The Law in Personal Relationships: Understanding Judicial Decision Making in Domestic Violence Cases

In the 1970s and 80s the feminist and battered women’s movement transformed public perception of domestic violence from a private family matter to a crime punishable by legal sanctions. Consequently, many states passed laws criminalizing domestic violence. In turn, domestic violence cases filled criminal court dockets around the country. Suddenly, judges played a major role in implementing and interpreting domestic violence laws. Additionally, judges exercised considerable latitude when ruling on sentencing, restraining orders, and child custody issues. Despite judges’ central role in domestic violence cases, the canon of literature on domestic violence has paid very little attention to understanding how judges actually interpret and ultimately decide cases. To better understand the judicial decision making process in domestic violence cases, I have been invited by the First Justice, David Weingarten, to observe court proceedings and judicial conferences at the Roxbury District Court in Boston, Massachusetts. By employing ethnographic research methods, I will investigate the legal reasoning judges use when adjudicating domestic violence cases. Domestic violence cases are defined by the unique relationship between the victim and the defendant. Consequently, the cases present a multitude of personal factors that may complicate the facts or the application of the law. I am seeking to understand how, if at all, judges consider the personal dimensions of domestic violence when ruling on these cases. Because of these uniquely personal factors—such as child custody issues and mutual dependence on a sole income, do judges handle domestic violence cases differently than other criminal cases? Through a more comprehensive understanding of the judicial decision making process, I hope to learn more about the efficacy of domestic violence laws at protecting victims, reducing recidivism, and protecting the Constitutional rights of the accused.

Shortly after the criminalization of domestic violence, an influx of feminist literature emerged citing judges as the most significant obstacle to the successful implementation of these laws. Confronting Domestic Violence: A Guide for Criminal Justice Agencies found that many judges were resistant to implementing the new laws as they viewed domestic violence as a private matter or “a family affair.” Consistent with the notion that domestic violence was simply the product of a dysfunctional relationship, many judges avoided sentencing the defendant to jail time and instead ordered marital counseling for the victim and defendant. In 1984, The Minneapolis Domestic Violence Experiment changed the public perceptions of domestic violence from “a family problem amenable to mediation and other informal intervention to a law violation requiring a formal criminal justice sanction” (Kothari 4847). Using a controlled study of police interventions to domestic violence, scholars found “the prevalence of subsequent offending was reduced by nearly 50 percent when the suspect was arrested” versus ordered to marital counseling (Sherman and Berk). This study, which remains one of the most widely cited articles in domestic violence scholarship, illustrated the importance of adjudicating domestic violence as a crime, not a marital conflict.

However, many judges were unaccustomed to handling domestic violence cases and the unique, relationship-based fact patterns that differ from those of other criminal cases. Moreover, due to frequency of incumbent reelection and/or lifetime appointments, many judges had served on the bench prior to the criminalization of domestic violence. A 1989 study found that 82% of state representatives felt judges were the single greatest impediment to implementation of domestic violence laws. Consequently, a deluge of feminist literature emerged criticizing the criminal justice system for a failure to uphold domestic violence laws, protect victims, and reduce recidivism. While this literature provides suitable advice to judges, it lacks a comprehensive analysis of how, if at all, judges assess personal factors in domestic violence cases.

The void of literature on the judicial process of domestic violence can, in part, be attributed to issues of access and appropriate controls. Firstly, access to a judge’s chambers is a rare privilege. While judicial opinions and court proceedings are a matter of public record, the nuances of judicial conferences are typically absent from the written legal opinions. Moreover,
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The criminal justice system, fraught with inequities on the basis of race and socio-economic status, presents unique challenges to researchers attempting to control for these factors. Namely, those with resources can retain apt counsel in domestic violence cases that offer drastically different outcomes than an indigent defendant represented by a public defender. Additionally, socio-economically privileged victims may have resources to more safely leave a dangerous situation and bring charges against their abuser. While these assumptions are not always true, they can confound our understanding of domestic violence cases by presenting different outcomes across demographic lines. Observing at the Roxbury District Court will allow me to control for these confounders. The Court serves a community that is predominantly black and low-income. Working with a demographically homogenous population, I can control for socio-economic and racially privileged outcomes in the justice system. By holding these demographics constant, I can make comparisons across cases and hone in on the influence of personal dimensions in the outcome of the case.

During eight weeks in Boston this summer, I will employ ethnographic research methods while observing court proceedings and judicial conferences Monday through Friday. Sixty-percent of Judge Weingarten’s docket involves domestic violence crimes and thus I will be exposed to a plethora of relevant cases throughout the summer. Moreover, because speedy trial rights guarantee a trial for a misdemeanor defendant within 30 days of arraignment, I will have many opportunities to observe cases from arraignment through the final judicial ruling (trial, dropped charges, or plea bargaining) during the summer. During arraignment, I will take fieldnotes that capture the fact pattern in the case. At arraignment, the prosecutor presents a basic outline of facts against the defendant and often includes statements about the victim including the victim’s cooperation with investigators and perceived threat of the defendant to her and society. Then, the defense counsel typically makes a motion to have the defendant released from custody, which often includes a discussion of various personal dimensions of the case (i.e. the defendant’s relationship with the victim, if they have children in common, defendant’s employment status). Then, I will attend the judicial conferences, which provide judges daily opportunities to workshop opinions before making their rulings. I will track how, if at all, the personal dimensions observed in court appear in the conferences. Do judges pay greater attention to personal factors in domestic violence cases than other crimes? I plan to observe the questions or considerations the judges make when assessing domestic violence crimes: what is the extent of the relationship between the victim and defendant? Do they have children in common? Who is the “breadwinner?” What are the consequences of incarcerating the defendant? Is the defendant a threat to the victim’s safety? Then, I will compare these considerations to those judges make when assessing other assault crimes (in which the victim and defendant are not in an intimate relationship). Moreover, I can ask the judges follow up questions to inquire specifically about certain facts in each case and how they may have influenced the final ruling. By analyzing how certain personal factors influence judicial decision-making, I will better understand how these unique crimes are handled in court.

As a Social Policy and Legal Studies major, this research marries my academic interests through an investigation of how domestic violence policy plays out in the courtroom. Additionally, this research builds on an existing body of research I conducted during my SESP Practicum last summer in San Francisco. Last summer, I studied the efficacy of specialized court systems that handle exclusively domestic violence cases in protecting victims and the Constitutional rights of the accused. The Practicum experience provided many valuable skills that will greatly assist my research this summer. I took fieldnotes daily, which were reviewed weekly by Professor Dan Lewis. Additionally, I obtained a basic understanding of criminal procedure and domestic violence laws. However, last summer, I lacked access to the judicial decision making process—a privilege I am fortunate to have this coming summer. My research this summer is the basis of my SESP Honors Thesis on the policy implications of domestic violence laws.
Bibliography


