# Violence against Women — A Challenge to the Supreme Court

The Harvard community has made this article openly available. **Please share** how this access benefits you. Your story matters

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Citable link</td>
<td><a href="http://nrs.harvard.edu/urn-3:HUL.InstRepos:12939469">http://nrs.harvard.edu/urn-3:HUL.InstRepos:12939469</a></td>
</tr>
<tr>
<td>Terms of Use</td>
<td>This article was downloaded from Harvard University’s DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at <a href="http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA">http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA</a></td>
</tr>
</tbody>
</table>
VIOLENCE AGAINST WOMEN — A CHALLENGE TO THE SUPREME COURT

THIS issue of the Journal includes two reports on risk factors for violent injuries to women. The findings of Kyriacou et al. and Grisso et al., from case–control studies in hospital emergency rooms, are not surprising. But the public-policy implications deserve renewed attention as the Supreme Court considers whether to strike down the 1994 Violence Against Women Act as unconstitutional.

Kyriacou et al. report that the chief risk factors for injuries to women as a result of domestic violence are alcohol or drug abuse by male partners and having a partner who is unemployed or intermittently employed. Grisso et al. found that partners who abuse women are much more likely than nonabusive partners to use cocaine. In addition, women in low-income neighborhoods have an even greater risk of being injured by neighbors, acquaintances, and friends than by their partners or by strangers. Perhaps the most striking insights come from reading the two reports together: Grisso et al. found that high proportions of both intentionally injured women (48 percent) and women in the control group (51 percent) reported having had an abusive partner in the past, and Kyriacou et al. found that having a former partner was the relationship variable with the strongest association with injury as a result of domestic violence. Other research also suggests that the most dangerous time for any abused woman is when she is threatening to leave or has left the relationship.

Trudy Gregorie, director of training at the National Center for Victims of Crime, explains that, “that’s when the abuser realizes that they have lost control for failing to protect their children from witness-
ing the violence. Assuring women that they will not lose their children because of the violence they are experiencing is crucial. Many women also fear losing custody of their children because social service agencies and courts have started to fault women for failing to protect their children from witnessing violence in the home. Assuring women that they will not lose their children because of the violence of the men in their lives is not only right, but also necessary to ensure that such women are not deterred from reporting episodes of domestic violence. At least as crucial are efforts to move beyond the short-term solutions provided by shelters to the creation of housing and jobs programs to alleviate the economic worries that keep these women in abusive situations.

But perhaps nothing would constrain violence against women more than crystal-clear public and cultural messages that such behavior will not be tolerated. On this score, the United States is in a crucial period of transition. Until recently, police departments and courts failed to treat assaults against women by their partners as seriously as they treated other forms of assault. Indeed, throughout the 19th century, state laws and cultural practices effectively con-
doned family violence and a husband’s prerogative to “discipline” his wife. Even after the formal laws changed, police and prosecutors often refused to in-

Volume 341 Number 25 · 1927
tervence in such matters and at best tried to mediate
the disputes quietly, without public sanctions.

A 1991 Senate report concluded that public reac-
tions to assaults against men differ markedly from
reactions to assaults against women.10

Typically, we do not ask whether the victim of a barroom
brawl is a real victim; we do not comment that the victim
deserved to be hit; we do not inquire whether there was
resistance or whether the victim said “no” persistently
enough; we do not believe that the crime may have been
fabricated altogether. Until the stereotypes upon which
these scenarios are built seem as foreign for the victims of
rape and domestic violence as they do for the victims of
barroom brawls, our criminal justice system will pose bar-
riers for women in society it does not pose for others in
our society.

Toward that end, in 1994 Congress adopted the
Violence against Women Act. The resulting grants
have so far distributed over $1.6 billion to states, lo-

cal governments, and Indian tribes to generate vital
financial and symbolic support for both law-enforce-
ment agencies and services to assist victims of
domestic violence. The act set up a panel to promote
research on domestic violence, and Kyriacou et al.
have explicitly taken up the panel’s challenge to im-
prove understanding of the risk factors for domestic
violence. The federal statute also creates a civil-rights
remedy; it permits victims to bring federal lawsuits
against perpetrators of sexually motivated violence
and thereby reinforces state and local laws without
supplanting them. For the first time in the nation’s
history, violence against women is being condemned
at the highest levels and resources are available to do
something about it locally.

Yet, the Violence against Women Act faces con-
stitutional challenge. Indeed, most savvy court watch-
ers predict that the Supreme Court will strike it down
during the current term. The technical arguments
may not interest nonlawyers, but they should. The
first question before the Court is whether Congress
has the power to adopt such a law as part of its au-

thority to regulate interstate commerce. Congress
claims that it does. Congress announced findings that
violence against women impairs women’s abilities to
pursue employment and to show up at work, hurts
businesses as a result of increased absenteeism, in-
creases employee turnover and health care expenses,
and affects national health care costs. Challengers
claim that these effects on interstate commerce are
either too indirect or too insubstantial to fall within
the purview of Congress.

The second question before the Supreme Court is
whether the power of Congress to enforce the 14th
Amendment’s guarantee of equal protection en-
compases the act. This power, established after the Civil
War to ensure that the states did not refuse to en-
force the laws to protect blacks as well as whites,
surely is also meant to ensure that the states do not
refuse to enforce the laws to protect women as well
as men. Again, Congress produced extensive evidence
of a widespread bias against women in state court
systems. If the Supreme Court accepts the challen-
ges, it may strike down not only the civil-rights rem-
edy but also the entire Violence against Women Act,
including its support for local law-enforcement agen-
cies and health and social services.

Over the past several years, the Supreme Court
has actively approved sharp constraints on the power
of Congress, especially in areas conventionally asso-
ciated with states’ power. Matters affecting women
have traditionally been treated as quintessentially ar-

cas of state, rather than federal, concern. But equal

protection under the law is a federal concern, as are
the regulation of drugs and alcohol and poverty and
unemployment stemming from national, and indeed,
global, economic forces. Each of these is related to
the issue of violence against women. As Grisso et al.
makes clear, women in low-income areas face severe
risks of violence in their neighborhoods as well as in
their homes. In 87 percent of the episodes involving
violent acts committed by persons other than the
women’s partners there were witnesses to the event.
Strengthening community policing and public con-
demnation of violence must be priorities if this pattern
is to change. Someone indifferent to global economic
trends and national economic policy may suggest
that these, too, are exclusively areas of state and local
concern, but national criminal justice, labor, housing,
and urban policies can be used to reject this view.

These points can be summarized in practical terms.
First, domestic violence is pervasive, and a woman re-
mains at risk even after she has left an abusive part-

ner.11,12 Second, the time at which women most need
protection from domestic violence is immediately be-
fore and after they leave their abusive partners. Third,
until recently, long-standing legal and cultural practic-
es led to a refusal to help women escape from domes-
tic violence. Fourth, in some communities, women
face an even higher risk of being injured by acquain-
tances than by partners. Fifth, the likelihood of vio-

lent injuries among women in their homes — and in
their neighborhoods — is highly related to alcohol
and drug abuse by their partners or other persons
and to the poverty and economic insecurity of those
committing the violent acts. Furthermore, these pat-
terns of violence have demonstrable economic con-
sequences and reflect long-standing failures to en-
sure women equal protection under the law. Finally,
sufficient political will has been mustered to bring
financial and symbolic resources to address these
problems. The nine members of the Supreme Court
should not turn back the tide.

MARTHA MINOW, J.D.

Harvard Law School
Cambridge, MA 02138
REFERENCES

11. Giordano BP. Use your power to be an advocate for women’s health. AORN J 1997;66:219, 222.

©1999, Massachusetts Medical Society.