
Women's Justice Center

Centro de Justicia Para Mujeres

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October 3, 2011

Re: SOS! Violence Against Women

Dear Feminist Law Professors,

I'm a women's rights advocate who has been working for the last 20 years in the exasperating struggle to end violence against women. I'm writing because we're stumped, and we need your help.

The problem is this: Modern violence-against-women laws are in place throughout most of the U.S., as are crisis centers, hotlines, counselors, and shelters. But a critical piece is missing. We don't have anywhere near adequate enforcement of the laws. Nor do women have any legal right to enforcement of the laws, nor any legal remedy or redress when police and prosecutors fail to enforce the laws.

Recent Supreme Court decisions in *DeShaney* (1989) and *Castle Rock* (2005), have, in fact, only fortified police and prosecutor discretionary powers to ignore these cases with impunity - including in cases where state laws mandate that law enforcement make arrests.

Granted, these Supreme Court decisions secure law enforcement's discretion to ignore any crime, or any victim, with impunity.

But the daunting and particular problem for women is that these absolute discretionary powers are in the hands of law enforcement agencies that are rife with anti-women biases, structures, and traditions. Violence-against-women cases are the cases these officials are most overwhelmingly prone to ignore, ditch, dismiss, under-investigate, under-prosecute, and give sundry other forms of disregard. This disparate impact and denial of equal protection is undermining all the other monumental efforts to end violence against women.

Despite all the high flying official rhetoric to the contrary, way too many police and prosecutors don't want to do these cases. They know they don't have to do these cases. They know a million ways to get rid of these cases. They know nobody can hold them to account. And the Supreme Court keeps driving this impunity deeper into the heart of American law. Not surprisingly, the violence against women rages on.

We can social work these cases endlessly, but when police and prosecutors don't do their part and put the violent perpetrators in check, the perpetrators easily turn around and undo any stability and safety we and the women have attempted to secure. The freer she gets, the angrier he becomes. Without adequate law enforcement, victims of violence against women are

doomed. And then they are double doomed by the void of any legal cause to hold unresponsive police and prosecutors to account. And then, all too often, she is dead.

Women come to the criminal justice system most frequently and most urgently as victims of violence against women. It's intolerable that at this most pivotal point for women's lives and freedom, her access to enforcement and justice is left entirely to the arbitrary whims of individual officials.

You've probably already guessed where we're hoping you'll come in. We need some form of effective legal mandate on police and prosecutors to enforce violence against women laws. We need restrictions on law enforcement's absolute discretion to pick and choose which laws to enforce and which to ignore.

Given the devastating Supreme Court rulings in *DeShaney* and *Castle Rock*, we need an all-out, strategic legal assault on these cases like the assault mounted by Charles H. Houston, Thurgood Marshall, and others against *Plessy v. Ferguson*.

It's impressive to read about the broad array of legal endeavors being pioneered by feminist law professors. Yet it's puzzling to see the paucity of work toward establishing a women's right to justice and protection in this scourge of violence against us.

We urgently need your help. Not in the judicial ghetto of family law where victims of violence against women are too often shunted to fend for themselves. But in criminal law where the state itself must take responsibility for securing justice for these heinous crimes. We can't solve this problem without you.

As a first step, please pass this on to colleagues you think would most fervently fight to create a women's right to justice. And then consider joining in yourself.

Thank you for your concern.

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