

Race, Rural, and Religion's Impact on Domestic Violence Cases

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This paper examines how state supreme courts deal with women who are victims of domestic violence.

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Introduction

Prior to 1970, the American legal systems were written ignorant of the needs of battered women (Goldfarb, 2008). Civil and criminal penalties for domestic violence remained rare throughout most of the nation's history (Bartlett and Rhode, 2006), and police often refused to arrest batterers (Zorza, 1992). Instead, officers attempted to mediate the domestic dispute, often ineffectively or they would let the violent incidents take their course based on the belief that domestic violence was a private matter between a husband and his wife (Epstein, 1994; Hanna, 1996). If an arrest did occur, prosecutors typically refused to pursue criminal charges (Epstein, 1994). In those rare cases that appeared in court, judges regularly denied relief to the victim, again viewing domestic violence as an internal family matter (Goldfarb, 2008; Siegel, 1996). These patterns continued well into the 1970s (Goldfarb, 2008).

Beginning in 1976, social policy toward female victims of domestic violence shifted towards improving legal responses to protect women and punish perpetrators (Fagan, 1996). The main focus of this shift has been on the mobilization of societal institutions to increase the range of formal and informal sanctions on batterers (Fagan, 1996). Legal action was designed to impose a retributive cost on batterers and to reduce the likelihood of further violence (Dutton, 1995; Sherman, 1992; Fagan and Browne, 1994). Accordingly, the risks and punishment costs of violence towards women was increased to emphasize the application of criminal sanctions through the arrest and prosecution of offenders (Fagan, 1996).

During this time, reforms in civil legal protection for domestic violence victims were also occurring throughout the nation (Grau, Fagan, and Wexler, 1984; Harrell, Smith, and Newmark, 1993). For example, until the legal reforms of the late 1970s, the only way a woman could

obtain a restraining order against a violent husband was to file for divorce concurrently (U.S. Commission on Civil Rights, 1982). Reforms in protective and restraining order legislation enabled *ex parte* relief which is granted by the courts for emergency situations in which immediate action is needed (Fagan, 1996). It included no contact provisions, ordering the perpetrator to not have any type of contact with the domestic violence victim as well as economic relief for battered women (Fagan, 1996). By the late 1970s, these measures and the application of criminal laws were extended to unmarried women and to divorced or separated women (Fagan, 1996).

The “legalization” of domestic violence beginning in the 1970s sought to increase the availability and severity of legal responses afforded to battered women (Zorza, 1992). To examine whether these reforms provided relief to female domestic assault victims, I use the state courts of last resort (hereafter, state supreme courts) for testing hypotheses involving domestic violence cases because, they along with the state legislatures, are the key policymakers in this policy area.

This approach takes into account both civil and criminal responses. It also shows how effective the court systems are at protecting female domestic violence victims under various circumstances. With each case that is decided, the standard state and local laws signal what their intended policy goals are in regards to domestic violence. Yet, the complexity of this approach is that the state supreme courts are 50 independent policy labs that must deal with their political, social, cultural, and legal environments as they make this policy. I am interested in studying state supreme courts because they are the most important policy laboratories and policy innovators in this policy area. I will examine the impact of exogenous variables like state politics, culture, litigant status, and legal issues on these courts’ decisions. I will also examine

the impact of the different policy time periods. The *Family Privacy Sphere (1965-1975)* captures a period of non-intervention in domestic violence. The *Post-Pennsylvania Prevention from Abuse Act (1976-1994)* represents a shift to a robust legal approach to domestic violence. Lastly, the *Post-Sensitivity Era (1995-2013)* captures the cumulative effect of state laws and the Violence Against Women Act of 1994.

The Non-Intervention Period (1800-1964)

Prior to the 1960s there was no real legal recourse for female victims of domestic violence. It is important to look at this time period because it illustrates the difficulty of changing an engrained social norm. This policy of non-intervention for domestic disputes had various justifications during this time period. Early in this era women did not have independent legal status and were supervised in the eyes of the law by first their fathers and with marriage to their husbands. At first, non-intervention was a natural outgrowth of the common law rule of coverture. This doctrine stated that when a woman marries, her independent legal identity no longer existed because it was incorporated into that of her husband. Since “the husband and wife are one person in law,” a legal action by one against the other is impossible. Furthermore, because marital unity made the husband legally responsible for his wife’s actions, coverture permitted him the power of “domestic chastisement.” In other words, it gave him the right to use corporal punishment to control his wife’s actions (Goldfarb, 2008).

During the middle of the Nineteenth century, the common law statute allowing husbands to use physical force on their wives came to be seen as both obsolete and problematic (Siegel, 1996). In fact, Alabama became the first state to nullify a husband’s right to strike his wife, noting that the “wife had the right to the same protection of the law that the husband can invoke

for himself (*Fulgham v. State*, 46 Ala. pg. 146-147).” However, there were not very many prosecutions under this law to protect women from violence (Fagan, 1996).

The Family Privacy Sphere (1965-1975)

During the mid-1960s and the early 1970s, the concept of family privacy became the new approach to domestic violence (Goldfarb, 2008). Instead of using a legally binding right to subjugate the wife, courts began to separate from the idea of coverture. It illustrates a judicial shift from overt control to a more passive adherence to domestic chastisement. It was an acknowledgment that courts should not defend abuse in a legal context. According to the family privacy jurisprudence, family members must be left alone so that they can resolve their differences without the damage that would be inflicted on their lives if the law intervened (Goldfarb, 2008). Privacy soon became a guiding principle for domestic violence law, with police officers, judges, and prosecutors adopting the view that protecting families from interference was more important than protecting battered women (Schneider, 2000). Adherence to the concept of family privacy has not fully disappeared from the legal landscape (Ptacek, 1999). Some law enforcement officers and court personnel are still hesitant to get involved in domestic violence cases (Ptacek, 1999). However, these vestiges of an earlier time have been displaced by a new, progressive dominant trend toward aggressive legal intervention for battered women (Goldfarb, 2008).

Post Pennsylvania Prevention from Abuse Act (1976-1994)

This new trend began to appear in the 1970s when the feminist movement brought domestic violence to the nation’s attention and encouraged a response from government (Fagan, 1996). Passage of Pennsylvania’s landmark 1976 Protection from Abuse Act served as the first protective (PO) legislation specifically for battered women (Chaudhuri and Daly, 1992). The

law provided wives protection from abusive spouses through civil sanctions (Keilitz, 1994). The Pennsylvania legislation spurred many other states to enact reforms on the organizational, statutory, and procedural levels to improve civil and criminal relief to victims (Ko, 2008). For example, police departments implemented mandatory arrest policies which removed police discretion over whether or not to arrest a domestic batterer (Zorza, 1991). Domestic violence units were formed in prosecutor's offices, and anger management treatment programs for abusive husbands were launched in probation departments (Zorza, 1991).

By 1994 all fifty states had implemented some type of protective order legislation (Carlson, Harris, and Holden, 1999). "The movement toward stricter enforcement of domestic violence laws gained an important federal imprimatur in 1994 with the enactment of the Violence Against Women Act (Goldfarb, 1998 pg. 1498)." The cumulative effect of these reforms helped to create a paradigm shift in legal policy that went from the assumption that battered woman should stay in a violent situation to the assumption that the batterer should be removed (Coker, 2000).

Violence Against Women Act of 1994

The *Violence Against Women Act* (VAWA) in 1994 was passed as a piece of a combined federal omnibus crime bill that provided tough new provisions to hold domestic abusers accountable along with programs to provide services for victims. VAWA has improved the criminal justice response to violence against women by strengthening federal penalties for habitual offenders and creating a federal "rape shield law." It mandates that victims no longer have to pay for their own rape exams for the service of a protection order. It requires that the victim's protection order will be recognized and enforced in all the U.S. jurisdictions. The act increases rates of prosecution, conviction, and sentencing of offenders by helping communities

train law enforcement and making domestic violence cases a priority (Violence Against Women Act, 1994).

VAWA has helped domestic violence victims get help in a crisis situation by establishing the National Domestic Violence Hotline. It has improved safety and reduced recidivism by developing community outreach programs for the issues surrounding violence against women. Since the Violence Against Women Act was passed, fewer people are experiencing domestic violence. More victims are reporting domestic violence to police officers, and the reports are resulting in more arrests (Renzetti, Edleson, and Bergen, 2010).

A variety of legal, political, and cultural reforms were initiated in the mid-1970s through 1994 whose purpose, in part, was to encourage a stronger response from the states in regards to domestic violence. The literature shows that these reforms have resulted in increased reporting of domestic assaults (Bryden and Lengnick, 1997). The evidence is clear that rates of police arrests for domestic violence have increased as well (Bachman, 1998 and Baumer, Felson, and Messner, 2003). Therefore, I derive the following hypotheses in regards to the impact of the Post Pennsylvania Prevention from Abuse Act on the domestic violence cases:

Hypothesis One: Female domestic violence victims who go to court during the *Post-Pennsylvania Prevention From Abuse Act (1976-1994)* have a greater likelihood of success in the state supreme courts.

The Post-Sensitivity Era (1995-2013)

The sweeping and strong domestic violence legislation implemented at the state and federal levels corrected historical wrongs such as requiring women to file for divorce before receiving protective orders (Zorza, 1992). These reforms created a wide range of criminal and civil remedies that recognized the reality of domestic violence (Lerman, 1992). These efforts

were institutionalized in law and social welfare policies with significant changes achieved in statutes (Fagan, 1996).

During the Post-Sensitivity Era, the state supreme courts have had ample time to absorb the residual effects from the various legal and political reforms that were initiated in the previous policy time period. The court culture has had time to adjust to the new laws and understands the seriousness of domestic violence cases. As a result of VAWA, court personnel now have been trained on the rape myths and the stereotypes of battered women that existed within the judiciary system. Therefore, I derive the following hypotheses in regards to the impact of the Post-Sensitivity Era on the domestic violence cases:

Hypothesis Two: Female domestic violence victims who go to court during the *Post-Sensitivity Era (1995-2013)* have a greater likelihood of success in the state supreme courts.

Litigant Characteristics

Abusers have often been violent in their treatment towards all family members (Davidson, 1995). Women battered by their male partner frequently report their abusers have also committed physical and/or sexual abuse to children in the home (Davidson, 1995). Many children also suffer serious injuries as a result of the reckless conduct of their fathers while assaulting their mother (Davidson, 1995). In families where the mother is assaulted, sixty-two percent of sons over the age of fourteen are harmed trying to protect their mothers (Davidson, 1995). In 1990, Congress adopted a resolution expressing that batterers should not be awarded custody of their children (H.R. 172, 1990). By the start of 2001, “forty-seven states and the District of Columbia had adopted legislation requiring that domestic violence be considered in custody determinations (Lemon, 2001 pg. 613).” This leads me to the following hypothesis:

Hypothesis Three: Female domestic violence victims who share a *Child* with the batterer have a greater likelihood of success in the state supreme courts.

The female litigant's status in court also impacts her chances of winning the case.

Appellee and the appellant are the two parties to an appeal. The appellee is the party against whom an appeal is filed. The appellee usually seeks affirmance of the lower court's decision. In contrast, the appellant is the party who filed the appeal. As the appellee, female domestic violence victims have certain advantages over the appellant. Part of it has to do with the appellee having a solid case; after all, she did win previously (Ambrose, 2012). Thus, I derive the following hypothesis:

Hypothesis Four: Female domestic violence victims who go to court as the *Appellee* have a greater likelihood of success in the state supreme courts.

It is not just the domestic violence victim's appellant status that must be examined, but her attorney is an important legal variable as well.

Pro se legal representation means advocating on one's own behalf before a court. In the United States, many state courts are experiencing an increasing proportion of pro se litigants due to the high cost of retaining a lawyer (Herman, 2006). The growth of pro se female litigants in domestic violence cases has presented numerous procedural justice concerns for the adversarial system, whose jurisprudential structure is premised on the assumption that she will have an attorney to represent her (Engler, 1987). This phenomenon in the legal system is occurring because many battered women cannot afford an attorney (Chase, 2003). Therefore, many battered women who show up pro se in court are more likely to lose their case because she does not have legal expertise, and she lacks an understanding of procedural protocols (Chase, 2003).

Thus, I derive the following hypothesis:

Hypothesis Five: Female domestic violence victims who go to court *Pro Se* have a lower likelihood of success in the state supreme courts.

On the other hand, the government's role in domestic violence cases can that they are of greater importance (NAAG, 2013). Attorneys general have always been important policymakers inside their states because of their ability to coordinate state legal policymaking and litigation activity (Clayton, 1994). They have successfully challenged federal law enforcement policies in domestic violence cases (Clayton, 1994). If the attorney general is representing a domestic violence victim, then her chances of winning are quite high due to the invested interests of the state in her case (Clayton, 1994). Therefore, I have the following hypothesis:

Hypothesis Six: Female domestic violence victims who go to court represented by a *Government Attorney* have a higher likelihood of success in the state supreme courts.

If the battered woman's opponent shows up in court pro se, that increases her odds of success because he lacks legal expertise and resources. Thus, I derive the following hypothesis:

Hypothesis Seven: Female domestic violence victims whose *Opponent* shows up *Pro Se* have a higher likelihood of success in the state supreme courts.

Criminal Charges

Efforts to deter domestic violence have typically focused on law enforcement (Fagan, 1996). The Minneapolis Domestic Violence Experiment (Sherman and Berk, 1984a, 1984b) is one of the most cited studies, and was critical in changing the public's perceptions of domestic violence from a "family problem" to a social ill that needed to be criminalized. In that experiment, police officers' selections of the most appropriate responses to misdemeanor domestic violence were determined by an experimental design, which randomly assigned one of three responses to the call: arresting the batterer, ordering one of the parties out of the residence, or counseling the couple (Sherman and Berk, 1984, 1984b). "Ninety-nine percent of the suspects targeted for arrest actually were arrested, while only 78 percent of those to receive advice did, and only 73 percent of those to be sent out of the residence for eight hours were actually sent

(Sherman and Berk, 1984, pg. 264).” When the assigned treatment was arrest, it signaled to the perpetrator immediately that he had broken the law and his crime was a serious offense (Sherman and Berk, 1984). Sherman and Berk reported that “the prevalence of subsequent offending assault, attempted assault, and property damage was reduced by nearly 50 percent when the suspect was arrested (Sherman and Berk, 1984a, pg. 267).” The results strongly suggested that police officers should arrest the batterer in domestic violence cases to increase victim safety and reduce future violence (Sherman and Berk, 1984a).

The arrest draws attention to the act and signals that domestic violence is a “real crime.” As a legal matter, domestic assault can be comparable to stranger-on-stranger assault and not diminished as family violence (Mahoney, 1991). Thus, the arrest is viewed by the state supreme courts as an indicator of seriousness. The case characteristics matter in terms of the type of domestic violence that is inflicted. For example, in the state courts assault will be viewed as a more serious crime than harassment. Therefore, I derive the following hypotheses in regards to the impact of an arrest and domestic violence charge on the outcome of these cases:

Hypothesis Eight: Female domestic violence victims whose partners have been *Arrested and Charged* have a greater likelihood of success in the state supreme courts.

Protection Orders

Civil protection orders are the most frequent form of protection for battered women (Fagan, 1996). Civil protection orders are a unique legal tool: “a victim-initiated intervention with the power of enforcement by the criminal justice system (Waul, 2000 pg. 53).” Civil protection orders bring the domestic violence victim into contact with the legal system, which in turn opens the door to other resources available such as support groups, legal advocates, and social welfare services (Ptacek, 1999). These orders provide instant relief by condemning a batterer’s conduct (Ko, 2008). Civil restraining orders also protect against abuse that may not

sufficiently constitute a criminal violation such as stalking or harassment (Ko, 2008). At their best, civil protection orders can help accomplish many goals, including stopping the violence, holding the offender accountable, protecting the abused woman and her children, providing financial relief, and conveying to the offender that domestic violence will not be tolerated (Hart, 1992). The complications of criminal arrest and prosecution have made protective orders the primary source of legal sanction for battered women in many states (Fagan, 1996).

These orders serve as the foundation for the recognition and protection of domestic violence victims (Finn, 1989). A civil court order is a legally binding court order that prohibits an individual who has committed an act of violence from further abusing the victim. The order frequently contains a warning printed to its face indicating that it is a criminal offense to violate the order. Therefore, I derive the following hypotheses in regards to the impact of a protection order on the outcome of these cases:

Hypothesis Nine: Female domestic violence victims who have a *Protection Order* against their partner have a greater likelihood of success in the state supreme courts.

State Level Policies

Often domestic violence is linked to religious and cultural norms about the proper roles of men and women in domestic relationships. In the United States context, Evangelical Christians have a particularly conservative view on the roles of husband and wife and tend to turn a skeptical eye towards secular laws that interfere with that relationship, like the domestic violence legislation that is the focus of this chapter. The South contains the Bible Belt, an area that has a higher Evangelical church attendance. The religious traditions of this group tend to work against raising awareness about domestic violence because of the focus on the salience of family for women and the undesirability to break the family apart, and the tendency to “spiritualize” social problems by religious ideologies. Gender segregation both within and

beyond this religious group contributes to the way the domestic violence may be marginalized for battered women. Divorce is highly stigmatized and reinforces a battered woman's sense of failure. Further, when the abuse is conceptualized as a religious issue, this exacerbates the victim's dependence on the church for guidance concerning her decisions about her safety. These churches tend to support traditions that regard women's primary responsibilities as a caregiver and resists societal advances to ensure female participation in all facets of society. In these instances, the Bible plays a critical role in how domestic violence is framed. Thus, corporal punishment is interpreted by many religious women as a sign that they have failed God. This factor could explain why domestic violence is so prevalent in this area of the United States (Nason-Clark, 2004).

Based on the growing research literature on the role of religion in supporting men's abusive ways in domestic relationships, achieving accountability is rare (Nason-Clark, 2004). The two central features of the Evangelical church that negate efforts to help battered women are gender segregation and the salience of family for women's lives. Thus, the traditionalism that is practiced within this religion and the groups resistance to societal advances to ensure female participation in all sectors of society lead me to the following hypothesis in regards to the impact of state level policies (the South):

Hypothesis Ten: Female domestic violence victims who go to court in the *South* have a lower likelihood of success in the state supreme courts.

Data Collection

I collected cases using WESTLAWNEXT in each of the fifty states from 1965 to 2013 based on two searches¹. The first search captures a set of cases during a period when there were

¹ WestLawNext search does recognize "rape" and "sexual violence" as search terms, but often times it brought up cases that went beyond the scope of domestic violence, e.g. rape between two strangers. However, it should be

no domestic violence laws or protection order statutes. The search terms selected are key case characteristics that highlighted some type of abuse within the domestic relationship. The first search included the following terms: marriage, divorce, wife, girlfriend, cohabitation, mistress, ex-girlfriend, "unmarried person", "physical cruelty", fighting, "bodily injury", "physical pain", "personal violence", "physical violence", fear, "danger to health", violence, "threatening conduct", "cruelty and ill treatment", "barbarous treatment", cruelty, "harsh or humiliating language or demeanor" "cruel and inhuman treatment", "physical abuse", "elements of cruelty", "inability to live together", and "mental cruelty." This search is used to establish a baseline of how the courts treated women who filed for divorce on grounds of physical cruelty or mental cruelty because protection orders and domestic violence laws did not exist in all fifty states until 1992.

In 1976 Pennsylvania became the first state to pass the Prevention from Abuse Act to protect battered women. Following in Pennsylvania's footsteps, many states began to take the initiative to create statutes to protect women from domestic violence. This helped to open the door for women to have access to the legal system. With the implementation of protection orders and domestic violence statutes a legal vocabulary now exists for the various types of violence within domestic relationships. Again, the search terms selected are key case characteristics that highlighted domestic violence in the relationship. Therefore, my second search includes the following terms from 1965 to 2013: "domestic violence", "domestic abuse and violence", threat, "domestic assault", "deadly weapon", violence, "emotional abuse", homicide, murder, "battered woman", harassment, "domestic disturbances", "child custody", "protection order", "protection of endangered persons", "security or order for peace or

noted that rape cases were picked up using the other search terms that were incorporated and is one of the issues under "Criminal Charges".

protection", stalking, "abuse prevention order", "domestic violence petition", "emergency protection order", "domestic violence order", "ex-parte protection order", "restraining order", "preliminary ex parte and emergency relief", "exclusion and stay away order", and "no contact orders."

Both searches produced approximately 10,656 cases. I read each of the cases to identify those that raised a question regarding divorce on grounds of physical or mental cruelty, domestic violence, or protection orders. Afterwards, my sample size dropped to 2,571 cases but produced 3,704 issues. Some of the cases had more than one issue that needed to be resolved by the courts. For example, *Daughtery v. Telek* (366 S.W. 3d 463) involves an ex-girlfriend wanting to maintain her protection order and an ongoing child custody dispute.

Dependent Variable

I am studying these appellate courts' support for the legal needs and arguments of domestic violence victims. Therefore, my dependent variable is the case outcome. I created a dummy variable coded 1 if the woman wins the case and zero if she loses. Because my dependent variable is dichotomous I utilized a logit model.

National Policy Shifts

The national policy shifts are captured as a set of three dummy variables (Family Privacy Sphere 1965-1975, Post Pennsylvania Prevention from Abuse Act 1976-1994, and Post-Sensitivity era 1995-2013). Family Privacy Sphere helps me to see the success rate of women during a time frame when the only protection against domestic violence that females had were to get a divorce on the grounds of physical cruelty. Unmarried women did not have any sort of protection in this era (Zorza, 1992). The Family Privacy Sphere served as the baseline category. The Post Pennsylvania Prevention from Abuse period allows me to see if the protection statutes

are having any type of impact when making decisions in the realm of domestic violence. Lastly, the Post-Sensitivity era enables me to see if women are having a higher success rate of winning domestic violence cases since the implementation of the Violence Against Women Act and state protection order statutes were adopted.

Litigant Characteristics

Female Litigant Status is captured as a dummy variable coded 1 if the woman is the appellee and zero if she is the appellant. Women whom are classified as the appellant serve as the baseline category.

Female Litigant Counsel is captured as a set of four dummy variables (Pro se, Private Attorney, Cause Lawyer, and Government Attorney). “Pro se” is when the battered woman represents herself in court. “Private Attorney” includes private attorney. The “Cause Lawyer” variable includes attorneys from the following groups: advocacy group, legal aid and services, and law schools and clinics. The “Cause Lawyer” serves as the baseline category. The “Government Attorney” includes attorneys such as: attorney general/assistant attorney general, state attorney/assistant state attorney, and district attorney/assistant district attorney. This shows me who is representing the female and the impact on her success.

The Opponent Counsel is captured as a set of three dummy variables (Pro se, Private Attorney, or Public Defender). “Pro se” is when the opponent represents himself in court. “Private Attorney” includes private attorney. “Public Defender” is an attorney appointed by the courts to represent the opponent. The “Public Defender” variable serves as the baseline category. These variables tell me the type of counsel that the opponent has.

Children is captured as a dummy variable coded 1 if the women have children and zero if the women have no children. Women classified with no children serve as the baseline category.

Legal Issues

The type of domestic violence is captured as a set of three dummy variables (Criminal Charges, Protection Orders, and Secondary Crisis). These issue variables allow me to see the differences in the success rate of women who are the victims of different types of domestic violence. The “Criminal Charges” variable includes the following types of issues: stalking/threats/harassment, firearms, murder/attempted murder/manslaughter, kidnapping, assault and rape. The “Protection Order” variable includes the following types of issues: seeking protection order, modifying protection order, maintaining protection order, seeking protection order for child, maintaining protection order for child, violated protection order, seeking a divorce on grounds of physical or mental cruelty, and maintaining a divorce on grounds of physical or mental cruelty. The “Secondary Crisis” variable includes the following types of issues: child custody dispute, child support, attorney fees, and spousal support. The “Secondary Crisis” variable serves as the baseline category.

State Level Policies

The region is captured as a dummy variable coded 1 if it is the South and zero if it is the non-South. This regional variable enables me to see if there are significant regional differences in the success rate of women who are victims of domestic violence. The “South” variable includes the following states: Florida, South Carolina, Alabama, Mississippi, North Carolina, Texas, Louisiana, Georgia, Virginia, Kentucky, Maryland, West Virginia, District of Columbia, Delaware, Arkansas, Oklahoma, and Tennessee. The “non-South” variable includes the following states: Maine, New Jersey, New York, New Hampshire, Massachusetts, Connecticut, Rhode Island, Pennsylvania, Delaware, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, Arizona, Colorado, Idaho, New

Mexico, Montana, Utah, Nevada, Wyoming, Alaska, California, Hawaii, Oregon, and Washington. The non-South region served as the baseline category.

Descriptive Results

Descriptive statistics are presented in Table 4.1. The results show that in the 1960s battered women won sixty-five percent of their cases. It is interesting to note the small number of domestic violence incidents that made it to the state supreme court during this period. During the 1970s, there was a period of aggressive legal intervention at the state level in regards to domestic violence policies in which the female litigant's success increased to sixty-nine percent. There is also a small increase in the number of domestic violence issues. The female litigant's success remained at sixty-nine percent during the 1980s with a slight decrease in the number of domestic violence incidents. During the 1990s, female domestic violence victims won seventy-two percent of the time. This period also shows another spike in the number of domestic violence issues. Finally, battered women have won seventy-four percent of the time since 2000. The courts have been flooded with an influx of domestic violence incidents during this time frame as well.

In regards to the policy periods, the results show an increase in the number of cases and the female litigant's success for each period. The Family Privacy Sphere (1965-1975) saw the least number of issues and the lowest success for battered women. The Post Sensitivity Period (1995-2013) saw the most number of issues in regards to domestic violence cases. The number of incidents tripled from the Post-P.A. PFAA (1976-1994) and is four times greater from the Family Privacy Sphere (1965-1975). While the increase in cases of violence against women is not a positive, it does illustrate that the public has an awareness of this issue and a willingness to pursue justice regarding domestic violence (Miller and Sarat, 1980). For the feminist movement,

this is a “win” in many respects because it demonstrates that political forces can and does lead to specialized remedies (Miller and Sarat, 1980). Specifically, this table shows that more battered women are utilizing the legal system as a remedy in domestic violence cases. An illustration of the number of wins for battered women by each of the three policy periods is shown in Figure 4.1. I speculate this influx of cases is the result of the criminal and legal sanctions that were implemented in the Post Pennsylvania Prevention from Abuse policy period as a result of the feminist movement. This shows that the laws are having a positive impact due to the dramatic increase in the number of issues that are flooding the courts. It also shows that police officers are making more arrests in domestic violence disputes.

The South has always been noted as being different and it proves no different in the treatment of battered women. Battered women who go to court in the South won their cases sixty-seven percent of the time, whereas battered women in the non-South were successful seventy-four percent of the time. The non-South region has almost double the amount of domestic violence incidents.

In terms of legal issues, Table 4.1 shows that battered women who had been a victim of rape had a success rate of ninety-four percent. A little over a third of the incidents involved a murder, attempted murder, or manslaughter issue. In these incidences, battered women won ninety-one percent of the time. Approximately a quarter of battered women were involved in an assault or battery and in those incidents she won eighty-seven percent of the time. These results support my expectations that when a women’s life is in danger and a criminal arrest is made, the courts weigh it more heavily (Sherman and Berk, 1984). As a whole, “Criminal Charges” made up a quarter of all domestic violence issues and battered women won eighty-eight percent of the time.

When looking at “Protection Orders”, it shows that approximately a third of the issues involved a battered woman who wanted to maintain her protection order. In these situations, she won sixty-eight percent of the time. Battered women who sought a divorce on the grounds of physical cruelty only won forty-three percent of the time. Battered women whose spouse or partner violated a protection order won seventy-five percent of the time. “Protection Orders” made up thirty percent of all domestic violence issues and battered women won sixty-seven percent of the time in this category.

In “Secondary Crisis”, a third of the issues involved battered women in a child custody dispute. In these incidences, she won fifty-nine percent of the time. Battered women seeking child support won sixty-six percent of the time. Child support incidents made up approximately a fourth of “Secondary Crisis” issues. Altogether, “Secondary Crisis” made up sixteen percent of all domestic violence issues and battered women won sixty-one percent of the time.

Figure 4.2 demonstrates the female litigant’s success by the proportion of each type of domestic violence issue occurring in each of the three policy periods. The low numbers of criminal charges in domestic violence during the Family Privacy Sphere (1965-1975) can be explained through the lack of criminal sanctions. The criminalization of domestic violence did not start until the mid-1970s in which we start to see an increase in the number of issues in the Post P.A. PFAA period. During the Family Privacy era, the only way a woman could get out of an abusive marriage was through a divorce on the grounds of physical or mental cruelty. This was categorized under “Protection Orders” which explains why that issue was prevalent during this time period. It is interesting to note that “Secondary Crisis” was relatively proportional to “Protection Orders”. I speculate that the majority of the women were in court to maintain their divorce and child support/custody.

In the Post P.A. PFAA period (1976-1994), each type of domestic violence is relatively proportional to each other. Even though the issues are somewhat proportional, it should be noted that there was a significant increase in the number of “Criminal Charges” cases. I speculate that the influx of domestic violence cases labeled as “Criminal Charges” was due to the various domestic violence statutes implemented in all fifty states and the landmark legislation of VAWA. However, the overall small number of cases may be the result of the courts adjusting to the criminal and legal sanctions implemented at the state and federal level. Therefore, we do not see a dramatic increase in the number of cases.

The success of domestic violence laws clearly shows during the Post Sensitivity period (1995-2013). We see an explosion in the number of cases that enter the courts in regards to “Criminal Charges” and “Protection Orders” in which both are nearly four times the amount from the previous policy period. Again, this illustrates that the laws are having a positive impact and that law enforcement is making more domestic violence arrests. It is interesting to note that “Secondary Crisis” is relatively consistent across all three policy periods. I speculate that the courts are still not aware of the financial hardships that battered women face when making the choice to leave an abusive relationship. Without a good attorney, the battered woman is at a disadvantage because she may be unable to enforce her legal right to child support, legal fees, and alimony (Gender and Justice, 1992).

Battered women classified as the appellee is almost eight times greater than appellants. Appellees won seventy-six percent of the time. When there were no children involved in the domestic dispute, she won seventy-five percent of the time. I speculate this comes from the notion that the courts believe it is in the best interest of children to maintain a relationship with their fathers even if violence is present between the two parties. Battered women who showed

up pro se in court won fifty-six percent of the time. It should be noted that only a small number of women showed up pro se. Female domestic violence victims who were represented with a government attorney won eighty-six percent of the time. Lastly, battered women whose opponents showed up pro se won sixty-eight percent of the time and again, only a small number of opponents were pro se.

Table 4.1 Descriptive Statistics.

	Mean	Std. Dev.	Number of Issues	Percentage of Issues	Fem. Lit. Success	Min.	Max
<i>National Policy Shifts</i>							
Family Privacy (1965-1975)	.20	.40	339	9%	67%	0	1
Post-P.A. PFAA (1976-1994)	.20	.40	524	14%	70%	0	1
Post-Sensitivity (1995-2013)	.60	.49	1,637	44%	74%	0	1
(1965- 1969)	.11	.31	261	7%	65%	0	1
(1970-1979)	.13	.34	334	9%	69%	0	1
(1980-1989)	.09	.29	240	6%	69%	0	1
(1990-1999)	.17	.38	468	13%	72%	0	1
(2000-2009)	.34	.47	922	25%	74%	0	1
(2010-2013)	.15	.36	419	11%	74%	0	1
<i>State Level Policies</i>							
South	.36	.48	906	24%	67%	0	1
Non South	.64	.48	1,738	47%	74%	0	1
<i>Legal Issues</i>							
Criminal Charges	.29	.45	933	25%	88%	0	1
• Stalking/Threats/Harassment	.08	.27	264	7%	85%	0	1
• Firearms	.02	.12	48	1%	83%	0	1
• Murder/Att. Mur./Manslaughter	.10	.30	332	9%	91%	0	1
• Kidnap	.10	.30	38	1%	86%	0	1
• Assault/Battery	.06	.25	220	6%	87%	0	1
• Rape	.01	.09	31	1%	94%	0	1
Protection Orders	.44	.50	1097	30%	67%	0	1
• Seek Protection Order	.03	.16	62	2%	60%	0	1
• Modify Protection Order	.01	.01	17	.01%	46%	0	1
• Maintain Protection Order	.15	.36	384	11%	68%	0	1
• Violated Protection Order	.07	.26	198	5%	75%	0	1
• Seek Child Protection Order	.01	.05	6	.01%	60%	0	1
• Maintain Child Protection Order	.01	.07	12	.01%	57%	0	1
• Maintain Divorce on Grounds of Physical Cruelty	.06	.23	327	9%	79%	0	1
• Seek Divorce on Grounds of Physical Cruelty	.11	.31	91	2%	43%	0	1

Secondary Crisis	.27	.45	614	17%	61%	0	1
• Child Custody	.11	.31	231	6%	59%	0	1
• Child Support	.06	.22	136	4%	66%	0	1
• Attorney Fees	.05	.21	105	3%	61%	0	1
• Spousal Support	.07	.25	142	4%	57%	0	1
<i>Litigant Characteristics</i>							
Female Litigant Appellee	.83	.37	2348	63%	76%	0	1
Female Litigant Appellant	.16	.37	296	8%	47%	0	1
Children Involved	.45	.50	1098	30%	67%	0	1
No Children	.55	.50	1546	42%	75%	0	1
Female Litigant Pro Se	.07	.26	148	4%	56%	0	1
Female Litigant Private Attorney	.56	.49	1357	37%	64%	0	1
Female Litigant Cause Lawyer	.02	.15	66	2%	74%	0	1
Female Litigant Government Attorney	.34	.47	1073	29%	86%	0	1
Opponent Pro Se	.05	.21	121	33%	68%	0	1
Opponent Private Attorney	.85	.36	2198	60%	70%	0	1
Opponent Public Defender	.11	.31	325	9%	83%	0	1
<i>N=</i>	3704						

Figure 4.1 The Female Litigant's Success by Policy Periods.

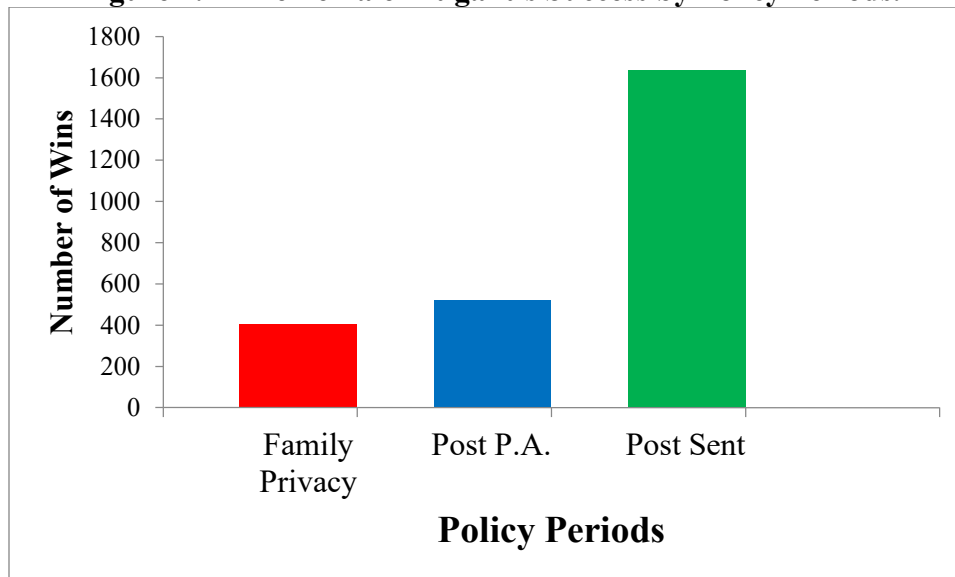
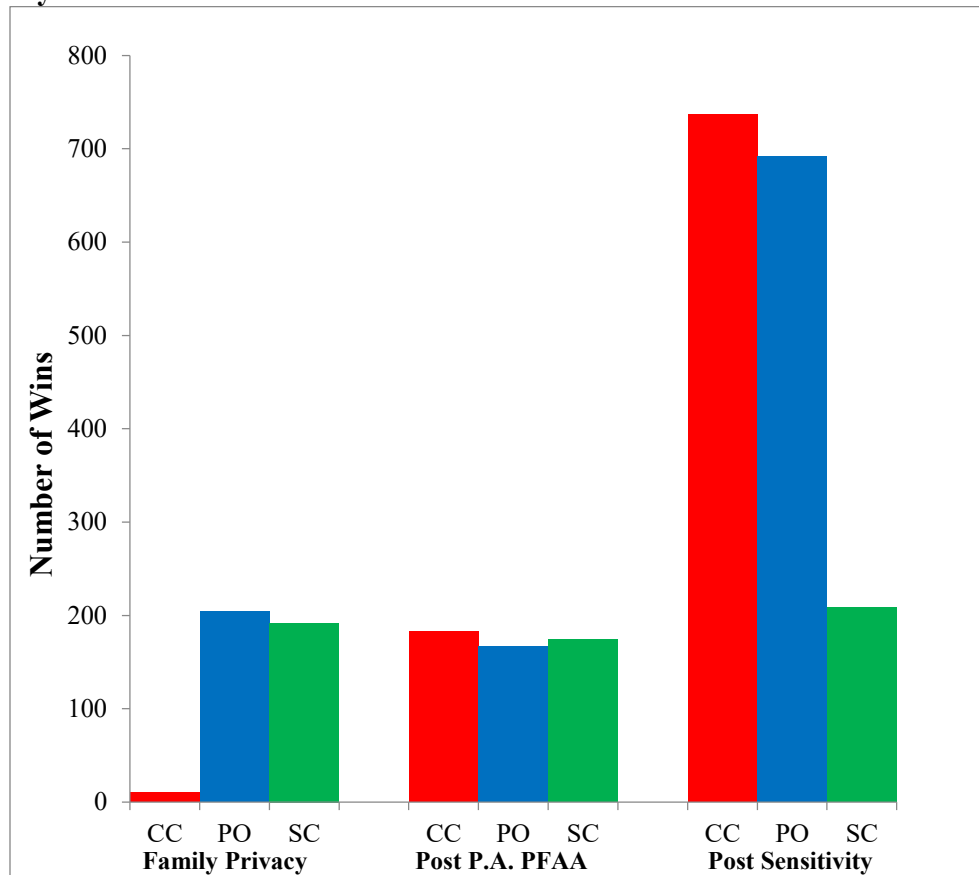


Figure 4.2 The Female Litigant’s Success by the Proportion of Legal Issues in Each of the Three Policy Periods.



Results

I modeled the impact of the independent variables on the outcome of the case in Table 4.2. The coefficients in the table show the change in the log of the odds ratio for a winning outcome in regards to female domestic violence victims. A positive coefficient suggests that the female has a higher probability of winning her case. A negative coefficient suggests that the female has a lower probability of winning. Since these coefficients are not readily interpretable, I provide under the column labeled “influence” the estimated increase or decrease in the probability that the female will win when the variable in question is present. The measure of the “influence” variable is arrived at by holding the other independent variables at their modal value and varying the value of the variable in question from 0 to 1.

Recall that I hypothesized that battered women would have a higher success rate of winning in the Post-Pennsylvania Prevention from Abuse era and the Post-Sensitivity because of changes in the legal treatment of these crimes and changes in public attitudes. Contrary to what I expected, the Post-Pennsylvania Prevention from Abuse (1976-1994) is not supported. It does not have an effect on the probability of women winning. Even though significant, women who go to court during Post-Sensitivity (1995-2013) actually have a lower probability of winning. This runs in the opposite direction of what I hypothesized. At first glance, one may assume that the “court culture” is still in an adjustment period and has yet to catch up with these changes. However, I speculate that the courts are being flooded with domestic violence cases that may be having an impact on the negative coefficient. These effects are quite small. For example, the impact that the Post-Sensitivity era has on the outcome of the case is only five percent.

The state level variable also had an effect. As expected, women who go to state courts in the south significantly have a lower probability of winning. This finding supports my hypothesis that the “court culture” in the south may still invoke strong traditional family structures (Nason-Clark, 2004). In 2010, the Kentucky State Supreme Court held in *Fraley v. Rice Fraley* (313 S.W. 3d 635) that handwritten letters and testimony in which Mrs. Rice Fraley admitted that she was fearful of her husband and felt unsafe without a protection order, but was insufficient to establish that her husband inflicted fear of imminent physical injury to support the granting of the order. Also, the Florida State Trial Court decided in *Gasilovsky v. Ben-Shimol* (979 so. 2d 1179) that issuing a protection order against repeat violence could not be supported by three violent acts stemming from one incident and the order was vacated. The trial court held that it had to find at least two separate violent incidents in order to issue a protection order (*Gasilovsky v. Ben-Shimol*).

I do observe some variation in the legal issues associated with domestic violence. The results provide support for the hypothesis that battered women whose spouse or partner had a domestic violence “Criminal Charge” have a higher rate of winning. Victims whose partner had a “Criminal Charge” was statistically significant ($p=.001$) and it influenced the outcome of the case by seventeen percent. Also, the results support the hypothesis regarding battered women who had a “Protection Order” have a higher rate of success. The coefficient for this variable was significant at the $p=.05$ and it impacted the outcome of the case by five percent. These results support the idea that when a female’s life is put in danger that the courts are more likely to weigh it more severely when compared to other violent cases.

Variables associated with the litigant’s characteristics also affected the outcome of the case. When a female is classified as the “appellee” she is more likely to win as hypothesized. This variable had the largest effect on the impact of the court’s decision. It is significant at the $p=.001$ and it influences the outcome of the case by twenty-five percent. The involvement of children did not have an effect on women winning. As expected, women who show up pro se in court have a lower probability of winning. It is statistically significant ($p=.001$) and its impact is somewhat modest. It influences the outcome of the case by fourteen percent. This finding supports my hypothesis that pro se battered women are more likely to lose their case because she does not have legal expertise. In contrast, women who are represented by a government attorney have a higher probability of winning. This supports the idea that when a government actor is involved the state has an invested interest in the case and has more resources available. Lastly, when the opponent shows up pro se, it significantly increases the probability that she will win. Overall, the model performs satisfactorily, predicting approximately 73 percent of the decisions correctly.

Table 4.2 Logit Estimates for Predictors of Winning Outcomes for Female Domestic Violence Victims.

	Coefficients (Robust Standard Errors)	Influence ²
<i>National Policy Shifts</i>		
Post-P.A. PFAA (1976-1994)	-.13 (.12)	-.02
Post-Sensitivity (1995-2013)	-.22* (.11)	-.05
<i>State Level Policy</i>		
South	-.37*** (.08)	-.09
<i>Legal Issues</i>		
Criminal Charges	.95*** (.18)	.17
Protection Orders	.23* (.10)	.05
<i>Litigant Characteristics</i>		
Female Litigant Appellee	1.04*** (.10)	.25
Children Involved	.13 (.09)	.03
Female Litigant Pro Se	-.58*** (.14)	-.14
Female Litigant Government Attorney	.53*** (.16)	.10
Opponent Pro Se	.37* (.18)	.07
<i>Cons</i>	-.12 (.14)	
<i>N</i> =	3704	
<i>Chi</i> ²	408.54***	
<i>Adj R</i> ²	.09	
PPC	73%	

Note: Statistical significant at p<.05*, p<.01**, and p<.001***.

Conclusion

This study provides an exploratory overview of the success of female domestic violence victims in state supreme courts. Based upon political science literature and judicial politics literature; I hypothesized that criminal and legal sanctions, time, geographical location, the

² “Influence” is the change in the predicted probability of Y = 1 which occurs from changing the value of a dummy independent variable from 0 to 1, holding all else to their modal value.

litigant's status, the involvement of children, and the type of counsel represented by both parties would impact the probability of success for the female domestic violence victim. I expected this to occur because of the implementation of protection order statutes in all fifty states, and the federal legislation of the Violence Against Women Act of 1994.

The findings were not all that surprising. My results suggest that the female litigant's status may be the most important variable in domestic violence cases. The involvement of government attorneys, the type of issue involved, and the opponent's counsel appear to have a successful impact on domestic violence cases as well. Even though the laws are beginning to protect battered women which are most evident by the success rate of battered women who go to court on the grounds of criminal charges and protection orders, the South still lags behind. The negative coefficient for the "Post-Sensitivity" era concerns me and warrants further investigation to figure out what is going on in that time period. It could be the influx of cases flooding the courts or it could be that institutions are slow to change as Jones has argued (1999). In order for these laws to protect all battered women, the traditionalism of family roles must be challenged and the seriousness of domestic violence must be corrected (Fagan, 1996). These results represent a study of a question that has previously received little scholarly attention in the field. However, for future research I would like to move away from the "South" variable and incorporate a race, rural, and religion variable to test the impact of these variables on state supreme domestic violence court cases.

While additional research is needed, my findings are important for players in judicial politics and in domestic violence. This research can contribute towards understanding the functions of state supreme courts more completely, and highlights the importance of comparative state analysis for developing theories of politics (Brace, Hall, and Langer, 1999).

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