

# GINGER ROGERS DANCING BACKWARDS IN RED HIGH HEELS— FEMINIST LAWMAKING AND DOMESTIC VIOLENCE

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Some at the American Bar Association<sup>1</sup> (“ABA”) would challenge that the activities of the Commission on Domestic Violence<sup>2</sup>

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\* Many thanks to my colleagues, Donna Mathews and Zehra Jaffrey, for their worthy assistance and support of this article and to all of the Commission members serving between 1999 and 2003 who represent the collective heart, soul, and mind of the Commission’s work during this time frame.

1. The American Bar Association (“ABA”) is a professional association with a membership of over 410,000 lawyers and related professionals. I assumed the position of Director of the Commission on Domestic Violence in February 1999. As a feminist, I recognize that women occupy a position subordinate to that of men in our culture and that this subordination is manifested within our system of justice. I chose to help promote justice for domestic violence survivors from within the system and my impression was that I was hired by the ABA to do just that. Would the ABA collectively have characterized my job as promoting feminism within the association? I do not know, but I doubt it. My sense is that within the Association, the concept of feminism essentially continues to remain pretty tightly under wrap. Those of us who embrace feminism focus on advancing our goals regardless that they are activities of feminist underpinning. It still seems safer that way.

2. The Commission was convened in 1994 by its first woman president, Roberta Cooper Ramos, to contemplate the scope of domestic violence and offer solutions to the problem. See Steven Keeva, *The Voice of American Lawyers’ First Woman: President’s Agenda Highlights Civic Education*, 81 A.B.A. J. 104, 104 (1995) (noting that the ABA president’s goal included the objective of bringing together a cross-section of communities to address domestic violence issues). Since its inception, the Commission has functioned as a nationally recognized entity that provides training and educational materials to lawyers and other professionals who serve domestic violence victims. The seventeen members of the Commission are appointed each year by the incoming ABA President. The membership is multidisciplinary and consists of a community cross-section of professionals that includes lawyers, professors, psychologists, law enforcement officers, judges, medical providers and others. One of the dominant threads consistently developing in the domestic violence movement in the United States is the notion that solutions to domestic violence are most effectively conceived of and implemented from a collective multi-system approach; the Commission’s make-up reflects this. This community approach manifests the threads of feminist theory—effective solutions must be contextual. This idea corresponds with Professor Schneider’s articulation that when we contemplate the experiences of women who have been battered, we must consider

("Commission") can be described as *feminist lawmaking*. They would say that our agenda is not feminist, it is simply activity directed at furthering "access to justice for victims of domestic violence and their children."<sup>3</sup> Then again, based on some of the letters and email correspondence the Commission has received from men's rights activists throughout the country, according to them, our activities fall into the realm of furthering "feminist, male-bashing social agendas aimed at doing men in."<sup>4</sup> Others would readily acknowledge that the culture in which we all live positions women subordinate to men, generally and specifically, within the very system on which we rely to ensure justice: the legal system.<sup>5</sup> These folks readily go about trying to rectify injustices without ever giving a thought to whether their involvement can be characterized as *feminist lawmaking*, in effect dodging the discussion of feminism altogether. Yet the acknowledgement that there is systemic and collective subordination based on gender that manifests as domestic violence is fundamental to the reason for the Commission's very existence. The Commission's mission and activity fit perfectly within the theoretical and remedial approaches Professor Schneider so eloquently articulates in her

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both the particularity and generality inherent within such experiences. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 59-73 (2000) (defining domestic violence both generally and particularly, by linking violence against women to subordination of women in society at large and specifically detailing the individual complexity of women's experiences).

3. The Commission's mission statement was developed in March 2000, under the guidance of our wonderful leader who was chair at that time, Judy Perry Martinez (Ms. Martinez is only one of a long line of committed Commission leaders. Others include Laura Stein, Michael Bedke, Marna Tucker, Chris Griffin and Lynn Gold-Biken). See ABA COMM'N ON DOMESTIC VIOLENCE, HISTORY AND MISSION STATEMENT (last updated Feb. 10, 2003) [hereinafter ABACDV] (providing a brief history and mission statement of the Commission), available at <http://www.abanet.org/domviol/home.html>.

4. Anonymous emails to Commission (2000, 2001, 2002, and 2003) (on file with author).

5. The legal system really comprises multiple systems, more or less intended to work independently and together to effect justice in cases where legal or equitable injustices have occurred. This is never more apparent than in circumstances in which women have been battered. Civil and criminal remedies, which are so considerably interrelated, regularly occur within the scope of completely separate proceedings in which the systems' actors often fail to connect. For example, prosecutors perceive their work as only involving the criminal case in which a woman who has been battered is a potential state's witness. Civil attorneys may operate only within the realm of the civil system and fail to talk with the prosecutor about the criminal case. Among other ramifications, this can result in separate and conflicting protective orders that may cause confusion for enforcement agents. A perfect example of feminist lawmaking is getting prosecutors (or defense attorneys) and civil attorneys who are representing a woman who has been battered, to work together and coordinate their cases. Otherwise, their activity, rising out of separate systems, remains a manifestation of the entrenchment of the victim-agent dichotomy within the justice system.

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book, *Battered Women and Feminist Lawmaking*.<sup>6</sup>

The Commission has undertaken activities within all three essential avenues identified in Part IV of Professor Schneider's book, *Aspirations, Limits and Possibilities*.<sup>7</sup> These avenues include concepts such as "Engaging With the State," "Lawmaking as Education," and "Education as Lawmaking."<sup>8</sup> All of the Commission's activities within these realms are interrelated and connected to the mission of "mobilizing the legal profession to provide access to safety and justice for victims of domestic violence."<sup>9</sup> None of the avenues are singular, but rather activity within any one category calls for activity within them all. For example, our activity of engaging the state is done through conduct that can be characterized as lawmaking. It is all interrelated.

For participating in the activity of the Commission, members, liaisons, and staff have been truly gifted with the expertise and enthusiasm of one another, shared experiences, and the reward of participating in effective efforts. As Commission members, liaisons, and staff travel down these avenues and others, we collectively and individually participate in developing new in-roads for creating the means for access to safety and justice for domestic violence victims, just as our mission statement declares. This too is interrelated. What follows are some highlights.

#### I. ENGAGING WITH THE STATE— COMMISSION ON DOMESTIC VIOLENCE SUPPORTED ABA POLICY

Consistently since its inception in 1994, the Commission has promoted ABA-approved policy statements that address domestic violence issues.<sup>10</sup> Though these policies do not carry the weight of law, they represent strong and deliberate statements from the predominant legal professional association in the world. Such policies have the effect of influencing legislative activity and service development. They may also be persuasive on a case-by-case basis.

For example, in 1995, the ABA House of Delegates adopted a policy recommendation to promote legislative funding initiatives that would support the development of community-coordinated responses

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6. SCHNEIDER, *supra* note 2.

7. See SCHNEIDER, *supra* note 2, at 179-232.

8. See *id.* at 179-227.

9. See ABACDV, *supra* note 3.

10. See *id.* (setting forth the ABA's official policies regarding the treatment of domestic violence in the legal field).

to domestic violence.<sup>11</sup> Early on, the advocacy community recognized that effective solutions required the participation and coordination of numerous community systems in an attempt to effectively keep battered women safe, restore their autonomy, and hold batterers accountable.<sup>12</sup> Because of the practice and recognition of that policy, the ABA and the Commission supported the enactment of federal laws that provided for funding domestic violence programs. In 2000, the ABA weighed in once again in support of the re-authorization of the Violence Against Women Act ("VAWA").<sup>13</sup> These efforts to engage with state and federal government all supported the state prioritizing of domestic violence as a social ill and funding programs to address it. VAWA promoted the criminalization of the act as well as support for the advocacy community. Its implementation required law enforcement agencies to work with domestic violence service providers from the advocacy community to effect both the prosecution of the crime and support for the victims. This provided the initial framework for what came to be known as community-coordinated responses.<sup>14</sup>

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11. Professor Schneider points out that many consider the coordinated community response an ideal model for the development of domestic violence services. See SCHNEIDER, *supra* note 2, at 179-227. She also notes that early community-coordinated responses were intended to mesh appropriate criminal sanctions with support for battered women. See *id.* I agree that the community responses usually fell far short of the ideal. For example, civil attorneys were rarely initially brought to the table as the councils were developed. Yet these services have proved to be the most critical to battered women in the long term. Although the idea of community-coordinated responses was thus theoretically a good model, identifying the critical community actors and engaging them was a difficult process. The early councils reflected the developing awareness of the depth of the problem. For instance, it took substantial convincing for advocates to persuade both legislatures and law enforcement that domestic violence should be treated as criminal behavior. In fact, advocates had to engage with the state considerably to enact protection order and warrantless arrest laws.

12. Feminists knew that effective solutions required that domestic violence be placed in a broader social context. Consequently, the early community-coordinated councils or domestic violence task forces included criminal justice actors, domestic violence advocates, social services actors and medical providers. This was early activity that prohibited any one service provider from limiting the services they delivered to battered women.

13. Violence Against Women Act of 2000 ("VAWA"), Pub. L. No. 106-386, 114 Stat. 1464, 1491 (codified as amended in scattered sections of 8, 18, 20, 28, and 42 U.S.C.); see also Rhonda McMillan, *Stranger Voice for Victims: Reauthorized Violence Against Women Act Expands Scope of Programs*, 86 A.B.A. J. 98, 98 (2000) (discussing the ABA and the Commission's support for the reauthorization of VAWA).

14. Professor Schneider points out that the criminalization model is currently being challenged. See SCHNEIDER, *supra* note 2, at 184-88. In my view, absolute criminalization, including mandatory arrest and prosecution laws and policies, should be challenged, and discretion to prosecute should remain with the prosecutor. In a perfect world, all law enforcement agents and prosecutors would operate with extensive understanding and awareness of the complexities that domestic violence presents both to the individual and to society as a whole. The

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Another of the ABA's prioritized legislative initiatives is working to restore adequate funding for civil legal services to low income individuals and domestic violence victims. The ABA has been steadfast in this commitment since Legal Services Corporation funding was reduced in 1996.<sup>15</sup> Recent studies indicate that legal assistance is the primary service having a long-term impact on the lives of women who have been battered.<sup>16</sup>

More recently, the ABA adopted a policy, developed by the Commission, recommending that victims of domestic violence be accorded an opt-out prerogative from court ordered mediation. This policy may influence state legislatures enacting legislation, court administrators establishing mediation program protocols, and judges, on a case-by-case basis, about the appropriateness of requiring someone who has been abused to mediate legal issues with an opposing party who has abused them. The policy recommends that the abused person, fully informed of the process and potential consequences, should be the ultimate decisionmaker as to whether to use the alternative dispute process of mediation. In the report supporting the policy recommendation, the Commission further noted that mediators attempting to mediate such cases should be competently trained about domestic violence.<sup>17</sup>

The Commission also developed a policy recommendation, adopted by the ABA, that encourages legislatures to enact laws requiring courts to consider the safety risks to victims of domestic violence and their children when drafting orders containing visitation and visitation exchange.<sup>18</sup> This policy asks courts to inquire into whether violence is a factor in a custody case and to provide and make use of locations where visitation can safely occur.<sup>19</sup> The policy

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dollars provided by VAWA have gone far to educate law enforcement and prosecutors about the issue. See McMillan, *supra* note 13. Mandatory arrest was likely a response that promoted the awareness of seriousness of the violent occurrences and a legislative response designed to overcome a history of minimizing the occurrences. See *id.* More awareness about domestic violence exists today than before VAWA. See *id.* Nonetheless, more education is called for. See *id.*

15. See Robert A. Stein, *Funding the Future*, 86 A.B.A. J. 100, 100 (2000) (explaining that the ABA's commitment to public service includes the use of the Commission to arouse national awareness regarding the issues of domestic violence).

16. See Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence* (last visited Jan. 27, 2003), available at [http://www.dvi.neu.edu/wn/dv\\_decline.htm](http://www.dvi.neu.edu/wn/dv_decline.htm).

17. See ABACDV, Policy 00A109B (last updated Feb. 12, 2003) (providing the report and policy on mediation and specifically including an opt-out provision for domestic violence victims), available at [http://www.abanet.org/domviol/med\\_recommend.html](http://www.abanet.org/domviol/med_recommend.html).

18. See *id.*

19. See *id.* (relaying that unsupervised visitation poses a risk of continuing

also asks lawyers to advocate for safe visitation and visitation exchanges. The accompanying report further calls for attorneys, regardless of which party they represent, to advocate for safe visitation and visitation exchanges.

The Commission actively participated with the National Conference of Commissioners on Uniform State Laws ("NCCUSL") during its drafting of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act ("UIEDVPOA").<sup>20</sup> The completed Act includes amendments that provide for inter-jurisdictional enforcement of stalking and domestic violence protection orders.<sup>21</sup> It is currently being addressed and incorporated within state legislatures throughout the country. The Act also provides that law enforcement shall enforce all the provisions within a protection order, including child custody and visitation provisions.<sup>22</sup> This is one example of how domestic violence activists have influenced the awareness of a traditional policymaking body that is influential in drafting laws adopted at the state level.

In 1997, just three years before NCCUSL adopted the UIEDVPOA, significant improvements to custody jurisdiction and enforcement laws were effected with the drafting and adoption of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA").<sup>23</sup> This Act really represented a revision of the preceding Uniform Child Custody Jurisdiction Act ("UCCJA"),<sup>24</sup> which did not comport with a subsequently enacted federal law.<sup>25</sup> When UCCJEA was drafted, the Conference did not foresee that law enforcement officers would enforce custody orders but rather they envisioned that custody conflicts would be best addressed through the court forum. However,

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violence).

20. See NAT'L CONF. OF COMM'R ON UNIFORM STATE LAWS, UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTIONS ORDER ACT ("UIEDVPOA") (last revised 2002), available at <http://www.law.upenn.edu/bll/ulc/uiedvoa/2002final.htm>.

21. See NAT'L CONF. OF COMM'R ON UNIFORM STATE LAWS, AMENDMENTS TO UIEDVPOA (last visited Feb. 15, 2003), available at <http://www.law.upenn.edu/bll/ulc/uiedvoa/2002act.htm>.

22. See UIEDVPOA, *supra* note 20 (excluding enforcement of child support provisions because the Uniform Interstate Enforcement of Family Support Act already provided an adequate mechanism and had been adopted in all fifty states).

23. See NAT'L CONF. OF COMM'R ON UNIFORM STATE LAWS, UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT ("UCCJEA") (draft for approval 1997) (last visited Feb. 15, 2003), available at <http://www.law.upenn.edu/bll/ulc/uccjea/chldcus2.htm>.

24. See NAT'L CONF. OF COMM'R ON UNIFORM LAWS, UNIFORM CHILD CUSTODY JURISDICTION ACT ("UCCJA") (last visited Feb. 15, 2003), available at [http://www.law.upenn.edu/bll/ulc/fnact99/1920\\_69/uccja68.htm](http://www.law.upenn.edu/bll/ulc/fnact99/1920_69/uccja68.htm).

25. See Parental Kidnapping Prevention Act, 28 U.S.C. § 1738 (2000).

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in 2000, just a few years later and while grappling with the complexities and realities inherent within protection orders, NCCUSL realized the significance of immediate law enforcement response to violations of custody provisions in protection orders and provided for such measures accordingly. The advocacy community, including the Commission itself, was instrumental in this shift.

Essentially, this engagement with the state has required utilizing both education as lawmaking and lawmaking as education. It is doubtful that any law about domestic violence has been enacted without educating lawmakers. Advocates have been instrumental in this educational process. Much of what I brought to the NCCUSL table was a “from-the-trenches” working perspective of advocating for battered women in their efforts to have law enforcement enforce their protection orders. My ability to share this information with the judges, lawyers, and constitutional law professors of NCCUSL served the process well.

All of these examples of the Commission’s work to build in-roads for battered women by engaging the state in the process can also be colored as utilizing education as lawmaking and lawmaking as education. The awareness that has resulted from public education campaigns about the impact of domestic violence on children has helped educate judges issuing orders as well as policy makers drafting laws. It has further helped educate the ABA delegates as they contemplate whether the ABA should adopt a statement on the issue. Educating the state,<sup>26</sup> including actors for the state, such as judges, policymakers, prosecutors, law enforcement officers, and child protective services officials, is essential to engaging and transforming the state.

## II. LAWMAKING AS EDUCATION

Sometime during 1986-1987, before becoming an attorney, I advocated for an immigrant woman, “Else,” during the early course of my career as a domestic violence advocate. Else needed a protection order because her husband battered her. He also threatened that if she notified police, he would divorce her and obtain custody of their daughter. He told Else that she would be deported and never see her daughter again. The most recent battering had included him slapping her and pulling her hair. I assisted Else with obtaining the correct forms to petition for an order

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26. “The state” includes judges, policymakers, prosecutors, law enforcement officers, child protective services and so forth.

of protection and explained the filing and service process. I watched as she wrote the facts down in the petition. She included a description of the physical assault in her petition; however, she did not understand that her husband's refusal to allow her to have a job or access to money, drive a car, or leave the house without his permission, were all components of the pattern of abuse.

The court reviewed Else's petition and signed an ex parte order of protection ordering the husband to stay away from her and providing that she have temporary custody of their daughter. Predictably, her husband retained an attorney to represent him in the matter and also to file for divorce on his behalf. In those days, pro bono programs that helped battered women obtain civil legal counsel did not exist in our community. If pro bono counsel was obtained, it was usually offered in response to the strength of the advocacy community's ability to persuade an attorney to take a case. I was able to find an attorney to help "level the playing field."

As her advocate, I was able to accompany Else to the hearing for the ninety-day protection order. In typical attorney style of the time, the two attorneys met in conference to work out a reasonable settlement to this problem. I was present during their negotiations because I was more familiar with Else's case than her attorney, who had just become involved that morning. I was appalled by the negotiation. The husband's attorney asked to have the protection order dropped, describing the incident as a ruse created by Else to get an upper hand in the divorce proceedings. The husband's attorney insisted that what had happened between them was not domestic violence—he asserted that it was just a fight during which the husband had merely slapped her. Else's attorney agreed that the violence was not serious and that they should probably try to work things out. He counseled Else that filing the protection order might look bad for her in the divorce case and that the action could be construed in such a way as to make Else appear antagonistic and trying to ruin her husband's reputation. Else's attorney convinced her it was in her best interest to agree to a stipulated agreement providing that she would stay in the house but would share custody of the daughter. Though Else had been prevented from working, minimal child support was ordered because the parties shared custody.

Herein lies the message about lawmaking as education. The education required to serve justice in this example is apparent. Else did not know her rights and did not understand that the domestic violence she experienced entailed far more than the slapping and hair pulling. This is true of many women who have been battered

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and to whom I have provided services. One of the very best educational tools developed so far in this field is the Duluth Power and Control Wheel,<sup>27</sup> which has helped thousands of women identify their circumstances as abusive. I recommend that all lawyers refer to this instrument during discussion with prospective clients, to assist in screening for domestic violence. It has helped me explain domestic violence to untold numbers of law enforcement officers, attorneys, judges, educators, religious leaders, and business owners.

Else was not the only person in the example who needed education about domestic violence. Both attorneys genuinely thought they were harmlessly advocating for their clients and serving their clients' best interests. I think they both genuinely believed what they said: "a slap is not domestic violence." The resulting custody arrangement reveals that the judge also lacked adequate education about domestic violence experiences. Because the judge believed that the difficulties were between Else and her husband and were independent of their daughter, joint custody was arranged without even a cursory inquiry into the safety of custody or exchange of custody.

During the 1980s and most of the 1990s, while advocates and policymakers worked hard to develop a criminal justice response to domestic violence, similar development within the civil justice system was neglected. Resources and energy were directed to training law enforcement, prosecutors, and other criminal justice actors, while funding for legal services was severely cut. As a result, there was a marked difference between training efforts and education about domestic violence to attorneys practicing in the civil arena and the enthusiasm and resources directed to the criminal justice system.

#### A. *The National Domestic Violence Civil Law Institutes*

In May 2000, the Commission partnered with the ABA Young Lawyers Division ("YLD") to create and host the first National Domestic Violence Civil Law Institute.<sup>28</sup> The project was funded by the Violence Against Women Office of the U.S. Department of Justice to provide technical assistance training for attorneys representing victims of domestic violence in civil law matters. Fortunately, the

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27. See MINN. PROGRAM DEV., DOMESTIC ABUSE INTERVENTION PROJECT (last visited Mar. 29, 2003) (describing its role as developer of the Power and Control Wheel), available at [http://www.duluth\\_model.org/](http://www.duluth_model.org/).

28. See John Austin, *Young Lawyers Step up to Aid Domestic Violence Victims*, AFFILIATE, Mar./Apr. 2000 (citing reasons for the collaboration as including the objectives of enhancing legal representation, promoting pro bono participation, and cultivating community collaboration), available at <http://www.abanet.org/yld/affiliate/apr.2000/stepup.html>.

awareness of the issue of domestic violence has developed since Else's failed day in court, but there continues to exist a great need to train attorneys about effective screening, safety, and litigation techniques. Since 2000, the Commission has conducted two additional national Domestic Violence Civil Law Institutes and has another scheduled for April 2003. In conjunction with the Civil Law Institutes, the Commission produced a practice guide for handling domestic violence cases.<sup>29</sup> In an effort to educate attorneys, we also began providing audio teleconferences. We are able to reach attorneys from all over the United States with two-hour training opportunities on domestic violence-related civil matters. Some of the country's most adept domestic violence civil attorneys have helped the Commission develop training materials for this continuing legal education and have served their profession as presenters. We are creating a body of training material that is all available on our website to assist attorneys and trainers as they develop statewide and local legal education.

As a result, civil law attorneys are beginning to receive the information they need to function more effectively on behalf of domestic violence victims. Today, Else's attorney would hopefully be able to say "no" to Else's husband's attorney and be willing to take the case to a court hearing, if necessary to ensure Else's protection. He would know better than to put a battered woman in the untenable and dangerous position of working out joint custody with a batterer. He would not advocate to his client that she try to "work it out" and suggest that she was being overly aggressive for accessing legal remedies to provide for her safety. Perhaps Else's attorney would be able to explain to her that domestic violence is more than just physical abuse and that other dynamics in the relationship also indicate that there are power and control issues she must additionally confront. He might refer her to an appropriate support system informed and capable of respectfully supporting battered women.

### III. EDUCATION AS LAWMAKING

#### A. *The Children's Initiative*

No one can dispute the inter-generational effect of domestic violence and we all agree that the training comporting such general knowledge must begin early. Accordingly, the Commission created a

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29. See generally LISA C. JORDAN & BETTE GARLOW, ABA COMM'N ON DOMESTIC VIOLENCE, *THE DOMESTIC VIOLENCE CIVIL LAW MANUAL: PROTECTION ORDERS AND FAMILY LAW CASES* (2001).

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tool to assist professionals providing services to domestic violence victims who are parents of small children.<sup>30</sup> Service providers acknowledge that parents frequently attempt to seek services for domestic violence at a time when their children are of school-age. Consequently, it is routinely the case that domestic violence victims bring their toddlers and babies to meetings with service providers. Small children are quite often traumatized, clinging to their parent and acting out during these meetings. It is unsafe and not advisable to entertain conversations about domestic violence or available options in front of children. Doing so either traumatizes children further or puts them in a position where they know information they may later share with a batterer. Many service providers have equipped playrooms and staff members who assist in looking after the victim's children. The Commission undertook a project to address these issues and created a coloring book, *The Bunny Book*, for children ages three to six years old. This book holds both educational and therapeutic value and actually goes far toward helping to develop a safety plan with small children in the event that further violence occurs in their presence. The coloring book was packaged in a colorful bag with a furry, stuffed toy and a box of crayons. This was just the first component of the project.

The Commission partnered with the YLD to help distribute the bags to service providers in the communities of four pilot cities. In turn, the YLD was able to reach out to youth in the community to assist them with assembling the bags. The final component of the project was YLD's commitment to conduct continuing legal education training about the impact of domestic violence on children.

Gael Strack, of the progressive San Diego City Attorney's Office, took the project to a local elementary school, where all of the students in second through eighth grade participated in assembling the bags. This provided her the opportunity and the forum to talk with school children about family violence and what to do if it occurs. Ms. Strack reported that every student was completely interested and engaged and had a great time working on the project. The Commission later received a call from a California elementary school in an area where a school shooting had occurred asking to use the coloring book with their younger, elementary-aged students. In San Diego, Ms. Strack, Rachelle Bedke of the YLD, and I provided

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30. See ABA YOUNG LAWYERS DIVISION 2000-2001, PROGRAM DESCRIPTION (last visited Feb. 15, 2003), available at <http://www.abanet.org/yld/midyear/programdes.html>.

workshops at the ABA midyear meeting. Martha Barnett, ABA president at the time, spotlighted the project in her Presidential press conference, in which she talked about the impact of domestic violence on children and the need for all service providers to address issues pertaining to the safety of children. This issue, the coloring book, and the press conference, were all subsequently featured in the *ABA Journal*.<sup>31</sup> Together, all these factors constituted an effectively implemented effort to encourage attorneys and the public to become aware of the problem and respond to it in communities throughout the United States.

A YLD member from Birmingham, Alabama, David Faulkner, took the lead on the project in his community. Mr. Faulkner rallied the YLD in the community to assist him with developing and implementing legal education. He coordinated assembling and distributing the bags with a Girl Scout Troop and the local domestic violence program.<sup>32</sup> The Girl Scouts earned a badge for their work on the project, while also learning about domestic violence. They helped distribute the bags to law enforcement, shelters, hospitals and other service providers.<sup>33</sup> The community was so impressed with the project that they subsequently acknowledged a public need for more bags in addition to those originally distributed.<sup>34</sup> With the help of Mr. Faulkner and the local YLD, the Girl Scouts raised money to repeat the project in the fall, during Domestic Violence Awareness Month.<sup>35</sup>

The project exemplifies the ability to promote education about domestic violence using creative and unconventional means. It applies a soft touch to address a hard issue. The Bunny Project, originating from the heart of an association of lawyers, has been one of the delights of my tenure at the ABA. Significantly, the project asked lawyers to become invested in ways that would affect their own

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31. See James Podgers, *One Small Step: Project Aims to Ease the Way for Children in Domestic Violence Cases*, 87 A.B.A. J. 89 (2001).

32. See ABA COMM'N ON DOMESTIC VIOLENCE, PRO BONO ACTIVITIES (last visited Feb. 15, 2003) (reporting that Birmingham, Alabama, Girl Scout Troop 734 helped distribute 2000 Bunny Bag packets), available at <http://www.abanet.org/soc/probono/domesticviolence.html>.

33. See *id.*

34. See *id.* (reporting that after distributing the original 2000 Bunny Bags to service providers throughout Birmingham, the Girl Scouts involved received an additional 1000 bags for distribution).

35. Two other projects were conducted with similar enthusiasm and widespread results in Chicago and Boston. The Bunny Book project is ready for replication throughout the United States. Commission members Gael Strack and Sarah Buel have taken the book to numerous communities to share with local providers. The book has also been translated into Spanish and will soon be ready for distribution in this format.

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future representation of victims of domestic violence, especially those cases involving children.

*B. Integrating Domestic Violence in the Law School Curriculum*

The Commission hosted a conference for law school professors in 1996 about integrating domestic violence in the law school curriculum.<sup>36</sup> A select group of professors from across the United States, with a demonstrated interest in teaching domestic violence, participated in the conference.<sup>37</sup> The groups' findings confirmed that the majority of law schools did not inquire into domestic violence issues through course offerings or any other concerted manner.

As a follow-up, the Commission discussed means of encouraging law schools all over the United States to join efforts to integrate the topic of domestic violence into the broad curriculum.<sup>38</sup> The Commission approached the Violence Against Women Office at the U.S. Department of Justice for funding to implement a project to this effect. The Commission believed that it was absolutely imperative to train a new generation of professionals to effectively address domestic violence within their professional undertakings, whether these students would eventually become lawyers working in private practice, government or policy workers, or even if they were to ultimately pursue business-related careers.<sup>39</sup> It is also critical that this new generation be capable of extending their relevant knowledge to their communities, both through their work and within their own lives. Initially funding three conferences and extending the project for two others, the Violence Against Women Office agreed that such an effort would go far in advancing the collective knowledge of the legal profession about domestic violence.

The Commission began the project by researching schools within

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36. See DEBORAH GOELMAN & ROBERTA VALENTE, WHEN WILL THEY LEARN? EDUCATING TO END DOMESTIC VIOLENCE, A LAW SCHOOL REPORT (1997) [hereinafter GOELMAN & VALENTE, LAW SCHOOL REPORT] (reporting that in 1996, the ABA and the Office for Victims of Crime conducted a two-day meeting with experts in the field of domestic violence to discuss the role of domestic violence seminars and clinics in the future of law schools), available at <http://www.ojp.usdoj.gov/ovc/publications/infares/etedv.etedvpdf.pdf>.

37. See *id.* (discussing the involvement of a group of approximately thirty domestic violence professors attending the conference).

38. See *id.* (discussing how law schools that incorporate domestic violence issues into their curriculum will help law students aid in the eradication of domestic violence within the general community).

39. See *id.* ("Incorporating domestic violence legal issues into law school curricula may help produce future lawyers who have a better understanding of domestic violence and its legal implications.").

specific geographic areas for indications of interest, including existing clinics, classes, or professors who were interested in advancing domestic violence education and activity within the scope of the overall law school curriculum.<sup>40</sup> In the course of implementing five regional conferences, teams from nearly seventy law schools assembled to talk about curricula development. They shared syllabi, teaching notes, information about difficulties inherent in creating new clinics and maintaining them once established, and ideas for integrating the subject of domestic violence in substantive law classes such as Property, Contracts, Family Law, Evidence, Torts, Civil and Criminal Procedure and Constitution law.<sup>41</sup>

A consistent theme interwoven throughout the five conferences was the considerable impact on the lives of domestic violence victims fortunate enough to secure the services of an attorney who possesses an understanding of the complexities underlying domestic violence. These complexities include battered women's decisions to remain with abusers rather than risk being homeless and depriving their children of shelter and confronting their lack of an autonomous economic foundation capable of providing basic living necessities.<sup>42</sup> Other complexities include fitting the circumstances of battered women within the construct of existing legal theory, as in the case of justifiable use of force and the imminency requirement of self-defense as they apply to women who have been battered. Dialogue about these issues is a great opportunity to discuss the intersection of theory and practice.<sup>43</sup>

As a result of these and other conferences,<sup>44</sup> activity in law schools

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40. *See id.*

41. *See id.* (discussing how domestic violence issues are unaddressed in law school courses and arguing that students would benefit if such issues were incorporated within core curriculum courses).

42. Attorneys have traditionally expressed frustration that battered women too frequently return to abusers. Educating attorneys, or in this case, attorneys-to-be, about this fundamental issue helps introduce the concept of client-centered representation and provokes a discussion about the attorneys' (or students') own personal biases as well as the biases that operate in our system of justice.

43. Professor Elizabeth Schneider, from the *Brooklyn School of Law* and Professor Sarah Buel, from the *University of Texas School of Law*, provided endless support and energy for all of these conferences. Their participation enriched the scope and depth of discussion that resulted at all five events. The Commission on Domestic Violence owes them both a debt of gratitude for their endless support to this project.

44. Professor Isabel Medina coordinated a wonderful conference on integrating domestic violence into law schools in October 2000 that resulted in a symposium edition of the *Loyola Law Review*. Her publication on the conference is a wonderful resource. *See generally* Isabel Medina, *Symposium on the Integrating Responses to Domestic Violence*, 47 *LOY. L. REV.* 1 (2001). Robin Hassler Thompson, Former Director of the Florida Governor's Task Force on Domestic Violence and current Commission member, coordinated a conference on integrating domestic violence in the law

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concerning domestic violence education has exponentially increased.<sup>45</sup> The Commission will publish its project report, *Teach Your Students Well*,<sup>46</sup> in spring 2003 to include examples of creative and wonderful efforts in law schools all over the United States. It will also offer sample syllabi, teaching notes contributed by generous professors, and models of clinics.

One of the most invigorating aspects of the conferences was the enthusiasm and commitment demonstrated by the students who attended. Students have been the impetus for motivating schools to join this movement on numerous occasions.<sup>47</sup> Students helped Professor Medina open the conference with their statements about the importance of learning about domestic violence in their educational endeavors. Students at *Tulane Law School* in New Orleans heard about Medina's conference at Loyola and attended. Subsequent to their experience, they approached their Dean with their commitment to seeing that courses and training would be offered at Tulane. They also approached the Commission's Chair, Judy Perry Martinez, an active member of the New Orleans Bar and a key speaker at the Loyola conference, to help advocate their point. As a result of this impetus, Tulane hired a professor to teach a domestic violence course in the summer of 2002 and opened a clinic that September.<sup>48</sup> Student involvement was an instrumental and high-impact aspect of the conferences. For me, it provided hope that we really are motivating a new generation of lawyers committed and eager to pursue this work and go forward.<sup>49</sup>

## CONCLUSION

Some observers believe that the Commission's work constitutes social justice work; they do not consider whether it is feminist lawmaking integrated into the overall work of the feminist

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school curriculum that occurred in September 1997. Thompson's template served as a model that was modified for the five Commission conferences from 1999 through 2002.

45. See Cynthia L. Cooper, *Defending Their Lives*, STUDENT LAWYER (Dec. 2002) (noting that three conferences hosted by the Commission between 1999 and 2001 have involved the participation of fifty law schools).

46. ABA COMM'N ON DOMESTIC VIOLENCE, *TEACH YOUR STUDENTS WELL* (forthcoming 2003).

47. See *id.* (reporting that forty law schools now have clinical programs addressing domestic violence issues).

48. See *id.* (reporting on the opening of the *Tulane Law School* Clinic on Domestic Violence).

49. Or likely, they were motivating us. Either way, it was a rewarding and encouraging dynamic

movement. Still others perceive the Commission's work as systematic male bashing, similar to the frequent accusations many advocates suffered during the early days of establishing women's shelters, for instance. Work undertaken by anyone advancing a society in which oppression of any kind is called into account is desirable. The Commission's work fits well within this scope. Is it feminist lawmaking? I think so, in the very best sense, and this is why: the Commission works hard to educate lawyers, law students, judges, advocates, and the public about the issue of domestic violence.<sup>50</sup> The Commission works hard to advance policies influencing legal thought and activities promoting greater protections for domestic violence victims and greater accountability of perpetrators.<sup>51</sup> From my perspective, the Commission's work is done in an effort to help raze an all too common social modus operandi: the subordination of women that ultimately leads to violence and a violation of their human dignity.

This work has moved swiftly and appears to have taken its lead from convention as we push forward fashioning remedies and relief from within existing legal forums. In reality, it calls for creativity, it is unconventional at times, deliberate, and has flair and purpose—much like Ginger Rogers dancing backwards in red high heels.

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50. See ABACDV, *supra* note 3 (“[T]he Commission continues to ambitiously and effectively address domestic violence issues in a range of contexts from educating judges, lawyers, or advocates on complex points of emerging law.”).

51. See *id.* (discussing the emphasis placed by the Commission on serving domestic violence victims and keeping them safe).