

# Domestic Violence



# Domestic Violence

*Law, Policy, and Practice*

SECOND EDITION

**Diane Kiesel**

Acting Justice, New York Supreme Court and  
Adjunct Professor, New York Law School



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2017  
Diane Kiesel  
All Rights Reserved

LCCN: 2017947249  
ISBN: 978-1-63281-558-3  
eISBN: 978-1-63281-559-0

Carolina Academic Press, LLC  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*For the late Judge Judith Kaye,  
chief judge of the state of New York (1993–2008), and  
retired Acting Justice Judy Harris Kluger, director of policy and  
planning for the New York State Courts (2009–2013),  
with my gratitude for giving me the opportunity to do  
this important work in the court system.*



# Contents

---

Table of Cases	xix
Acknowledgments	xxix
Preface	xxxvii
<b>Chapter 1 · Introduction</b>	<b>3</b>
I. In Harm's Way— The Dynamic of Domestic Violence	9
Mary Ann Dutton, Symposium on Domestic Violence: <i>Understanding Women's Responses to Domestic Violence:             A Redefinition of Battered Woman Syndrome</i>	10
Kathleen Waits, <i>The Criminal Justice System's             Response to Battering: Understanding the Problem,             Forging the Solutions</i>	12
Jane K. Stoever, <i>Transforming Domestic Violence Representation</i>	16
Sarah M. Buel, <i>Fifty Obstacles to Leaving, A.K.A.,             Why Abuse Victims Stay</i>	19
II. A Man's Home Is His Castle	25
A. Slow Change	26
<i>Bradley v. State</i>	27
III. Modern Times	29
IV. Domestic Violence as a Crime	31
<i>Bruno v. Codd</i>	31
Notes and Questions	37
<b>Chapter 2 · Race, Culture, Religion and Sexual Orientation &amp;         Domestic Violence</b>	<b>41</b>
I. Introduction	41
II. African American Women	42
Linda L. Ammons, <i>Mules, Madonnas, Babies, Bathwater,             Racial Imagery and Stereotypes: The African-American             Woman and the Battered Woman Syndrome</i>	43
III. Latinas	45
Jenny Rivera, <i>Intimate Partner Violence Strategies:             Models for Community Participation</i>	45

IV. Socioeconomic Status	47
Jody Raphael, <i>Battering Through the Lens of Class</i>	47
V. Muslim Societies	49
Lisa Hajjar, <i>Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis</i>	49
Kenneth Lasson, <i>Bloodstains on a “Code of Honor”: The Murderous Marginalization of Women in the Islamic World</i>	52
VI. Jewish Communities	59
Lydia M. Belzer, <i>Toward True Shalom Bayit: Acknowledging Domestic Abuse in the Jewish Community and What to Do About It</i>	59
VII. Native American Women	63
Kathryn A. Ritcheske, Note: <i>Liability of Non-Indian Batterers in Indian Country: A Jurisdictional Analysis</i>	63
<i>United States v. Bryant</i>	66
Commission on the Status of Women, Sixtieth session, 2016 Violence Against Indigenous Women and Girls, <i>Statement submitted by Indian Law Resource Center, National Congress of American Indians, and Native American Rights Fund, and other non-governmental organizations in consultative status with the Economic and Social Council</i>	72
VIII. Women With Disabilities	75
Karen Nutter, Note: <i>Domestic Violence in the Lives of Women With Disabilities: No (Accessible) Shelter From the Storm</i>	75
IX. Cultural Defenses	78
<i>State v. Vue</i>	78
X. Law Enforcement/Military “Culture”	83
Simeon Stamm, Note: <i>Intimate Partner Violence in the Military: Securing Our Country, Starting with the Home</i>	85
Diane Wetendorf, <i>Representing Victims of Police-Perpetrated Domestic Violence</i>	94
XI. Lesbians, Gay Men and the Transgendered Community	100
Sharon Stapel & Virginia M. Goggin, <i>Lesbian, Gay, Bisexual, Transgender and Queer Victims of Intimate Partner Violence</i>	101
Leigh Goodmark, <i>Transgender People, Intimate Partner Abuse, and the Legal System</i>	104
Notes and Questions	117
<b>Chapter 3 · The Criminal Law of Domestic Violence</b>	121
Linda McGuire, <i>Criminal Prosecution of Domestic Violence</i> (1994), written for The Battered Women’s Justice Project	121
I. Crimes of Domestic Violence	124
A. Homicide	124
Minn. Stat. 609.185 (2015)	124



<i>State v. Barnes</i>	125
B. Fatality Reviews/Danger Assessments	128
Jacqueline C. Campbell, et al., <i>Assessing Risk Factors     for Intimate Partner Homicides</i>	131
<i>Pettingill v. Pettingill</i>	134
<i>Petriciolet v. Texas</i>	138
C. Domestic Violence as a Specific Crime	143
California Penal Code 273.5 (2016)	144
<i>People v. Abrego</i>	145
D. Witness Tampering	147
<i>People v. Yascavage</i>	147
E. Criminal Contempt—Violation of Protective Orders	151
<i>People v. Wood</i>	151
<i>State v. Grayhurst</i>	154
<i>State v. Lucas</i>	157
F. Marital Rape	161
<i>People v. Liberta</i>	161
S.C. Code Ann. 16-3-615 (2014)	166
G. Strangulation	166
11 Del. C. § 607 (2016)	167
NY Penal Law § 121.12 (2015)	167
H. Stalking	167
Paul E. Mullen & Michele Pathe, <i>Stalking</i>	168
Cal Pen Code 646.9 (2016)	172
<i>People v. Zavala</i>	173
II. Domestic Violence in the New Technology Era	177
<i>Elonis v. United States</i>	177
Mary Graw Leary, Symposium: <i>Emerging Issues in Crime Victims’     Rights: The Third Dimension of Victimization</i>	182
III. Fighting Back	188
Fla. Stat. § 776.013 (2016)	189
Fla. Stat. § 776.032	190
<i>Bartlett v. State</i>	190
IV. Consequences of the Criminalization of Domestic Violence	193
Lois A. Ventura & Gabrielle Davis, <i>Domestic Violence:     Court Case Conviction and Recidivism</i>	194
A. Bail Considerations	196
18 USCS § 3142 (2015)	197
<i>United States v. Rogers</i>	197
NY Criminal Procedure Law § 510.30 (2016)	201
18 Pennsylvania Consolidated Statutes § 2711 (2016)	202
Suraji R. Wagage, <i>When the Consequences Are Life and Death:     Pretrial Detention for Domestic Violence Offenders</i>	203
Notes and Questions	213

<b>Chapter 4 · Evidentiary Issues in Domestic Violence Cases</b>	217
I. <i>Crawford</i> and the Fate of Victimless Prosecutions	218
<i>Crawford v. Washington</i>	218
<i>Davis v. Washington</i>	223
<i>Giles v. California</i>	229
Sarah M. Buel, <i>Putting Forfeiture to Work</i>	232
II. Evidence of Prior Acts of Domestic Violence in Homicide and Other Domestic Violence Cases	256
<i>People v. Bierenbaum</i>	256
<i>People v. Dorm</i>	268
<i>Rufo v. Simpson</i>	269
<i>Peters-Riemers v. Riemers</i>	276
III. Evidentiary Tools Unique to Domestic Violence Cases	279
A. Propensity for Intimate Partner Abuse	279
Andrew King-Ries, <i>Responding: Two New Solutions: True       to Character: Honoring the Intellectual Foundations of the       Character Evidence Rule in Domestic Violence Prosecutions</i>	279
Minn. Stat. 634.20 (2015)	282
C.R.S. (Colorado) 18-6-801.5 (2015)	282
B. Medical Record Evidence in Domestic Violence Cases	283
<i>People v. Benston</i>	283
Nancy E. Isaac & V. Pualani Enos, <i>Documenting Domestic       Violence: How Health Care Providers Can Help Victims</i>	287
IV. Special Evidentiary Considerations with Child Witnesses in Family Violence or Sexual Abuse Cases	288
A. The Ability to Testify Under Oath	289
Fla. Stat. 90.605 (2015)	289
B. Accommodations for Child Witnesses	290
N.J. Stat. Sec. 2A:84A-16.1 (2016)	290
42 Pa. C.S. Sec. 5987 (2016)	290
A.C.A. Sec. 16-44-203 (Arkansas 2015)	290
<i>Maryland v. Craig</i>	291
<i>Ohio v. Clark</i>	300
V. Courthouse Dogs	306
Casey Holder, Comment: <i>All Dogs Go to Court: The Impact     of Court Facility Dogs as Comfort for Child Witnesses     on a Defendant's Right to a Fair Trial</i>	307
<i>State v. Dye</i>	311
VI. Evidentiary Privileges in Domestic Violence Cases	317
A. The Marital Privilege	317
Utah R. Evid. Rule 502 (2016)	317
B. Domestic Violence Counselor/Social Worker	318
<i>People v. Turner</i>	318
Notes and Questions	322

<b>Chapter 5 · Expert Testimony &amp; Syndrome Evidence</b>	323
Introduction	323
I. Use of Syndrome Evidence by Defendants in Self-Defense Cases	324
<i>State v. Kelly</i>	325
<i>State v. Hanks</i>	331
II. Use of Expert Testimony by Prosecutors	335
<i>State v. Grecinger</i>	335
III. Other Uses of Syndrome Evidence by Defendants	340
A. Duress	340
Model Penal Code § 2.09. Duress.	340
<i>State v. B.H.</i>	341
B. Competency	346
<i>Commonwealth v. Conaghan</i>	346
IV. Syndrome Evidence in Cases Involving Children	349
A. Battered Child Syndrome	349
Nancy Wright, <i>Voice for the Voiceless:</i>	
<i>The Case for Adopting the “Domestic Abuse Syndrome” for Self-Defense Purposes for All Victims of Domestic Violence Who Kill Their Abusers</i>	350
<i>State v. Janes</i>	359
B. Child Sexual Abuse Accommodation Syndrome	365
<i>State v. Chauvin</i>	365
V. Jurors as Experts	369
<i>People v. Arnold</i>	369
Notes and Questions	373
<b>Chapter 6 · The Violence Against Women Act—Fighting Domestic Violence on a Federal Level</b>	377
I. Setting the Stage for VAWA	378
II. Violence Against Women Act Becomes Law	379
A. The <i>Morrison</i> Decision	380
<i>United States v. Morrison</i>	380
B. After <i>Morrison</i> —What Remains	387
<i>United States v. Larsen</i>	388
III. Federal Firearms Restrictions	393
Darren Mitchell & Susan B. Carbon, <i>Firearms and Domestic Violence: A Primer for Judges</i>	393
<i>United States v. Hayes</i>	397
<i>United States v. Castleman</i>	401
<i>Voisine v. United States</i>	406
<i>Fraternal Order of Police v. United States</i>	410
Tom Lininger, <i>An Ethical Duty to Charge Batterers Appropriately</i>	413
Notes and Questions	430

<b>Chapter 7 · Children, the Elderly and Domestic Violence</b>	435
I. The History of Abuse Against Children and the Emergence of Child Welfare Groups	436
A. Ten Centuries of Child Abuse	436
Martin Ventrell, <i>Evolution of the Dependency Component       of Juvenile Court</i>	436
B. Emergence of Modern Child Protective Measures	439
II. The Modern Fight Against Child Abuse	442
A. Mandated Reporters	443
Maryland Family Law Code Ann. § 5-704 (2016)	443
N.J. Stat. § 9:6-8.10. (2016)	444
<i>B.H. v. County of San Bernardino</i>	444
<i>L.A. and L.A. v. D.Y.F.S.</i>	452
<i>Brown v. Pound</i>	457
<i>Wilson v. Darr</i>	459
<i>State v. Wilson</i>	461
B. Scope and Limit of Duties to Protect Children	466
Col. Rev. Stats. § 18-6-401 (2015)	466
<i>People v. Steinberg</i>	466
C. Shaken Baby Syndrome	470
Deborah Tuerkheimer, <i>The Next Innocence Project:       Shaken Baby Syndrome and the Criminal Courts</i>	470
<i>State v. Edmunds</i>	477
III. Teen Dating Violence	481
Andrew Sta. Ana & Stephanie Nilva, <i>Teen Victims of     Intimate Partner Violence</i>	481
IV. Family Violence as a Form of Child Abuse	485
<i>People v. Johnson</i>	485
V. Family Violence and Child Custody	488
A. Should Batterers Be Custodial Parents?	488
Ala. Code § 30-3-131 (2015)	488
Ind. Code Ann. § 31-17-2-8 (2016)	488
Nancy Ver Steegh, <i>Differentiating Types of Domestic Violence:       Implications for Child Custody</i>	489
B. Failure to Protect Children from Witnessing Violence	499
VI. Domestic Violence and Interjurisdictional Custody Disputes	501
A. The Uniform Child Custody and Jurisdiction Enforcement Act	501
Joan Zorza, <i>The UCCJEA: What Is It and How Does It Affect       Battered Women in Child-Custody Disputes?</i>	501
B. International Child Abduction	513
<i>Souratgar v. Fair</i>	513
VII. Domestic Violence and the Elderly	520
David France, <i>And Then He Hit Me</i>	521
Tex. Penal Code § 22.04 (2016)	522

Cal. Pen. Code § 368 (2016)	523
N.Y. Penal Law § 260.32 (2015)	525
Lisa Fischel-Wolovick, <i>Police Response: Mandatory Arrest &amp; Primary Physical Aggressor</i>	526
Notes and Questions	527
<b>Chapter 8 · Divorce and Domestic Violence</b>	<b>533</b>
I. Domestic Violence as a Ground for Divorce	535
<i>Echevarria v. Echevarria</i>	536
<i>Brady v. Brady</i>	537
Louisiana R.S. 9:307 (2016)	539
II. Domestic Violence, Economic Issues and the Distribution of Marital Assets	540
A. California's Divorce Law	540
Cal. Fam. Code § 4320 (2016)	541
Cal. Fam. Code § 4325 (2016)	542
Cal. Fam. Code § 2603.5 (2016)	542
<i>In re Marriage of Cauley</i>	543
B. The Consideration of Domestic Violence in the Awarding of Marital Assets in Other Jurisdictions	546
<i>Havell v. Islam</i>	547
<i>Wheeler v. Upton-Wheeler</i>	551
C. Economic Issues for Domestic Violence Survivors	554
III. Divorce Mediation and Domestic Violence	555
CONNIE J.A. BECK & BRUCE D. SALES, FAMILY MEDIATION: FACTS, MYTHS AND FUTURE PROSPECTS	555
Nancy Ver Steegh, <i>Yes, No, and Maybe: Informed Decision Making     About Divorce Mediation in the Presence of Domestic Violence</i>	557
Dafna Lavi, <i>Divorce Involving Domestic Violence: Is Med-Arb Likely     to be the Solution?</i>	559
Alaska Stat. 25.24.060 (2015)	580
Notes and Questions	581
<b>Chapter 9 · Civil Actions and Domestic Violence</b>	<b>583</b>
I. Interspousal Tort Immunity	584
<i>Thompson v. Thompson</i>	584
<i>Brown v. Brown</i>	588
<i>Townsend v. Townsend</i>	591
Ill. Comp. Stat. Ann (2016) 750 ILCS 65/1	593
II. Statutes of Limitations	593
Lisa Napoli, <i>Tolling the Statute of Limitations for Survivors     of Domestic Violence Who Wish to Recover Civil Damages     Against Their Abusers</i>	594
<i>Nussbaum v. Steinberg</i>	597
<i>Nussbaum v. Steinberg</i>	600

III. Expanding Tort Liability for Domestic Violence	601
A. Battered Women’s Syndrome	601
<i>Cusseaux v. Pickett</i>	601
B. The Tort of Domestic Violence	603
California Civil Code § 1708.6 (2016)	603
California Penal Code § 13700 (2016)	603
California Code of Civil Procedure § 340.15 (2016)	604
C. Infliction of Emotional Distress	604
<i>Feltmeier v. Feltmeier</i>	604
<i>Kloepfel v. Bokor</i>	609
IV. Tort Actions in Divorce	614
<i>Chen v. Fischer</i>	614
<i>Lord v. Shaw</i>	617
V. Insurance Issues in Domestic Violence Tort Litigation	619
A. Lack of Coverage for Acts of Domestic Violence	620
Jennifer Wriggins, <i>Interspousal Tort Immunity and Insurance</i> “Family Member Exclusions”: <i>Shared Assumptions, Relational</i> <i>and Liberal Feminist Challenges</i>	620
B. The Patient Protection and Affordable Care Act and Domestic Violence	622
Maggie Jo Buchanan, <i>Fighting Domestic Violence Through</i> <i>Insurance: What the Affordable Care Act Does and Can</i> <i>Do for Survivors</i>	623
VI. Tort Actions Against Police and Public Agencies	629
<i>DeShaney v. Winnebago County Department of Social Services</i>	629
<i>Town of Castle Rock v. Gonzales</i>	633
VII. Domestic Violence Torts at the Workplace	639
John E. Matejkovic, <i>Which Suit Would You Like? The Employer’s</i> <i>Dilemma in Dealing With Domestic Violence</i>	639
<i>Carroll v. Shoney’s, Inc.</i>	644
Georgia Code. Ann. § 34-1-7 (2016)	645
<i>Green v. Bryant</i>	646
NYC Administrative Code 8-107.1	648
R.I. Gen. Laws § 12-28-10 (2016)	648
VIII. False Arrest Claims	649
<i>Wildoner v. Borough of Ramsey</i>	649
Notes and Questions	655
<b>Chapter 10 · Domestic Violence and Family Law</b>	659
Catherine F. Klein & Leslie E. Orloff, <i>Protective Orders and</i> <i>Other Injunctive Relief: Civil Protection Orders</i>	660
I. Who Is Part of the Family?	663
N.Y. Family Ct. Act § 812 (2016)	663
II. The Legality of <i>Ex Parte</i> Orders of Protection	664

<i>Shah v. Shah</i>	664
Official Code of Georgia Annotated § 19-13-2 (2016)	670
<i>Anderson v. Deas</i>	670
III. Relief Provided Under Protective Orders	672
<i>Maldonado v. Maldonado</i>	672
<i>V.C. v. H.C.</i>	676
<i>Stuckey v. Stuckey</i>	682
IV. Assessing the Effectiveness of Protective Orders	685
Susan L. Keilitz, Paula L. Hannaford & Hillery S. Efke, <i>Civil Protective Orders: The Benefits and Limitations for Victims of Domestic Violence</i>	685
V. Sanctions for Violations	689
<i>United States v. Dixon</i>	689
<i>Walker v. Walker</i>	695
Notes and Questions	698
Tex. Prop. Code § 92.016 (2016)	700
<b>Chapter 11 · Immigration and Domestic Violence</b>	703
I. The History of Women and Immigration Law	704
Leslye E. Orloff & Janice V. Kaguyutan, <i>Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses</i>	704
II. The Violence Against Women Act and Immigration Reform	708
Sarah M. Wood, Note: <i>Queer Theory, Feminism, and the Law: VAWA's Unfinished Business: The Immigrant Women Who Fall Through the Cracks</i>	708
III. Further VAWA Improvements	710
IV. Immigration Law in Context	711
<i>Johnson v. Attorney General</i>	711
<i>Hernandez v. Ashcroft</i>	715
<i>Rosario v. Holder</i>	723
V. The U VISA	728
<i>Hyoun Kyung Lee v. Holder</i>	728
VI. The Impact of Criminal Conviction on Removal	730
<i>Padilla v. Kentucky</i>	731
<i>Singh v. Ashcroft</i>	735
VII. Domestic Violence as Torture, a Violation of International Human Rights or the Basis for Asylum	738
Lori A. Nessel, "Willful Blindness" to Gender-Based Violence Abroad: <i>United States' Implementation of Article Three of the United Nations Convention Against Torture</i>	738
<i>In re R—A—</i>	749
Asylum and Withholding Definitions Proposed Rules	758
Notes and Questions	766

<b>Chapter 12 · Domestic Violence and the Justice System</b>	<b>769</b>
I. Problem-Solving Courts	770
A. Judicial Attitude and Demeanor in Domestic Violence Cases	770
B. The Debate About Specialized Domestic Violence Courts	774
Bruce Winick, <i>Applying the Law Therapeutically in Domestic Violence Cases</i>	774
Hon. Janice Rosa (ret.), <i>The Judge as Community First Responder: Because ACE's High is a Losing Hand</i>	778
II. Representing Clients in a Domestic Violence Court	780
A. Victims	780
B.J. Cling & Dorchen A. Leidholdt, <i>Interviewing and Assisting Domestic Violence Survivors</i>	780
B. Perpetrators	781
Lisa Angel & Lee Rosen, <i>Zealous and Ethical Representation of Batterers</i>	781
III. Sentencing—Jail, Probation, Batterers' Programs, Judicial Monitoring or Circles of Peace	783
Cheryl Hanna, <i>The Paradox of Hope: The Crime and Punishment of Domestic Violence</i>	785
A. Jail Sentences for Federal Crimes of Domestic Violence	801
18 U.S.C. § 2262	801
<i>United States v. Robinson</i>	802
<i>United States v. Fiume</i>	806
B. Sentences in State Courts	808
S.C. Code Ann. § 16-25-20 (2016)	808
N.Y. C.L.S. Penal § 60.12 (2015)	812
C. Electronic Monitoring and Batterers' Programs	813
Rev. Code Wash. § 26.50.150 (2016)	817
D. Alternative Solutions	818
C. Quince Hopkins, Mary P. Koss & Karen J. Bachar, <i>Responding: Two New Solutions: Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities</i>	819
IV. Ethical Considerations in Domestic Violence Cases	826
A. The Role of the Judge: Neutral Umpire or Societal Problem Solver?	826
B. The Domestic Violence Judge in the Courtroom	830
<i>In re Greene</i>	830
C. The Lawyer as Advocate in the Domestic Violence Case	833
1. Defense Dilemma: Where to Draw the Line	833
District of Columbia Bar Ethics Opinion 321	834
2. Ethical Problems of the Prosecutor	835
V. When Domestic Violence Hits Close to Home	835
<i>In re Nevill</i>	836
<i>In the Matter of Magid</i>	841



<i>In The Matter of Fawn Balliro</i>	844
<i>In the Matter of Williams</i>	852
Notes and Questions	858
<b>Index</b>	861



# Table of Cases

---

## A

Abbott, State v., 329  
Abrego, People v., 145  
Acosta, Matter of, 755  
Alabama v. Shelton, 70  
Alberton v. State Bar, 839  
Alejo v. City of Alhambra, 448, 449  
Alice C. v. Joseph C., Matter of, 679  
Allery, State v., 363  
Aly v. Aden, 518  
A-M-E- & J-G-U-, Matter of, 765  
Anderson v. Deas, 670  
Anderson v. Deas, 670  
Anderson v. Johnson, 138  
Andrei v. Ashcroft, 719  
Angel, People v., 268  
Anonymous, People v., 285  
Arakawa, State v., 251  
Arceneaux v. K-Mart Corp., 643  
Archie v. Racine, 631  
Argersinger v. Hamlin, 68  
Argueta v. Holder, 725  
Armstrong v. United States, 407  
Armstrong, State v., 479  
Armstrong, United States v., 407  
Arnold, People v., 369  
Avdel Corp. v. Mecure, 667

## B

B.H. v. County of San Bernardino, 444  
B.H., State v., 341  
Bailey, Estate of, by Oare v. County of York, 631  
Bailey, Matter of, 850  
Bailey, United States v., 391  
Baker v. McCollan, 632  
Balint, United States v., 181

Barber v. Thomas, 406  
Barco-Sandoval v. Gonzales, 725, 726  
Barnes, State v., 125  
Barnes, United States v., 399, 401  
Barnhart v. Thomas, 400  
Barnier v. Barnier, 536  
Barry v. Barry, 538  
Barry, United States v., 412  
Barshaw v. State, 143  
Bartelho, United States v., 654  
Bartlett v. State, 190  
Bauer, State v., 82  
Beaugez, People v., 464  
Begay v. United States, 404  
Belless, United States v., 402  
Belleville Toyota, Inc. v., 608  
Benoy v. Simons, 611  
Benston, People v., 283  
Berger v. Sonneland, 611  
Bergerson, People v., 486  
Bess, State v., 326, 329  
Bierenbaum v. Graham, 322  
Bierenbaum, People v., 256  
Bifulco v. United States, 401  
Birchler v. Castello Land Co., 613  
Blakey v. Cont'l Airlines, Inc., 667, 668  
Bleakley, People v., 469  
Bledsoe, People v., 373  
Blickstein v. Blickstein, 549, 616  
Blockburger v. United States, 152, 155, 691  
Bloom v. Illinois, 691, 692, 693  
Blyden, People v., 371  
Board of Regents of State Colleges v. Roth, 637  
Bock, In re, 842

- Boerne, City of, v. Flores, 385  
 Bolling v. Sharpe, 411  
 Bolton, United States v., 412  
 Bonello, State v., 297  
 Booker, United States v., 801, 803, 804  
 Borja v. INS, 760  
 Borse v. Piece Goods Shop, Inc., 647  
 Boudreau, State v., 155  
 Bracey, People v., 469  
 Bradley v. State, 27  
 Brady v. Brady, 537  
 Brady v. Maryland, 835  
 Brancoveanu v. Brancoveanu, 550  
 Brauer, Matter of, 845  
 Brawner v. Brawner, 592  
 Brennan v. Orban, 616, 655  
 Brooks, People v., 487  
 Brower v. Ackerley, 611  
 Brown v. Brown, 588  
 Brown v. Ohio, 153, 691, 808  
 Brown v. Pound, 457  
 Brown v. United States, 328  
 Brown, People v., 165  
 Brown, United States v., 348  
 Browne v. New York State Bd. of Parole,  
 Matter of, 697  
 Bruno v. Codd, 31, 32, 34, 35  
 Bryant, People v., 152  
 Bryant, United States v., 66  
 Brzonkala v. Virginia Polytechnic and  
 State Univ., 380, 382  
 Budnitz, Matter of, 850  
 Burbano, Matter of, 750  
 Burden, State v., 219  
 Burgett v. Texas, 69, 71  
 Burns, People v., 146  
 Butler v. Bonner & Barnewall, Inc., 666
- C
- C-A-, Matter of, 765  
 Caccese, People v., 285  
 Cagle v. Burns & Roe, Inc., 613  
 California v. Cabazon Band of Mission  
 Indians, 67  
 California v. Green, 293, 294, 295  
 Callender, Commonwealth v., 209  
 Cameron, People v., 146  
 Caminetti v. United States, 391, 392  
 Camps Newfound/Owatonna, Inc. v.  
 Town of Harrison, Me., 392  
 Carfagno v. Carfagno, 653  
 Carlson, State v., 127  
 Carmille A. v. David A., 696  
 Carmody v. Trianon Co., 613  
 Carr, People v., 487  
 Carroll v. Shoney's, Inc., 644  
 Carron, People v., 176  
 Castle Rock, Town of. v. Gonzales, 633,  
 634, 635, 636, 637, 639  
 Castleman, United States v., 66, 401, 406,  
 407, 408, 409  
 Catena v. Seidl, 669  
 Cauley, In re Marriage of, 543  
 Cavallo, State v., 330  
 Cavanaugh, United States v., 70  
 Ceron-Sanchez, United States v., 737  
 Cesare v. Cesare, 653, 655  
 Chapman, In re, 692  
 Chauvin, State v., 365  
 Chen v. Fischer, 614  
 Chevron, U.S.A., Inc. v. Natural  
 Resources Defense Council, Inc., 722  
 Chiaradio, United States v., 807  
 Chiarello, State v., 329  
 Chretien, Commonwealth v., 165  
 Cintron, People v., 264  
 Ciskie, State v., 335  
 Cisneros, United States v., 198  
 City of, See Name of City  
 Civil Rights Cases, 380, 381, 384, 385  
 Clark v. Modern Group, Ltd., 647  
 Clay v. Commonwealth, 136  
 Cleveland v. United States, 391, 392  
 Coble v. State, 142, 143  
 Coe & Payne Co. v. Wood-Mosaic Corp.,  
 671  
 Coker v. Georgia, 163  
 Colas v. Watermain, In re, 643  
 Committee on Professional Ethics and  
 Conduct of the Iowa State Bar  
 Association v. Patterson, 843  
 Commonwealth v., See Name of  
 Defendant  
 Conaghan, Commonwealth v., 346  
 Conaghan, Commonwealth v., 346  
 Concemi, Matter of, 850  
 Contes, People v., 468

- Conti, State v., 156  
 Coy v. Iowa, 219, 292, 293, 294, 295, 296, 297  
 Crandon v. United States, 406  
 Crawford v. Washington, 218, 226, 228, 229, 301, 302, 303, 305  
 Crawford, Commonwealth v., 348  
 Cressey, State v., 368  
 Crow Dog, Ex parte, 67  
 Cruz-Foster v. Foster, 673, 674  
 Culhane, People v., 370  
 Cunefare, People v., 638  
 Cusseaux v. Pickett, 601
- D**
- D.O.H. v. T.L.H., 499  
 Daniels v. Williams, 631, 632, 633  
 Darby, United States v., 383  
 Daubert v. Merrell Dow Pharmaceuticals, 324  
 Davidson v. Cannon, 631  
 Davidson, State v., 297  
 Davis People v., 486  
 Davis v. Munie, 608  
 Davis v. State, 142  
 Davis v. Tacoma Ry. & Power Co., 612  
 Davis v. Washington, 223, 224, 225, 302  
 De Angelis v. De Angelis, 164  
 De Stefano, People v., 165  
 Debs, In re, 692  
 Delahunty v. Massachusetts Mut. Life Ins. Co., 616  
 Delaware v. Fensterer, 294, 320, 321  
 Descamps v. United States, 409  
 DeShaney v. Winnebago County Department of Social Services, 629, 636  
 Dhinsa, United States v., 249  
 Dielmann v. INS, 730  
 DiGuilio, State v., 190  
 Dillard, United States v., 198, 199, 200  
 Dinius v. Dinius, 530  
 DiProspero v. Penn, 455  
 Discipline of an Attorney, Matter of, 850  
 District of Columbia v. Heller, 397  
 Dixon, United States v., 152, 689  
 Donaldson v. Seattle, 637  
 Dorm, People v., 268  
 Douglas E. Rowe, A Suspended Attorney, In re, 858
- Dowdell v. United States, 293  
 Driscoll, Matter of, 849  
 Duarte, United States v., 808  
 Dunning, State v., 364  
 Duro v. Reina, 64, 67  
 Dusky v. United States, 346, 348, 349  
 Dutton v. Evans, 220, 266  
 Dye, State v., 311, 313, 316
- E**
- E-A-G-, Matter of, 765  
 Eames v. Eames, Matter of, 681  
 Ebel v. Ferguson, 592  
 Echevarria v. Echevarria, 536  
 Edmunds, State v., 477  
 Edwards, Commonwealth v., 228  
 Elonis v. United States, 177, 178, 179  
 English v. English, 29  
 Ennis v. Truhitte, 592  
 Ewoldt, People v., 272  
 Ex parte, See Name of Party  
 Eyrich for Eyrich v. Dam, 602  
 Eyrich v. Dam, 602
- F**
- Fader, State v., 338  
 Fair, State v., 329  
 Farmer v. Brennan, 408  
 Fawn Balliro, Matter of, 844  
 FCC v. Beach Communications, Inc., 411  
 FCC v. Pacifica Foundation, 296  
 Felix, United States v., 694  
 Feltmeier v. Feltmeier, 604  
 Ferraro v. Chadwick, 448  
 Finn, Matter of, 850  
 Fisch v. Bellshot, 455  
 Fisher, State v., 463, 464  
 Fiume, United States v., 806  
 Flayhart, People v., 468  
 Flores v. Ashcroft, 403  
 Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank, 385  
 Fogerty, Commonwealth v., 163  
 Foley v. Foley, 656  
 Fong Haw Tan v. Phelan, 732  
 Fong Yue Ting v. United States, 732  
 Forcucci v. Forcucci, 538, 539  
 Foster, State v., 315

- Fraternal Order of Police v. United States, 410, 411  
 Frye v. United States, 323  
 Fulgham v. State, 28
- G**
- G.S. v. Department of Human Services, 454  
 Gadbury v. Bleitz, 612  
 Gardner v. State, 253  
 Garlow v. State Bar, 838  
 Gateward, United States v., 412  
 Gavieres v. United States, 691, 694  
 Gebardi v. United States, 158  
 Gideon v. Wainwright, 68  
 Giglio v. United States, 835  
 Giles v. California, 229, 303, 305  
 Ginsberg v. New York, 296  
 Globe Newspaper Co. v. Superior Court of Norfolk County, 296  
 Gluzman, United States v., 391  
 Goldberg, In re, 842  
 Gomez v. INS, 762  
 Gomez v. State, 314  
 Grady v. Corbin, 691, 692, 694  
 Grayhurst, State v., 154  
 Grecinger, State v., 333, 335  
 Green v. Bryant, 646  
 Green v. United States, 669  
 Greene, In re, 830  
 Greenlee, People v., 285  
 Grella, Matter of, 852  
 Grimsby v. Samson, 610, 613  
 Guaragno v. Guaragno, 518  
 Gust v. Flint, 671  
 Gutierrez, People v., 146, 147  
 Guzman v. C.R. Epperson Construction, Inc., 609
- H**
- H-A-, Matter of, 730  
 Haggard, United States v., 720  
 Hail v. Regency Terrace Owners Ass'n, 645  
 Hakimi, State v., 314  
 Hall, State v., 368  
 Halvey v. Halvey, 501  
 Hamilton v. Ali, 698  
 Hamilton v. Fulkerson, 592  
 Hammon v. Indiana, 226, 302
- Handa v. Handa, 679  
 Hanks, State v., 331  
 Hardy, United States v., 805  
 Harrington v. State, 468  
 Harris v. City of Montgomery, 458  
 Harris v. Oklahoma, 692  
 Harris, United States v., 380, 384  
 Harrison, United States v., 674  
 Hart, State v., 277  
 Hartfield v. State, 244  
 Haskell's Inc. v. Sopsic, 128  
 Haubry v. Snow, 611  
 Havell v. Islam, 547, 548  
 Havrish, People v., 432  
 Hayes v. Mercer County, 652  
 Hayes, United States v., 397, 401, 403, 404, 405, 406, 409  
 Heacock v. Heacock, 617  
 Heart of Atlanta Motel, Inc. v. United States, 387, 392  
 Heckman, State v., 192  
 Hegel v. McMahon, 611  
 Heller v. Doe, 412  
 Hennum, State v., 333, 338, 339  
 Henriksen v. Cameron, 606, 607, 617  
 Henson, People v., 468  
 Hernandez v. Ashcroft, 713, 714, 715  
 Hessen v. Hessen, 536, 538  
 Higbie, In re, 839  
 Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty., 227  
 Hill v. Lockhart, 734  
 Hipplewith, State v., 328, 329  
 Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 384  
 Hofbauer, Matter of, 468  
 Holmes v. United States, 314  
 Howlett, Commonwealth v., 137  
 Huddleston v. United States, 401  
 Hudson v. United States, 152, 156  
 Huesers v. Huesers, 278  
 Hughes, State v., 364  
 Hunsley v. Giard, 610, 612  
 Huntington v. Attrill, 638  
 Hyoun Kyung Lee v. Holder, 728
- I**
- Idaho v. Wright, 266  
 In re, See Name of Party

- In re Marriage of, See Name of Spouse  
 In the Matter of, See Name of Party  
 Ingber, People v., 697  
 Ingraham v. Wright, 631  
 Innie, United States v., 736, 737  
 Innovative Clinical & Consulting Svcs. v. First Nat. Bank, 670  
 INS v. Abudu, 766  
 INS v. Aguirre-Aguirre, 766  
 INS v. Cardoza-Fonseca, 753  
 INS v. Elias-Zacarias, 760  
 INS v. Lopez-Mendoza, 732  
 INS v. St. Cyr, 724  
 International Shoe Co. v. Washington, 667
- J**
- J.D.C., In re, 674  
 Jackson v. State Bar, 838  
 Jackson, City of, United States v., 675  
 Jacobs v. Walt Disney World, Co., 667  
 James W. v. Superior Court, 449  
 James, People v., 266, 267  
 Janes, State v., 359, 362  
 Jayson, State v., 329  
 Jeffries, United States v., 181  
 Jensen v. Conrad, 631  
 Jian Hui Shao v. BIA, 766  
 John, United States v., 67  
 Johnson v. Attorney General, 711  
 Johnson v. Drummond, Woodsum, Plimpton & MacMahon, P.A., 643  
 Johnson v. Johnson, 536, 537  
 Johnson v. United States, (1979), 673  
 Johnson v. United States (2010), 402, 403, 404  
 Johnson, People v. (Cal. 2000), 322  
 Johnson, People v. (N.Y.), 370, 485  
 Johnson, State v., 610  
 Jones, State v., 209  
 Journey v. MacCracken, 692
- K**
- Kalaw v. INS, 719  
 Katzenbach v. McClung, 387  
 Keifer v. Keifer, 138  
 Keller, State v., 737  
 Kelly, State v., 325, 856, 602, 654  
 Kennedy v. Kennedy, 538  
 Kentucky Dep't of Corrections v. Thompson, 636  
 Kerlinsky, Matter of, 850  
 Khouzam v. Ashcroft, 746, 748  
 Kilmer v. Kilmer, 679, 680  
 King v. Brasier, 305  
 King v. State, 143  
 Kinney, State v., 374  
 Kirby v. United States, 293  
 Kirby, State v., 463  
 Kirkman, State v., 316, 317  
 Kloepfel v. Bokor, 609, 611  
 Knight, In re, 843  
 Koskela, State v., 80  
 Kuhn v. Kuhn, 380  
 Kumho Tire Co. v. Carmichael, 324  
 Kurzke v. Nissan Motor Corp., 664  
 Kushner, In re, 842  
 Kylo v. United States, 228
- L**
- L.A. and L.A. v. D.Y.F.S., 452  
 L.A. ex rel. S.A. v. N.J. Div. of Youth & Family Servs., 453  
 Lane, United States v., 199  
 Lankford, United States v., 391  
 Lara, United States v., 65  
 Larsen, United States v., 388  
 Lawson v. Boeing Co., 611  
 Lear v. Township of Piscataway, 652  
 Lebel v. Everglades Marina, Inc., 668  
 Lee, State v., 82  
 Leffingwell v. Leffingwell, Matter of, 679  
 Leocal v. Ashcroft, 405  
 Lewis, People v., 267  
 Lewis, United States v., 412  
 Liberta, People v., 161  
 Libretti v. United States, 734  
 Lilly v. Virginia, 227  
 Lilly, United States v., 807  
 Linkenauger, People v., 272, 275  
 Lionetti, State v., 328  
 Littlefield, In re Marriage of, 313, 315, 316  
 Litwin, In re, 842  
 Logan v. United States, 693  
 Lopez, United States v., 380, 382, 383, 384, 385, 391  
 Lord v. Shaw, 617

- Lucas, State v., 157  
 Lucio-Lucio, United States v., 200  
 Ludwig, Commonwealth v., 297  
 Lunetta, In re, 842
- M**
- M.D.Z., In re, 668  
 Mack, Commonwealth v., 464  
 MacLennan, State v., 334, 351  
 Magid, Matter of, 841  
 Maldonado v. Maldonado, 672  
 Malette, State v., 209  
 Malone, People v., 487  
 Manley, State v., 128  
 Mannion, State v., 297  
 Manufacturers Mut. Ins. Co. v. Sullivan,  
 639  
 Maragh, People v., 371, 372, 373  
 Mark Len, State v., 328  
 Marri v. Stamford Street R. Co., 589  
 Martinez v. California, 632  
 Martinez v. State, 193  
 Mary L. v. Dep't of Social Services, Matter  
 of, 527  
 Maryland v. Craig, 291, 315  
 Mathewson v. Mathewson, 588, 589  
 Matter of, See Name of Party  
 Mattox v. United States, 221, 293, 294, 295  
 Maurer, People ex. Rel., v. Jackson, 697  
 May v. Anderson, 502  
 McAfee, Commonwealth v., 28  
 McAllister, United States v., 412  
 McBride v. County of Westchester, 598  
 McCann v. McCann, 549, 550  
 McCarty, United States v., 807  
 McClure v. Campbell, 612  
 McCray, People v., 272  
 McDonald v. City of Chicago, 397  
 McGrath v. Fahey, 606  
 McLaughlin, In re, 844  
 McMahan v. McMahan, 549  
 McMann v. Richardson, 732  
 McMaugh v. State, 348, 349  
 McRae's of Alabama, Inc., Ex parte, 645  
 Meade, United States v., 398  
 Meagan R., In re, (1996), 158, 159  
 Melendez-Diaz v. Massachusetts, 301  
 Meli, People v., 163  
 Mellillo, State v., 328  
 Mellum v. Mellum, 277  
 Mendez v. Holder, 726  
 Mendez-Moranchel v. Ashcroft, 712  
 Merenoff v. Merenoff, 606  
 Merola v. Merola, 679  
 Merrill Lynch, Pierce, Fenner & Smith  
 Inc. v. Dabit, 400  
 Michigan v. Bryant, 302, 303, 305, 306  
 Milliken v. Meyer, 667  
 Mischlich, In re, 842  
 Moghararrabi, Matter of, 755  
 Molineux, People v., 256, 267  
 Montero-Martinez v. Ashcroft, 719  
 Moore v. Cnty. of Delaware, 518  
 Moore v. Jones, 675  
 Morissette v. United States, 181, 409  
 Morris v. Snappy Car Rental, 697  
 Morrison, United States v., 380, 391, 392,  
 393  
 Morrissey v. Brewer, 632  
 Moses, People v., 469  
 Motherwell, State v., 460  
 Mount, State v., 328  
 Mulder, State v., 363  
 Mullally v. Langenberg Bros. Grain Co.,  
 591  
 Murphy v. Workers' Comp. Appeals Bd.,  
 642  
 Myers, State v. (N.J. 1990), 602  
 Myers, State v. (Minn. 1984), 81
- N**
- Nason, United States v., 402  
 Natale v. Ridgefield, 638  
 National Cable & Telecomms. Ass'n v.  
 Brand X Internet Servs., 766  
 Nemeth, State v., 352  
 Nenno v. State, 142  
 Nevill, In re, 836, 843  
 New Jersey v. Townsend, 373  
 New Orleans v. Steamship Co., 691, 693  
 New York v. Ferber, 296  
 New York v. Havrish, 432  
 Nguyen, United States v., 412  
 Nichols v. United States, 69, 70  
 Nicholson v. Scoppetta, 500  
 Nord v. Shoreline Sav. Ass'n, 613  
 Nordgren v. Lawrence, 612  
 North Carolina v. Pearce, 691



Nudd v. Matsoukas, 656  
 Nussbaum v. Steinberg, 600  
 Nystrom, State v., 81

## O

O'Brien v. City of Syracuse, 615  
 O'Brien v. O'Brien, 549, 616  
 O'Connell v. Corcoran, 615  
 Obergefell v. Hodges, 104, 663  
 Ohio v. Clark, 300  
 Ohio v. Roberts, 218, 219, 221, 222, 231,  
 294, 295, 301  
 Ohio v. Schneider, 472  
 Olano, United States v., 808  
 Olguin v. State Bar, 838  
 Oliphant v. Suquamish Indian Tribe, 64  
 Oliver, State v., 26, 27  
 Order of Railroad Telegraphers v. Railway  
 Express, 593  
 Ortiz, People v., 275  
 Osborne v. Ohio, 296  
 Ozaltin v. Ozaltin, 517

## P

Padilla v. Kentucky, 731  
 Page, United States v., 391  
 Palabay, State v., 314  
 Palmer, Matter of, 850  
 Palsgraf v. Long Island R.R., 612  
 Panpat v. Owens-Brockway Glass  
 Container, Inc., 643  
 Parker v. United States, 693  
 Parr, People v., 487  
 Parrt v. Taylor, 632  
 Paul v. Davis, 632  
 Payne v. Tennessee, 695  
 Peavler v. Mitchell & Scott Mach. Co., 643  
 Pennsylvania v. Ritchie, 293, 321  
 People v., See Name of Defendant  
 Perales-Cumpean v. Gonzales, 713  
 Perez v. United States, 382, 383, 391  
 Perovich, State v., 314  
 Peters-Riemers v. Riemers, 276  
 Petriciolet v. Texas, 138  
 Pettingill v. Pettingill, 134  
 Petty, In re, 840  
 Pike, Commonwealth v., 348, 848  
 Plains Commerce Bank v. Long Family  
 Land & Cattle Co., 66, 68  
 Planned Parenthood v. Danforth, 164

Pointer v. Texas, 219  
 Ponzi v. Fessenden, 697  
 Possino, In re, 838, 840  
 Precision Instrument Mfg. Co. v. Auto.  
 Maint. Mach. Co., 518  
 Prescott, People v., 152  
 Price, State v., 156  
 Prince v. Massachusetts, 296  
 Principato, In re, 842, 843  
 Profitt, State v., 80  
 Public Finance Corp. v. Davis, 606

## Q

Quintana v. Quintana, Matter of, 679, 681

## R

R-A-, 749, 764, 765  
 Rainbow v. Swisher, 615  
 Rawls, United States v., 412  
 Reid v. Pierce County, 610  
 Resek, People v., 269  
 Reyes, State v., 666  
 Reynolds v. United States, 230, 231  
 Rice v. Janovich, 610  
 Rider, State v., 165  
 Rios v. Rios, 536  
 Ritt, State v., 82  
 Rivera-Maldonado, United States v., 807  
 Robbins, Commonwealth v., 348, 349  
 Robel v. Roundup Corp., 611  
 Robinson, United States v., 802  
 Rochin v. California, 632  
 Rodgers v. State, 142  
 Rodriguez v. Gonzales, 725, 726  
 Rodriguez, State v., 155  
 Roe v. Flores-Ortega, 734  
 Rogers v. Rogers, 591  
 Rogers v. United States, 181  
 Rogers, United States v., 197  
 Rohan, In re, 840  
 Rosario v. Holder, 723  
 Rosen, In re, 842  
 Ross v. Ross, Matter of, 679  
 Rothrock, In re, 838  
 Roy v. Roy, Matter of, 680  
 Rufo v. Simpson, 269  
 Runyon, In re, 843  
 Russeau v. State, 142  
 Russell, United States v., 733  
 Rydder v. Rydder, 520

## S

Salerno, United States v., 209  
 Sanchez, People v., 338  
 Sandbeck v. Rockwell, 278  
 Sandin v. Conner, 638  
 Sangha v. INS, 760  
 Santa Clara Pueblo v. Martinez, 68  
 Santiago, People v., 235  
 Schaefer v. Souris River Telecom., 277  
 Scott v. Illinois, 66, 68  
 Scott, United States v., 228  
 S-E-G-, Matter of, 765  
 Sepulveda v. Gonzales, 725, 726  
 Shabani, United States v., 401  
 Shah v. Shah, 664  
 Shah v. Shah, 665, 668  
 Shavanaux, United States v., 70, 71  
 Shaw, Matter of, 850  
 Shepard v. United States, 404  
 Silverman v. Silverman, 518  
 Simmons, People v., 486  
 Singh v. Ashcroft, 735  
 Singleton, United States v., 198, 199  
 Sleeper, Matter of, 851  
 Smiley v. Citibank (South Dakota), N.A.,  
 766  
 Smith v. Allwright, 695  
 Smith v. Russell Sage College, 616  
 Smith, People v., 469  
 Smith, State v. (Tex. 2011), 142  
 Smith, State v. (Fla.), 165  
 Smith, State v. (N.J.), 164, 165  
 Smith, United States v., 412  
 Snyder v. Massachusetts, 293  
 Solorio v. United States, 694  
 Sorrentino, United States v., 412  
 Souratgar v. Fair, 513, 514, 515, 516, 517,  
 519, 520  
 Southern R. Co. v. United States, 383  
 Soutiere v. Soutiere, 374, 375  
 Spence, People v., 313, 314  
 Spurrell v. Block, 611  
 Stanley v. Illinois, 488  
 State v., See Name of Defendant  
 Steinberg, People v., 466  
 Stepanovic v. Filip, 713, 714  
 Stewart, People v., 146  
 Stillman v. Moore, 245  
 Stoker v. Stoker, Utah, 618, 619

Strickland v. Washington, 732, 733, 734,  
 735  
 Stuckey v. Stuckey, 682  
 Suarez, People v., 487  
 Sullivan v. State Bar, 839  
 Sundance Homes, Inc. v. County of Du  
 Page, 608  
 Swinger, People v., 285

## T

Tampa Maid Seafood Prods. v. Porter, 642  
 Tarasoff v. Regents of Univ. of California,  
 265  
 Tarver v. State Bar, 839  
 Taylor v. United States, 404, 736  
 Taylor, People v., 374  
 Tevis v. Tevis, 616  
 Theroff, State v., 364  
 Thomas, People v., 146  
 Thompson v. Thompson, 584  
 Thompson, In re, 693  
 Thompson, State v., 210  
 Thurman v. City of Torrington, 629  
 Tierney v. Davidson, 654  
 Till, People v., 269  
 T-M-B-, Matter of, 760  
 Toennis, State v., 363  
 Tohom, People v., 313, 314  
 Tokatly v. Ashcroft, 736  
 Toll v. State Bar, 839  
 Tom Olesker's Exciting World of Fashion,  
 Inc. v. Dun & Bradstreet, Inc., 609  
 Torpey, People v., 371  
 Town of, See Name of Town  
 Townsend v. Townsend, 591  
 Trammel v. United States, 164  
 Turner, People v., 318  
 Turner, United States v., 412  
 Tusso, In re, 842

## U

United States v., See Name of Defendant

## V

V.C. v. H.C., 676  
 Van Dyke, State v., 344  
 Vana v. Elkins, 619  
 Vance v. Chandler, 607  
 Vang v. Toyed, 82  
 Vela v. State, 142

Voisine v. United States, 406  
Voisine, United States v., 407  
Vue, State v., 78

**W**

Wahlberg, State v., 127  
Walker v. Walker, 695  
Walker, In re (Cal. 2007), 374  
Walker, In re (Ind. 1992), 843, 844  
Walker, State v., 462  
Wallace, In re, 843  
Wallace, United States v., 807  
Warguleski v. Warguleski, 538  
Watson, People v., 177  
Weber, In re, 840  
Weir v. State Bar, 838  
Weishaupt v. Commonwealth, 165  
Weiss v. City of Milwaukee, 642  
Wells, United States v., 412  
Wenzel v. Wenzel, 549  
West, People v., 487  
Westgate v. Westgate, 552  
Whallon v. Lynn, 517, 518, 519  
Wheeler v. United States, 289  
Wheeler v. Upton-Wheeler, 551  
White River Estates v. Hiltbruner, 613  
White, United States v., 249  
Wildermuth v. State, 296, 297, 298  
Wildoner v. Borough of Ramsey, 649  
Wilhite, State v., 297

Williams v. Alexander, 285  
Williams, In the Matter of, 852  
Williams, People v., 371, 372  
Willott v. Willott, 591  
Wilmore v. Gonzales, 713, 714  
Wilson v. Darr, 459  
Wilson, State v., 461  
Windauer v. O'Connor, 619  
Windsor, United States v., 104  
Wisconsin v. Larsen, 389, 390  
Wood, People v., 151  
Woodward, Commonwealth v., 470, 473  
Wright v. Beardsley, 612  
Wright, People v., 146

**X**

X-Citement Video, Inc., United States v.,  
181  
Xiao Ji Chen v. Gonzales, 724, 725, 726

**Y**

Yascavage, People v., 147  
Youngberg v. Romeo, 632

**Z**

Zack, People v., 275  
Zamora-Mallari v. Mukasey, 714  
Zapata, United States v., 807  
Zavala, People v., 173  
Zessman v. State, 468  
Zheng v. Ashcroft, 746



# Acknowledgments

---

I want to thank Justice Rosalyn Richter of the New York State Supreme Court, Appellate Division, author of two chapters for the first edition of this text, who generously allowed me to include and update them in this one. She was my first supervising judge when I was appointed to the bench in 1999, and assigned me to the Bronx County Misdemeanor Domestic Violence Court. In addition, she and I developed a course in Domestic Violence and the Law at New York Law School, which I still teach.

I also must thank LexisNexis/Matthew Bender & Co. for publishing the first edition of this book more than a decade ago, recognizing the importance of this subject to the law school curriculum. I thank LexisNexis/Matthew Bender Academic Editor Cristina Gegenschatz who did long distance brain-storming, hand-holding, advising, and editing for the duration of the first edition and who assisted in the early stages of this latest edition until the project was taken over by its new publisher, Carolina Academic Press (CAP). I also thank Sean Caldwell, former Director of Market Planning for LexisNexis who stayed on at CAP and whose insights helped make this second edition shorter, tighter and more relevant to the students and professors who will be using it.

I also want to thank my new editorial team at CAP: Senior Editor Linda Lacy, Managing Editor Ryland Bowman, Editor Keith Moore, and Grace Pledger, Head of Production, all of whom worked hard to move this book to completion. I thank Georges G. Lederman, Esq., for just being there when wanted and needed, which is always, and my family, Helen and June Kiesel.

Thank you to Catherine Christian, chief of the New York County District Attorney's Elder Abuse Unit; Susan Zirinsky, senior executive producer of *48 Hours* and Dr. Ludy Green, founder of *Second Chance Employment Services*, for consenting to be interviewed for this book. Finally, I want to thank the professors around the country who have had the confidence in me to use this book as a teaching tool for their students. I appreciate it.

Diane Kiesel  
New York, NY

I additionally thank the authors and publishers for permission to reprint portions of the following copyrighted material:

Ammons, Linda L., *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003. Copyright © 1995 by The Board of Regents of the University of Wisconsin System. Reprinted by permission of the Wisconsin Law Review.

Angel, Lisa and Lee Rosen, *Zealous and Ethical Representation of Batterers*, in MARGARET B. DREW ET AL., *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE* 83 (ABA Comm'n on Domestic Violence, 2d ed. 2004). Copyright © 2004 by the American Bar Association. Reprinted with permission.

Beck, Connie J.A. and Bruce D. Sales, *FAMILY MEDIATION: FACTS, MYTHS, AND FUTURE PROSPECTS* (2001). Copyright © 2001 by the American Psychological Association. Reprinted with permission of the authors and the American Psychological Association.

Belzer, Lydia M., *Toward True Shalom Bayit: Acknowledging Domestic Abuse in the Jewish Community and What To Do About It*, 11 CARDOZO WOMEN'S L.J. 241 (Winter 2005). Copyright © 2005 Cardozo Women's Law Journal. Reprinted with permission.

Berman, Greg, Derek Denckla and John Feinblatt, *Judicial Innovation at the Crossroads: The Future of Problem-Solving Courts*, 13 THE COURT MANAGER 28 (2000). Copyright © 2000. Reprinted by permission of The New Press.

Berman, Greg and John Feinblatt, *GOOD COURTS: THE CASE FOR PROBLEM SOLVING JUSTICE* (2005). Reprinted by permission.

Boat, Barbara W., *Abuse of Children and Abuse of Animals: Using the Links to Inform Child Assessment and Protection*, in CHILD ABUSE, DOMESTIC VIOLENCE, AND ANIMAL ABUSE: LINKING THE CIRCLES OF COMPASSION FOR PREVENTION AND INTERVENTION 83 (Frank R. Ascione & Phil Arkow eds., 1999). Copyright © 1999 Purdue University Press. Reprinted by permission.

Brummer, Bennett H., *Criminal Law Symposium: Independent, Professional Judgment: The Essence of Freedom*, 10 ST. THOMAS L. REV. 607 (1998). Copyright © 1998. Reprinted by permission of St. Thomas Law Review.

Buchanan, Maggie Jo, *Fighting Domestic Violence Through Insurance: What the Affordable Care Act Does and Can Do For Survivors*, 23 TEX. J. WOMEN & L. 77 (Fall 2013). Copyright © 2013. Reprinted by permission.

Buel, Sarah M., *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999). Reproduced by permission of the Colorado Bar Association from *The Colorado Lawyer*, Oct. 1999, 19 © Colorado Bar Association, and the author. All rights reserved.

Buel, Sarah M., *Putting Forfeiture to Work*, 43 U.C. DAVIS L. REV. 1295 (April 2010). Copyright © 2010. Reprinted by permission.

Campbell, Jacqueline C. et al., *Assessing Risk Factors for Intimate Partner Homicides*, NIJ Journal 15 (Issue No. 250) (Nov. 2003). Reprinted by permission of the U.S. Department of Justice, National Institute of Justice.

———, *Assessing Dangerousness* (Newbury Park: Sage 1995). J.C. Campbell, D. Webster, J. Koziol-McLain, C.R. Block, D.W. Campbell, M.A. Curry, F. Gary, C.J. Sachs, P.W. Sharps, Y. Ulrich, S. Wilt, J. Manganello, J. Schollenberger, S. Su, and V. Frye. Risk Factors in Abusive Relationships: Results From a Multi-State Case Control Study, *Am. J. Public Health*, in press.

Cling, B.J. and Dorchen A. Leidholdt, *Interviewing and Assisting Domestic Violence Survivors in LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM*, 6TH ED. (Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson, eds. 2015). Copyright © 2015. Reprinted by permission.

Conference of State Court Administrators, *POSITION PAPER ON SAFETY AND ACCOUNTABILITY: STATE COURTS AND DOMESTIC VIOLENCE 3* (Nov. 2004). Copyright © 2004. Reprinted by permission of the National Center for State Courts, Conference of State Court Administrators.

Dutton, Mary Ann, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Women Syndrome*, 21 HOFSTRA L. REV. 1191 (1993). Copyright © 1993. Reprinted with permission of the Hofstra Law Review Association.

Ferrato, Donna, *Elisabeth & Bengt in the bathroom the first night she was hit*, photograph in *LIVING WITH THE ENEMY*. Copyright © 1991 by Donna Ferrato. Reprinted by permission.

Fischel-Wolovick, Lisa, *Police Response: Mandatory Arrest & Primary Physical Aggressor*, in *LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM*, 6TH ED. 52 (Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson, eds. 2015). Copyright © 2015. Reprinted by permission.

France, David, *And Then He Hit Me*, AARP MAGAZINE 73 (Jan.–Feb. 2006). Copyright © 2006. Reprinted with permission of the author.

Goodmark, Leigh, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.— C.L.L. REV. 51 (Winter 2013). Copyright © 2013. Reprinted with permission.

Hajjar, Lisa, *Religion, State Power and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis*, 29 LAW & SOC. INQUIRY 1 (Winter 2004). Copyright © 2004. Reprinted with permission of Blackwell Publishing Ltd.

Hanna, Cheryl, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505 (1998). Copyright © 1998 by the William and Mary Law Review. Reprinted by permission.

Holder, Casey, Comment: *All Dogs Go to Court: The Impact of Court Facility Dogs as Comfort for Child Witnesses on a Defendant's Right to a Fair Trial*, 50 Hous. L. REV. 1155 (Symposium 2013). Copyright © 2013. Reprinted by permission.

Hopkins, C. Quince, Mary P. Koss & Karen J. Bachar, *Responding: Two New Solutions: Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities*, 23 ST. LOUIS U. PUB. L. REV. 289 (2004). Reprinted with permission of the St. Louis University Public Law Review. © 2004 St. Louis University School of Law, St. Louis, Missouri.

Indian Law Resource Center, et al., *Statement to the Commission on the Status of Women, Sixtieth Session, 2016 Violence Against Indigenous Women and Girls*. Copyright ©2016 United Nations. Reprinted by permission of the United Nations.

Isaac, Nancy E. and V. Pualini Enos, *Documenting Domestic Violence: How Health Care Providers Can Help Victims* (Nat'l Inst. of Justice, U.S. Dep't of Justice, September 2001). Reprinted by permission.

Juhler, Jennifer and Justice Mark Cady, *Morality, Decision-making, and Judicial Ethics*, available at [www.abanet.org](http://www.abanet.org). Reprinted with permission.

Keilitz, Susan L., Paula L. Hannaford and Hillery S. Efkeman, *Civil Protective Orders: The Benefits and Limitations for Victims of Domestic Violence*, National Center for State Courts Research Report vii (1997). Copyright © 1997. Reprinted by permission of the National Center for State Courts.

King-Ries, Andrew, *Responding: Two New Solutions: True to Character: Honoring the Intellectual Foundations of the Character Evidence Rule in Domestic Violence Prosecutions*, 23 ST. LOUIS U. PUB. L. REV. 313 (2004). Reprinted with permission of the St. Louis University Public Law Review. © 2004 St. Louis University School of Law, St. Louis, Missouri.

Klein, Catherine F. and Leslie E. Orloff, *Protective Orders and Other Injunctive Relief: Civil Protection Orders*, in MARGARET B. DREW ET AL., *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE* 200 (ABA Comm'n on Domestic Violence, 2d ed. 2004). Copyright © 2004 by the American Bar Association. Reprinted with permission.

Knauer, Nancy, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325 (1999). Copyright © 1999. Reprinted by permission of the author.

Kutner, Jenny, *Domestic Violence Victims Can Be Evicted for Calling Police. Here's Why*, [connections.mic.com/articles/148484/domestic-violence-victims-can-be-evicted-for-calling-police-here-s-why#zQRqkpyY1](http://connections.mic.com/articles/148484/domestic-violence-victims-can-be-evicted-for-calling-police-here-s-why#zQRqkpyY1). July 14, 2016. Reprinted by permission.

Lasson, Kenneth, *Bloodstains on a 'Code of Honor:' The Murderous Marginalization of Women in the Islamic World*, 30 WOMEN'S RIGHTS L. REP. 407 (Spring/Summer 2009). Copyright © 2009. Reprinted by permission.

Lavi, Dafna, *Divorce Involving Domestic Violence: Is Med-Arb Likely to be the Solution?* 14 PEPP. DISP. RESOL. L. J. 91 (2014). Copyright © 2014. Reprinted by permission.



Leary, Mary Graw, *Symposium: Emerging Issues in Crime Victims' Rights: The Third Dimension of Victimization*, 13 OHIO ST. J. CRIM. L. 139 (Fall 2015). Copyright © 2015. Reprinted by permission.

Lininger, Tom, *A Duty to Charge Batterers Appropriately*, 22 DUKE J. GENDER L. & POL'Y 173 (Spring 2015). Copyright © 2015. Reprinted by permission.

Library of Congress, "Contrasted husbands" illustration by Richard Newton (1795), available at Library of Congress Online Catalogue, <http://catalog.loc.gov/>.

Library of Congress, "Judge Thumb, or — patent sticks for family correction: warranted lawful!" illustration by James Gillray (1782), available at Library of Congress Online Catalogue, <http://catalog.loc.gov/>.

Library of Congress, "Sensible Roosevelt—A whipping-post for wife-beaters" illustration by Thomas Worth (1883), available at Library of Congress Online Catalogue, <http://catalog.loc.gov/>.

Lippman, Hon. Jonathan, *Foreword to LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM*, 6TH ED. 52 (Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson, eds. 2015). Copyright © 2015. Reprinted by permission.

Matejkovic, John E., *Which Suit Would You Like? The Employer's Dilemma in Dealing With Domestic Violence*, 33 CAP. U. L. REV. 309 (2004). Copyright © 2004. Reprinted by permission of the Capital University Law Review.

McGuire, Linda, *Criminal Prosecution of Domestic Violence* (1994), written for The Battered Women's Justice Project, available at <http://data.ipharos.com/bwjp/website/> (under topic: Prosecution). Reprinted by permission of the author and The Battered Women's Justice Project.

Meier, Joan S., *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657 (2003). Copyright © 2003. Reprinted by permission of the American University Journal of Gender, Social Policy & the Law.

Minnesota Program Development, Inc., The Duluth Model, Domestic Abuse Intervention Project, Power and Control Wheel. Reprinted with permission.

Mitchell, Darren and Susan B. Carbon, *Firearms and Domestic Violence: A Primer for Judges*, 39(2) CT. REV.: J. AM. JUDGES ASS'N (2002). Reprinted by permission of the American Judges Association.

Mullen, Paul E. and Michele Pathe, *Stalking*, 29 CRIME & JUSTICE 273 (2002). Copyright © 2002 University of Chicago Press. Reprinted by permission of the University of Chicago Press.

Napoli, Lisa, *Tolling the Statute of Limitations for Survivors of Domestic Violence Who Wish to Recover Civil Damages Against Their Abusers*, 5 CIRCLES BU. W. J. L. & SOC. POL'Y 53 (1997). Copyright ©1997. Reprinted by permission.

New York City Mayor's Office to Combat Domestic Violence, Anti-domestic violence poster, Fall 2013. Reprinted by permission of the Mayor's Office of Legal Counsel.

Nessel, Lori A., "Willful Blindness" to Gender-Based Violence Abroad: United States' Implementation of Article Three of the United Nations Convention Against Torture, 89 MINN. L. REV. 71 (2004). Copyright © 2004 Minnesota Law Review. All rights reserved. Reprinted by permission.

New York Society for the Prevention of Cruelty to Children, The George Sim Johnson Archives, Photograph of Mary Ellen (taken upon her rescue, April 1874). Reprinted with permission of the New York Society for the Prevention of Cruelty to Children.

Nutter, Karen, Note: *Domestic Violence in the Lives of Women With Disabilities: No (Accessible) Shelter From the Storm*, 13 S. CAL. REV. L. & WOMEN'S STUD. 329 (2004). Reprinted with permission of the author.

Orloff, Leslye E. and Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL'Y & L. 95 (2001). Copyright © 2001 American University Journal of Gender, Social Policy and Law. Reprinted with permission.

Ptacek, James, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 50 (1999). (Boston: Northeastern University Press, 1999) Copyright © 1999 by James Ptacek. Reprinted by permission of University Press of New England.

———, "Judicial Responses That Empower Battered Women" Wheel, from *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES* 176 (1999). Copyright © 1999 by James Ptacek. Reprinted by permission of University Press of New England.

Raphael, Jody, *Battering Through the Lens of Class*, 11 AM. U.J. GENDER SOC. POL'Y & L. 367 (2003). Copyright © 2003 American University Journal of Gender, Social Policy and Law. Reprinted with permission.

Rosa, Janice, *The Judge as Community First Responder: Because ACE's High is a Losing Hand*, (19)(2) SYNERGY 16 (Spring 2016) Copyright © 2016, National Council of Juvenile and Family Court Judges. Reprinted by permission.

Ritcheske, Kathryn A., Note: *Liability of Non-Indian Batterers in Indian Country: A Jurisdictional Analysis*, 14 TEX. J. WOMEN & L. 201 (2005). Copyright © 2005 Texas Journal of Women and the Law. Reprinted with permission.

Rivera, Jenny, *Intimate Partner Violence Strategies: Models for Community Participation*, 50 ME. L. REV. 283 (1998). Copyright © 1998 Maine Law Review. Reprinted with permission.

Sta. Ana, Andrew and Stephanie Nilva, *Teen Victims of Intimate Partner Violence*, in *LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM*, 6TH ED. 254 (Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson, eds. 2015). Copyright © 2015. Reprinted by permission.

Stamm, Simeon, Note: *Intimate Partner Violence in the Military: Securing our Country, Starting with the Home*, 47 FAM. CT. REV. 321 (April 2009). Copyright © 2009. Reprinted by permission.

Stapel, Sharon and Virginia H. Goggin, *Lesbian, Gay, Bisexual, Transgender and Queer Victims of Intimate Partner Violence* in LAWYER'S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM, 6th Ed. 241 (Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson, eds. 2015) Copyright © 2015. Reprinted by permission.

Stoever, Jane K., *Transforming Domestic Violence Representation*, 101 KY. L. J. 483 (2012). Copyright © 2012. Reprinted by permission of the Kentucky Law Journal and the author.

Trost, Caroline T., Note: *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 VAND. L. REV. 183 (1998). Copyright © 1998. Reprinted with permission of the Vanderbilt Law Review.

Tuerkheimer, Deborah, *The Next Innocence Project: Shaken Baby Syndrome and the Criminal Courts*, 87 WASH. U. L. REV. 1 (2009). Copyright © 2009. Reprinted by permission.

Ventrell, Martin, *Evolution of the Dependency Component of Juvenile Court*, 4 JUVENILE & FAM. CT. J. (1998). Copyright © 1998. Reprinted by permission of the National Council of Juvenile and Family Court Judges.

Ventura, Lois A. and Gabrielle Davis, *Domestic Violence: Court Case Conviction and Recidivism*, 11(2) VIOLENCE AGAINST WOMEN 255 (2005). Copyright © 2005 by Sage Publications, Inc. Reprinted by permission of Sage Publications, Inc.

Ver Steegh, Nancy, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379 (2005). Copyright © 2005 Louisiana Law Review. Reprinted by permission.

———, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145 (2003). Copyright © 2003 by the William and Mary Journal of Women and the Law. Reprinted by permission.

Wagage, Suraji R., *When Consequences Are Life and Death: Pretrial Detention for Domestic Violence Offenders*, 7 DREXEL L. REV. 195 (Fall 2014) Copyright © 2014. Reprinted by permission.

Waits, Kathleen, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267 (1985). Copyright © 1985. Reprinted with permission.

Wetendorf, Diane, *Representing Victims of Police-Perpetrated Domestic Violence*, 16(2) FAMILY LAW FORUM (Fall 2007). Copyright © 2007, New Mexico State Bar, Family Law Section. Reprinted by permission.

Winick, Bruce, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33 (2000). Copyright © 2000. Reprinted by permission of the UMKC Law Review.

Wood, Sarah M., Note: *Queer Theory, Feminism, and the Law: VAWA's Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL'Y 141 (2004). Copyright © 2004. Reprinted by permission of Duke University School of Law.

Woodhouse, Barbara Bennett, *Sex, Lies and Dissipation: The Discourse of Fault in a No-Fault Era*, 82 GEO. L.J. 2525 (1994). Reprinted with permission of the publisher, Georgetown Law Journal © 1994.

Wriggins, Jennifer, *Interspousal Tort Immunity and Insurance "Family Member Exclusions": Shared Assumptions, Relational and Liberal Feminist Challenges*, 17 WIS. WOMEN'S L.J. 251 (2002). Copyright © 2002 by The Board of Regents of the University of Wisconsin System. Reprinted by permission of the Wisconsin Women's Law Journal.

Wright, Nancy, *Voice for the Voiceless: The Case for Adopting the 'Domestic Abuse Syndrome' for Self Defense Purposes for All Victims of Domestic Violence Who Kill Their Abusers*, 4 CRIM. L. BRIEF 76 (Spring 2009). Copyright © 2009. Reprinted by permission.

Zorza, Joan, *The UCCJEA: What Is It and How Does It Affect Battered Women in Child-Custody Disputes?*, 27 FORDHAM URB. L.J. 909 (2000). Copyright © 2000. Reprinted by permission of the Fordham Urban Law Journal.

# Preface

---

In the 10 years since the first edition of *Domestic Violence: Law, Policy and Practice* was published, much has changed in the legal community. The subject is firmly entrenched in the upper-level law school curriculum around the country. The Violence Against Women Act has been reauthorized and strengthened repeatedly and through it money has been awarded for legal and judicial training, victim services and police programs. Despite the fact the United States Supreme Court has determined that the Second Amendment permits an individual the right to bear arms, sound, reasonable restrictions on the rights of convicted batterers to keep guns have been upheld—again and again. There has been improved understanding of the impact of domestic violence on minority communities. It has become easier to divorce an abusive spouse with the nationwide implementation of no-fault divorce statutes, New York being the last to change. The definition of “intimate partner” has been expanded and gays now have a constitutional right to marry—everywhere in the country. As a result, more victims of domestic violence are able to seek protection from abusive partners in courts. All of this portends well for the fight to end the scourge of domestic violence.

But domestic violence continues to be an international problem of seemingly insurmountable proportions. It is a major public safety issue; a legal and human rights issue; a criminal justice problem and a dark stain on society; all of it to the detriment of women, who continue to be the vast majority of its victims.

This topic remains a highly emotional one, and I have attempted as best I can, as I attempted in the first edition, to present it in as neutral a manner as possible. In each of the more than 15 years that I have taught this topic to upper-level students at New York Law School, I have struggled in choosing the right words to convey what I mean. My concern for neutrality carries over from my professional role as a judge, where for nearly 20 years I presided in a specialized domestic violence court in New York state, where I had multiple duties. I was charged with protecting the safety of victims, upholding the constitutional rights of the accused and requiring accountability from those convicted of domestic violence crimes. It was a place where victory was measured in small increments. I could not wave a magic wand and end the violence; but I could give women the chance to escape a terrible cycle of physical, emotional and economic oppression while signaling to those convicted of the violence that society would no longer accept what was once the norm.

To be sure, to present the topic of domestic violence in a *neutral* way does not mean I condone it, nor does it mean that I do not feel compassion and concern for those who suffer from it. Neutrality does not mean I think both victim and perpetrator share “blame” for the occurrence. Domestic violence is criminal conduct. It is the result of a conscious choice made by one party to an intimate relationship to engage in dangerous, hurtful and highly inappropriate conduct against the other to gain or maintain power and control. My neutrality reflects the recognition that we live in a society which enjoys a healthy and vigorous legal system, of which I am a part, and reflects my effort to approach the topic as an academic, not an advocate, to encourage critical thinking about how our society addresses domestic violence.

This book is written in the traditional casebook style, although I have drastically cut the contents from the first edition. The cases, law review excerpts, government studies and statutory examples are shorter and more succinctly on point. We now live in an era of Internet messages and Twitter feeds. Attention spans are shorter and information delivery faster and those of us in academia must bow to that reality. In an effort to show the intersection between domestic violence and other areas of study I have included articles about the subject from journals of medicine, social science, psychology and even economics. There are notes and questions at the end of each chapter that will encourage lively (hopefully) class discussion. Faculty adapters are urged to supplement the materials with cases, newspaper articles and information unique to the local community. The topics have been expanded in this edition to include more about stalking, particularly on the Internet and with the use of new technologies such as GPS. It also contains sections on domestic violence in the international community, as well among those in law enforcement and the military. There is a new focus on domestic violence among the transgendered and among the elderly. The United States Supreme Court has issued a number of opinions in recent years about the constitutionality of keeping guns out of the hands of convicted batterers. The late Justice Scalia’s original-intent judicial philosophy has altered the evidentiary landscape and new cases about testimonial-versus-non-testimonial statements have been issued by the high court. These cases seem to come up often in domestic violence situations, as its victims are sometimes unwilling to cooperate with law enforcement in convicting their abusers, thus forcing prosecutors to introduce other proof at trial. Judges have begun allowing service dogs in the courtroom to calm litigants at trial in domestic violence cases. These topics are also included. At the beginning of each chapter is a small box outlining what students should glean from it.

Students taking this course and using this book may follow one of many career paths. In my experience, many students want to become advocates for battered women. Often, they are the most attentive and outspoken, rightfully eager to demand that the law be more receptive and creative in protecting women from intimate partner abuse. Future prosecutors populate the course. There has been much discourse of late as to whether concepts like “mandatory arrest,” and “victimless prosecution,” are of value in fighting domestic violence, or whether they improperly wrest control from the victim who needs to be empowered in order to move on with her life. This topic has

made for interesting classroom discussion in recent years. Those who intend to join District Attorneys' offices need to understand the limitations of the criminal law in ending family violence and how far they can legally and ethically "push the envelope" in prosecuting it. Students who hope to become defense lawyers tend to be greatly outnumbered in these classes by future victims' advocates and young D.A.'s. Yet their concern that the pendulum has swung too far, and that a mere allegation of domestic violence is tantamount to guilt, is a valid one. Due process is a precious right that must be protected, even for a man facing domestic violence charges. For students hoping to enter family or matrimonial law, this book provides a basic entry point on how these topics intersect with domestic violence.

One look at the text demonstrates that domestic violence permeates every legal discipline; thus there are chapters on criminal law, federal law, family law, civil law and matrimonial law. There is a chapter on child and elder abuse and another on how the justice system addresses intimate partner violence. There is an immigration chapter and another on domestic violence among various societal groups.

Finally, there is the issue of terminology. It has become acceptable to refer to those who have suffered domestic violence as "survivors" rather than "victims." The survivor label signifies strength and resilience and self-empowerment, and certainly those who have endured domestic violence have all of those traits. Nonetheless, one can survive an accident, an illness or bad luck. Something bad *happens* to a survivor who makes it through to the other side. Domestic violence does not just "happen." A perpetrator chooses to engage in it, thus victimizing another. And tragically, as homicide figures demonstrate every day, some victims do not survive.

Diane Kiesel  
New York, New York  
July 2017

