Commerce Clause could regulate, but only a local one.²²

There are intractable problems concerning protection of abused women and prevention of violence. Keeping women safe is the big issue. There are major problems with the two primary legal vehicles for protection that have been developed—civil protective orders and criminal sanctions—both of which are problematic, unsatisfactory, and limited.

Despite extensive statutory developments that seek to make civil protection orders more effective, these orders are merely pieces of paper ordered by courts that are often difficult for police to enforce. The most difficulty comes from situations where there is some need for ongoing

15. See generally SCHNEIDER ET AL., *supra* note 1, ch. 3.

16. See *id.* ch. 3.

17. See *id.* chs. 3 & 15.

18. See *id.*

19. 505 U.S. 833 (1992).

20. See SCHNEIDER, FEMINIST LAWMAKING, *supra* note 3, at 3–5.

21. 529 U.S. 598 (2000).

22. For discussion of *Morrison*, see generally Catharine A. MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 HARV. L. REV. 135 (2000); Sally F. Goldfarb, *The Supreme Court, the Violence Against Women Act and the Use and Abuse of Federalism*, 71 FORDHAM L. REV. 57 (2002); Julie Goldscheid, *The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out*, 39 FAM. L.Q. 157 (2005).

contact between the individuals, like having children in common.²³ Cases abound like the recent Supreme Court decision in *Castle Rock v. Gonzales*,²⁴ in which the Court denied a civil remedy against police to a woman who was unable to obtain enforcement of her protective order in time to prevent her children from being murdered by her abusive husband.

The second primary vehicle for protection—criminal sanctions—reflects tremendous change. Advocates moved with trepidation into criminalization as a remedy because the State has not been historically friendly to women's rights.²⁵ On a symbolic level, the notion of intimate violence as a crime against the State was viewed as an important statement that violence within intimate relationships was a public harm, not simply a private one. Given the historical context of invisibility, the move to a concept of public harm was viewed as a significant shift.

Yet criminalization has proven to be very problematic. Criminal sanctions are often too crude a remedy, requiring too much from women who seek to end the violence but not necessarily end the relationship. Abused women often do not want to subject their partner or family to criminal sanctions. Criminal sanctions may also have problematic impacts on women's ability to separate from their partners and obtain custody of their children. The move to criminalization has engendered criticism from advocates on a variety of grounds, some emphasizing the problems for women of color and immigrant women in obtaining police protection and others citing concepts of "family privacy" that have historically prevented intervention.²⁶ Many advocates are genuinely concerned with the way in which criminalization appears to be the focus of U.S. domestic violence advocacy, particularly with the advent of VAWA and the range of criminal justice programs that are funded under VAWA.²⁷ U.S. policy on domestic violence should emphasize a broader range of efforts that include education, job training, employment, and a more "human rights" focused set of programs instead of criminalization.

Despite state involvement on the criminalization front, states have not assumed responsibility to protect victims of abuse and have not been held liable for failure to protect victims. Courts have consistently held that state officials such as police officers are not responsible for abuse, even

23. Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008).

24. 545 U.S. 748 (2005).

25. See SCHNEIDER, *FEMINIST LAWMAKING*, *supra* note 3, ch. 10.

26. See Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006).

27. See generally KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (2008); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657 (2004).

when they fail to enforce civil protective orders. *Castle Rock* is the most recent example, and it is significant that the case has now been brought to the Inter-American Human Rights Commission on the ground that the United States has committed international human rights violations in failing to protect Jessica Gonzales from abuse.²⁸

Prevention of abuse is very difficult. Violence is deeply tied to gender socialization about the proper roles of men and women. Abusers are very charismatic and manipulative, and they are commonly attentive and intensely devoted to the women they abuse and to the relationship at first. Abuse occurs within a gendered context: the tremendous importance of intimate relationships for women and the cultural and psychological significance of “romance.” Given the pervasiveness of teen dating violence,²⁹ there is a need for outreach and education in order to assist women to recognize the signs of abuse and not to confuse those signs with romance and the desire for intimacy.

III. Domestic Violence and Family Law

It is critical to recognize the pervasiveness of violence in intimate relationships and families and the degree to which every aspect of family law has to be rethought in light of violence.³⁰ Family court judges are often hostile and disbelieving towards claims of domestic violence. The many professionals who may be involved in the family court system, not only judges but guardians ad litem, for example, need focused education. Lawyers who handle family law cases are often ill-equipped to identify abuse and thoughtfully represent clients where there are issues of domestic violence.

Domestic violence affects grounds for divorce and strategic questions of whether victims of abuse should seek divorce on no-fault or fault-based grounds. It affects distribution of assets in divorce.³¹ It must be taken into consideration when determining custody issues such as joint custody, relocation, and visitation.³² It affects issues of divorce mediation and parent education.³³ It shapes the panoply of laws that have an impact on women who might need to flee with their children from an abuser.

28. See *Gonzales v. United States*, Inter-Am., C.H.R., Rep. No. 52/07, OEA/Ser.L/V/II.128, doc. 19 (2007). The Inter-American Human Rights Commission has agreed to hear this petition and held a “merits” hearing on this case in November 2008. See http://www.law.columbia.edu/center_progarm/human_rights/InterAmer/ and <http://www.aclu.org/womensrights/violence/380171gl20081113.html>.

29. See generally Pamela Saperstein, Note, *Teen Dating Violence: Eliminating Statutory Barriers to Civil Protection Orders*, 39 FAM. L.Q. 181 (2005).

30. See generally SCHNEIDER ET AL., *supra* note 1, chs. 10–12.

31. See *id.* at 514–17.

32. See *id.* at 517–98.

33. See *id.* at 617–44.

Domestic violence affects the child protective system as well as issues of race and class throughout the family law system generally.³⁴ Violence is often a part of the lives of poor mothers and can result in neglect and/or abuse petitions, or termination of parental rights resulting in children being sent to foster care. For undocumented women who experience violence, immigration issues pose tremendous barriers.

Even where there has been a change in law “on the books,” there has not been change in the application of law “on the ground.” Custody decisions in cases involving domestic violence are an example of the uneven nature of change.³⁵ Custody is an area where there has been a considerable degree of statutory reform and revision respecting domestic violence. The classic “best interests of the child” standard allows for judicial discretion, including, in some states, taking a history of violence into consideration. Some jurisdictions have now made presumptions against custody to batterers explicit in their custody laws. Yet even with these presumptions, it appears that many abusers are awarded custody, even in situations where they have allegedly been responsible for the mother’s death. Judges often do not recognize or acknowledge abuse or tend to minimize it. Even though there may be a statutory bar, judges do not take claims of abuse seriously when they are presented, or even see them when they are subtle, and so they do not factor abuse into custody determinations.

A similar theme runs through the issue of mediation.³⁶ Many family courts specifically preclude mediation where there is a history of domestic violence. But many mediators are not trained or sensitive enough to issues of violence to recognize signs of abuse and apply these protocols in a thoughtful way.³⁷ Similarly, the move toward more purportedly cooperative parenting can lead to battered women being viewed as problem parents when they will not “go along.” It is difficult to work out visitation when there is a history of abuse, not only because the child may be at risk of violence or sexual abuse but because contact between the parents needs to be limited. Family visitation centers have opened in order to facilitate visitation, and other complicated methods are used. Parent education is another example of the way that new approaches favoring “cooperative parenting” in divorce are often impossible when there is a history of violence. Parents simply cannot work together when there is a history of violence, and various adjustments have needed to be developed.

34. *See id.* ch. 12.

35. *See id.* at 517–98 (discussing issues related to custody).

36. *See id.* at 617–37.

37. Jane C. Murphy & Robert Rubinson, *Domestic Violence and Mediation: Responding to the Challenges of Crafting Effective Screens*, 39 *FAM. L.Q.* 53 (2005).

There are special problems involved in child protection and domestic violence.³⁸ Battered women's advocates have educated family courts about the inappropriateness of an abusive parent having custody. These efforts have led to the development of standards by child welfare agencies that "engaging in domestic violence" could result in abuse or neglect petitions being brought against a parent, the termination of parental rights, or criminal prosecution. Since mothers are largely primary caretakers, the impact of this rule has had a disproportionate impact on abused mothers. While the problems of child protection often pit battered mothers against the welfare of their children, the application of these rules has historically led to children being taken away from their mothers and placed in foster care. The *Nicholson v. Williams*³⁹ litigation in New York brought these issues to the fore, highlighting very difficult problems and the need for child welfare workers to be educated about violence. We need to provide resources to women who have experienced violence to assist in education, employment, and parenting so that their children can stay with them when it is appropriate.

These problems are pervasive because family court personnel are often not sufficiently knowledgeable about violence or thoughtful in their application of legal standards when violence is involved. Throughout these various aspects of family law is the underlying theme of, and overwhelming need for, state-funded legal representation for lawyers who can systematically represent battered women and more consistently educate judges. There is also the major problem of what has been called Civil Gideon—the need for battered women to have lawyers provided by the State in civil and family law matters.⁴⁰ Battered women are often forced to rely on pro bono lawyers or law students in clinical or volunteer programs, particularly around civil protection orders. While this is better than no representation at all, most abused women need lawyers who are knowledgeable about and sensitive to issues of violence because their cases are very complicated.⁴¹ Legal issues in one area may have an impact on every other area and have tremendous consequences for women's lives down the line. They are far too difficult for a lawyer or law student without the background or experience to deal with these cases. While Family Justice Centers are often helpful and useful in assisting with the range and inter-

38. See SCHNEIDER ET AL., *supra* note 1, ch. 12.

39. 203 F. Supp. 2d 153 (E.D.N.Y. 2002); see also *Nicholson v. Scopetta*, 820 N.E.2d 840 (N.Y. 2004). Both cases are discussed in SCHNEIDER ET AL., *supra* note 1, ch. 12.

40. For a discussion of Civil Gideon, see generally Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons from Gideon v. Wainwright*, 15 TEMP. POL. & CIV. RTS. L. REV. 527 (2006); Russell Engler, *Shaping A Context-Based Civil Gideon from the Dynamics of Social Change*, 15 TEMP. POL. & CIV. RTS. L. REV. 697 (2006).

41. See generally Margaret Drew, *Lawyer Malpractice and Domestic Violence: Are We Revictimizing Our Clients?*, 39 FAM. L.Q. 7 (2005).

related nature of legal problems that have an impact on violence, there is an urgent need for state-funded legal representation.

IV. Looking Forward

While there has been much progress in making the problem of domestic violence visible in the law over the last fifty years, there is much work to do. There are still tremendous misunderstandings concerning the dynamics of abuse among lawyers, judges, professionals, and laypeople, and a deep resistance to seeing intimate violence as a multifaceted problem. Women are blamed for failing to leave, and the problem of violence is often minimized. Even judges who work hard to understand domestic violence may be frustrated by the complexity of the problems and the fact that intimate violence is not the same as stranger violence. The legal issues that are presented by intimate violence are, by definition, complex and involve difficult human relationships. Even the most thoughtfully developed legal reforms can be problematic. Of course, issues of intimate violence tie in with other issues, so reform in many other areas of the law has an impact on violence. Recent evidence and Confrontation Clause cases in the Supreme Court have had a huge impact on domestic violence prosecutions.⁴²

Intimate violence is deeply linked to issues of women's equality and citizenship.⁴³ Women who experience violence are not able to be full participants in society. In the United States today, we do not understand that link, and domestic violence is largely understood through a criminalization lens. While looking at the problem of global violence against women that I examined for work on the Secretary-General's Report, I could see that other countries have begun to recognize that violence is connected with all aspects of women's equality, education, employment, economic well-being, and social supports, and that it makes a big difference to view violence within a "human rights" framework. This approach needs to be reflected in U.S. policy regarding domestic violence. We need to develop a strengthened national commitment and the "political will" to address these needs.

Further, there is a tremendous need for innovative legal work that can grapple with the complexity of battering and intimate violence. It is also crucial that we have thoughtful and experienced judges, lawyers, other professionals, and advocates who can grapple with these issues. Although

42. See generally *Davis v. Washington*, 547 U.S. 813 (2006); *Crawford v. Washington*, 541 U.S. 36 (2004); Deborah Tuerkheimer, *Exigency*, 49 ARIZ. L. REV. 801 (2007) (examining the differences in the treatment of domestic violence in the Fourth Amendment Warrant Clause and the Sixth Amendment Confrontation Clause contexts).

43. See generally SCHNEIDER, *FEMINIST LAWMAKING*, *supra* note 3.

some legal reform efforts have not been successful, we cannot give up when battered women fail to act in ways that legal actors expect. Many times, I hear judges and prosecutors give up on battered women in the criminal justice system and throw up their hands in frustration because battered women do not want to prosecute their abusers. We need a greater understanding of the significance and pervasiveness of violence, but we also must recognize that it happens in the context of complex human relationships that often involve sharing children as well as economic and emotional dependence and, yes, even love. This means that we need legal solutions that are sufficiently nuanced to recognize the violence as well as the human connections.

We have made important first steps to recognize and integrate understandings of violence into the law. But we have much work to do to translate these understandings into law reform that is effective for all women. We have a long way to go before we treat domestic violence as an issue of women's equality and make this meaningful "on the ground."

