

SOCIAL RESEARCH AND SOCIAL CHANGE: MEETING THE CHALLENGE OF GENDER INEQUALITY AND SEXUAL ABUSE

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Describing the relationship between social science research and social change is a large project for limited space.¹ The task reminds me of Gloria Steinem's response when asked to describe the impact of the women's movement. That felt, she said, like being asked to "describe the universe and give three examples."² So that will be my strategy here. Let me offer three illustrations of how contemporary social science research has transformed understandings of social problems and inspired efforts at social reform.

Sexual harassment, acquaintance rape, and domestic violence have always been with us, but only in the last several decades have we begun to chart their dimensions and dynamics and to craft meaningful responses. Making gender inequality central to research on these issues has dramatically altered the content and context of policy debates. Yet our progress remains partial, and our studies to date have been far more successful in describing the problems than in identifying solutions. I will conclude, then, by exploring some of the barriers to essential policy-oriented research, both at the individual and institutional level and by suggesting some strategies for reform.

I.

Events like this one inevitably invite personal reflection on the not-so-good old days, and my memories are probably not atypical. When I first encountered sexual harassment, as a Yale student in the 1970s, it had neither a label nor a remedy. We spoke of the experience as "having a problem with a professor" and the problem was always ours, never his. There were no policies, procedures, or complaint channels that might have identified that there was indeed a problem. But into the void marched a series of books and articles, as well as lawsuits, that identified sexual harassment

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¹ This Essay grows out of an address presented in a plenary session entitled "Transgressing Sex Segregation: The Law, Social Science, and Social Policy" at the August 11, 2006, annual meeting of the American Sociological Association.

² Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 *YALE L.J.* 1731, 1732 (1991).

as a form of sexual discrimination and one that should be actionable under a newly passed statute, Title VII of the national Civil Rights Act.³

The initial reception in many quarters was less than enthusiastic. The men who dominated the upper levels of employment, judicial, and policy circles were often skeptical that sexual overtures and workplace banter were significant problems and that women were, or should be, offended. As one male manager put it in a 1980s survey by the *Harvard Business Review*, "I've never been harassed but I would welcome the opportunity."⁴ For those who did not "ask for it," Phyllis Schlafly reassured Congress, harassment was not a problem except in the rarest of cases.⁵ Many federal judges agreed. In their view, the civil rights law was not meant to be a "clean language act"⁶ or a remedy for the "petty slights suffered by the hypersensitive."⁷ Only "sustained, malicious, and brutal" abuse should qualify for relief.⁸ One trial judge expressed common views with uncommon candor: "So we will have to hear [your complaint], but the court doesn't think too much of it."⁹

Research has played a major role in challenging and changing these attitudes. Studies from a wide range of employment and educational settings have brought home the frequency and costs of harassment. Most have found that between one-third and four-fifths of women, and up to one-fifth of men, experience such abuse.¹⁰ Contrary to critics' concerns, underreport-

³ Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-1–2000e-17 (2000). Among the most influential works was CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979). For an overview of the history of sex harassment law, see DIRECTIONS IN SEXUAL HARASSMENT LAW (Catharine A. MacKinnon & Reva B. Siegel eds., 2004).

⁴ Eliza G. C. Collins & Timothy B. Blodgett, *Sexual Harassment . . . Some See It . . . Some Won't*, 59 HARV. BUS. REV., Mar.–Apr. 1981, at 76, 92.

⁵ NANCY E. MCGLEN & KAREN O'CONNOR, *WOMEN'S RIGHTS: THE STRUGGLE FOR EQUALITY IN THE NINETEENTH AND TWENTIETH CENTURIES* 186 (1983).

⁶ *Katz v. Dole*, 709 F.2d 251, 256 (4th Cir. 1983) (holding that a former federal air traffic controller had nevertheless satisfied the requirements for proving sexual harassment under Title VII by showing that she suffered sustained serious harassment).

⁷ *Zabkowicz v. West Bend Co.*, 589 F. Supp. 780, 784 (E.D. Wis. 1984) (holding that warehouse worker had proven harassment occurred and that her employer did not take effective action to fix the problem).

⁸ *Id.* at 784.

⁹ *Henson v. Dundee*, 682 F.2d 897, 900 n.2 (11th Cir. 1982) (holding that plaintiff's claim that she was denied the opportunity to attend police academy because of her refusal to have sexual relations with her supervisor was erroneous, but finding that plaintiff had made a prima facie showing of the elements necessary to establish a Title VII violation on other claims).

¹⁰ For a study finding that 44% of women and 19% of men reported having experienced "some form of unwanted sexual attention" at work in the past two years, and finding that other studies estimate the percentage of women suffering sexual harassment at work to be as high as 40% to 80%, see THERESA M. BEINER, *GENDER MYTHS V. WORKING REALITIES: USING SOCIAL SCIENCE TO REFORMULATE SEXUAL HARASSMENT LAW* 1 (2005). For a study finding that as many as one in two women may encounter workplace sexual harassment, see Heather Antechol & Deborah Cobb-Clark, *The Changing Nature of Employment-Related Sexual Harassment: Evidence from the U.S. Federal Government 1978–1994*, 57 INDUS. & LAB. REL. REV. 443, 443 (2004). For a discussion of harassment on college cam-

ing, not overreaction, has been the common response. Only five to twelve percent of those experiencing harassment make any complaints, and fewer still can afford the financial and psychological costs of litigation.¹¹ The price of harassment, both for individuals and institutions, remains substantial. Many of these employees suffer significant economic and psychological injuries including dismissals, demotions, depression, and other stress and mental health disorders.¹² Employers lose millions from decreased productivity, increased turnover, and legal expenses.¹³ And everyone suffers from the job segregation and subordination that exclude workers from positions they deserve.

In short, we have made considerable progress in analyzing the problem, but we are still a considerable distance from preventing it. Harassment remains pervasive and formal complaints nearly doubled between 1992 and 2001.¹⁴ The prevailing assumption is that the answer lies with policies, complaint channels, and training programs, and that these structures will normally insulate employers from liability.¹⁵ Yet the evidence available casts doubt on the adequacy of such initiatives. For the vast majority of victims, the costs of complaining outweigh the benefits: barriers include fears of reprisal, blacklisting, and loss of privacy, as well as doubts about the value of responses.¹⁶ Although employers are spending an estimated \$10 billion annually on training programs,¹⁷ and four states now require them for

puses and in elementary and secondary schools, see Deborah L. Rhode, *Sex in Schools: Who's Minding the Adults?*, in *SEXUAL HARASSMENT OF WORKING WOMEN*, *supra* note 3, at 290–96.

¹¹ Johanna Grossman, *The Culture of Compliance: The Final Triumph of Form Over Substance in Sexual Harassment Law*, 26 *HARV. WOMEN'S L.J.* 3, 23–24 (2003).

¹² DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* 101 (1997).

¹³ *Id.*

¹⁴ RAYMOND F. GREGORY, *UNWELCOME AND UNLAWFUL: SEXUAL HARASSMENT IN THE AMERICAN WORKPLACE* 9 (2004).

¹⁵ For an analysis of this presumption of insulation from liability, see Susan Bisom-Rapp, *Fixing Watches With Sledgehammers: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession*, 24 *U. ARK. LITTLE ROCK L. REV.* 147, 161–62 (2001); Kimberly D. Krawiec, *Cosmetic Compliance and the Failure of Negotiated Governance*, 81 *WASH. U. L.Q.* 487, 508, 540 (2003); Margaret S. Stockdale et al., *Coming to Terms With Zero Tolerance Sexual Harassment Policies*, 4 *J. FORENSIC PSYCHOL. PRAC.* 65, 71–72 (2003).

¹⁶ See, e.g., GREGORY, *supra* note 14, at 134; Stockdale et al., *supra* note 15, at 73. See generally Grossman, *supra* note 11. For an argument that combating sexual harassment through assertiveness training for women is ineffective and that cognitive-behavioral psychology may provide insight into victims' responses, see Louise Fitzgerald et al., *Why Didn't She Just Report Him?: The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 *J. SOC. ISSUES* 117 (1995). For advocacy of an approach to sexual harassment law that takes its lead from the contradictory realities of women's lives and that makes room for social science research, see Beth A. Quinn, *The Paradox of Complaining: Law, Humor and Harassment in the Everyday Work World*, 25 *LAW & SOC. INQUIRY* 1151 (2000).

¹⁷ For these cost estimates, see Stuart Silverstein, *Fear of Lawsuits Spurs the Birth of a New Industry*, *L.A. TIMES*, June 27, 1998, at A1.

specified private sector workers,¹⁸ no systematic research documents the effectiveness of these programs in producing sustained attitude changes or in altering workplace behavior. What few studies have been done yield inconclusive results.¹⁹ Some find no long-term improvements in attitudes and others indicate that poorly designed programs can actually entrench gender stereotypes, encourage male backlash, and perpetuate the very biases that they are designed to combat.²⁰

Recent experience with California's mandatory training law illustrates the risks. The programs that I have reviewed both highlight overly obvious or overly trivial examples of harassment and exaggerate the risk of personal liability for unintended offenses. According to some courses, statements such as "you look nice in that dress" or acts of chivalry like holding a door open fall into a "dangerous grey area."²¹ Even inadvertent offenders can reportedly risk losing not only their "reputation" but also their "home[s], car[s] and life savings."²² For the clueless in California, some training includes instruction on what forms of workplace hugging are permissible. Although frontal hugs apparently are acceptable, side hugs or squeezes may be objectionable. But then again, maybe not.²³ Too many individuals may end up seeing these required programs, and the legal doctrine that they describe, as overblown reactions to oversensitive feminists who should get a life, not a law. As one exasperated male supervisor put it in his evaluation, "This appears to be a course designed by idiots for idiots."²⁴

¹⁸ California, Connecticut, and Maine require sexual harassment training for some private employers, and Michigan mandates its civil rights department to offer training programs to employers, including private employers. GLOBAL COMPLIANCE, STATE REQUIREMENTS FOR HARASSMENT TRAINING, available at <http://www.globalcompliance.com/pdf/state-requirements-for-harassment-training.pdf> (last visited Dec. 3, 2006); see also Brightline Compliance, Preventing Workplace Harassment: Sexual Harassment Training by State, <http://www.brightlinecompliance.com/training/sexual-harassment-training.html> (last visited Dec. 3, 2006).

¹⁹ For a discussion of these studies, see Bisom-Rapp, *Fixing Watches*, *supra* note 15, at 163; Susan Bisom-Rapp, *An Ounce of Prevention Is a Poor Substitute for a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law*, 22 BERKELEY J. EMP. & LAB. L. 1, 30–36 (2001).

²⁰ These studies are summarized in several books and articles. See Barbara Gutek, *Sexual Harassment Policy Initiatives*, in SEXUAL HARASSMENT: THEORY, RESEARCH, AND TREATMENT 185 (William O'Donohue ed., 1997); Bisom-Rapp, *Fixing Watches*, *supra* note 15, at 163; Bisom-Rapp, *An Ounce of Prevention*, *supra* note 19, at 37–38.

²¹ The example comes from materials for an in-house training of staff at the Natural Resources Defense Council (NRDC) in San Francisco in 2005 (on file with author).

²² This example comes from the training program required for Stanford University supervisors in 2005–2006 (on file with author).

²³ NRDC materials, *supra* note 21. The trainer for the NRDC cautioned that some employees may object to any form of touching. Interview with Ralph C. Cavanagh, Attorney, NRDC, in Stanford, Cal. (Nov. 2005).

²⁴ This was the response of one Stanford University supervisor contained in his evaluation of the Stanford training program referenced in *supra* note 22 (on file with the author).

II.

A similar story can be told about our progress—and its limits—concerning acquaintance rape. Once again, when I was in college, forced sex was a not uncommon part of the campus social scene. But to borrow the title of an early celebrated study, *I Never Called It Rape*.²⁵ Mainly, my female classmates and I never spoke of it at all, and when we did, our euphemisms were along the lines of “bad sex” and a “real mistake.” We held ourselves responsible, as did the culture generally, and in that setting of shame and blame, reporting the experience to any authority was generally unthinkable. If a woman wore short skirts or tight jeans, consumed too much alcohol, or led a man on, what could one expect? As one judge summarized prevailing attitudes, when a woman goes to a man’s room, “she certainly [has] to realize that they [are] not going upstairs to play Scrabble.”²⁶ Any “normal” man was entitled to expect something more.

Much, of course, depends on one’s definition of “normal” and one’s definition of “rape.” Over the last several decades, a growing body of research has documented the frequency and consequences of this long unchallenged problem, as well as the attitudes that perpetuate it. An estimated one out of six American women has experienced an attempted or completed rape,²⁷ and about seventy percent of these incidents involve an acquaintance.²⁸ Studies of college age men have found that substantial numbers, typically around half, report that they would force a woman to have sex if they could get away with it.²⁹ A majority admit engaging in some sexually coercive behaviors, and ten to fifteen percent acknowledge having forced sex on a date.³⁰ Yet most individuals do not consider this behavior to be rape although it meets the legal definition.³¹

²⁵ ROBIN WARSHAW, *I NEVER CALLED IT RAPE: THE MS. REPORT ON RECOGNIZING, FIGHTING, AND SURVIVING DATE AND ACQUAINTANCE RAPE* (1994).

²⁶ *State v. Rusk*, 424 A.2d 720, 734 (1981) (Cole, J., dissenting).

²⁷ For the one in six estimate, see *Sexual Assault* (Dean G. Kilpatrick et al. eds.), in U.S. DEP’T OF JUSTICE, NATIONAL VICTIM ASSISTANCE ACADEMY (Anne Seymour et al. eds., 2000), available at <http://www.ojp.usdoj.gov/ovc/assist/nvaa2000/academy/J-10-SA.htm>.

²⁸ For the acquaintance rape estimates, see BUREAU OF JUSTICE STAT., U.S. DEP’T OF JUSTICE, CRIME CHARACTERISTICS, available at http://www.ojp.usdoj.gov/bjs/cvict_c.htm (last visited Dec. 3, 2006).

²⁹ SUSAN BASOW, *GENDER: STEREOTYPES AND ROLES* 319 (3d ed. 1992) (thirty-five to sixty percent); Lynn Henderson, *Rape and Responsibility*, 11 L. & PHIL. 127, 170 (1992) (thirty to fifty percent); Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1023–24 (1991) (close to one-half).

³⁰ For citations of related studies, see RHODE, *supra* note 13, at 120; WARSHAW, *supra* note 25, at 13–14. See also BASOW, *supra* note 29, at 319 (Fifty percent of college men engage in “coercive and manipulative sex.”).

³¹ See RHODE, *supra* note 13, at 120 (about one-half); BASOW, *supra* note 29, at 318 (Eighty-four percent of men who admitted to committing acts that met the legal definition of rape or attempted rape believed that their behavior “definitely was not rape.”).

Part of the reason for this disconnect between legal standards and popular perceptions is that rape by an acquaintance appears to be less injurious than rape by a stranger. In a survey of some four thousand college-age women, over forty percent of those who acknowledged recently experiencing what the law defines as rape did not report it because they were not sure a crime had been committed or that harm had been intended.³² Thirteen percent did not know how to make a report, and another thirty percent were deterred by the expectation of harsh or dismissive treatment in the justice system.³³ Yet many of these women, like many law enforcement officials, may underestimate the injuries associated with sexual assaults by an acquaintance. Researchers find that these assaults are no less psychologically debilitating than rape by a stranger because they call into question a woman's behavior, judgment, and sense of trust in ways that other rapes do not.³⁴

Social science research has been crucial not only in charting the dimensions of acquaintance rape but also in understanding the factors that perpetuate it. These include the cultural importance of male sexual prowess as a measure of power, status, and control; the hypermasculinity fostered in all-male environments like fraternities and athletic teams; the impaired judgment resulting from substance abuse; and the assumptions that a woman's "no" may often mean "yes," that provocative clothing is an "advertisement for sex," that women often find some coercion erotic, and so forth.³⁵

Yet although we have made considerable progress in identifying the conditions that need to change, we have been far less successful in addressing them. Sexual assault policies and education programs are a standard fixture of campus life, but as with sexual harassment training, no body of research establishes their effectiveness. To the contrary, the sparse evidence available suggests that the standard approach, which combines policies aimed at deterrence with a brief educational session, is insufficient

³² BONNIE S. FISHER, ET AL., U.S. DEP'T OF JUST., THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 25 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/182369.pdf> (respondents were permitted to choose more than one reason for not reporting the incident).

³³ *Id.* at 24–25.

³⁴ Christine A. Gidycz & Mary P. Koss, *The Effects of Acquaintance Rape on the Female Victim*, in ACQUAINTANCE RAPE: THE HIDDEN CRIME 270, 270 (Andrea Parrot & Laurie Bechhofer eds., 1991); Bonnie L. Katz, *The Psychological Impact of Stranger versus Nonstranger Rape on Victims' Recovery*, in ACQUAINTANCE RAPE, *supra*, at 251, 251–53.

³⁵ For a discussion of these various factors, see KATHERINE T. BARTLETT & DEBORAH L. RHODE, GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY 816–20 (2006); RHODE, SPEAKING OF SEX, *supra* note 13, at 126; Torrey, *supra* note 29, at 1014–15. For an empirical study finding negative gender-based attitudes, pornography consumption, and alcohol abuse to be significant factors in predicting the likelihood of engaging in sexual violence, see Joetta L. Carr & Karen M. VanDeusen, *Risk Factors for Male Sexual Aggression on College Campuses*, 19 J. FAM. VIOLENCE 279 (2004).

to achieve lasting attitude change.³⁶ Virtually no studies document the influence of these strategies on behavior. Nor do we have reason to believe that secondary education programs, most of which focus on abstinence, deal adequately with the pressure for sexual activity that one-third of adolescents report experiencing.³⁷

We do not lack for promising alternatives. Experts have developed a range of curricular and policy initiatives, including more intensive and culturally sensitive education and peer counseling programs that target at-risk groups.³⁸ We urgently need more innovation and systematic evaluation of these approaches. Significant progress will require prevention programs with some demonstrable success and the research necessary to develop them.

III.

Similar points could be made about domestic violence. The problem has always been with us, but until the last several decades the public had little awareness of its dimensions or dynamics. Part of the reason is that few statistics were available on family abuse and few cases reached the justice system. Except in the most egregious circumstances, police, prosecutors, and judges viewed legal intervention as inappropriate or ineffectual.³⁹ An influential 1968 training manual for the International Association of Police Chiefs captured the prevailing wisdom concerning domestic violence calls.⁴⁰ It advised police officers that their “sole purpose” was

³⁶ For discussions casting doubt on the effectiveness of brief prevention programs, see Patricia Frazier et al., *Evaluation of a Coeducational Interactive Rape Prevention Program*, 73 J. COUNSELING & DEV. 153, 157 (1994); Mary J. Heppner et al., *Examining Immediate and Long-Term Efficacy of Rape Prevention Programming with Racially Diverse College Men*, 46 J. COUNSELING PSYCHOL. 16, 17 (1999); Elena L. Klaw et al., *Challenging Rape Culture: Awareness, Emotion and Action Through Campus Acquaintance Rape Education*, 28 Women & Therapy 47, 48 (2005). For research finding that most universities take a deterrence-based approach to rape prevention, which is less effective than a public health approach, see Roberto Hugh Potter et al., *Examining Elements of Campus Sexual Violence Policies: Is Deterrence or Health Promotion Favored?*, 6 VIOLENCE AGAINST WOMEN 1345 (2000).

³⁷ For a report that nearly one-third of adolescents report having experienced the pressure to have sex, and that adolescent boys report experiencing more of such pressure than do their female peers, see HENRY J. KAISER FAMILY FOUNDATION, NATIONAL SURVEY OF ADOLESCENTS AND YOUNG ADULTS: SEXUAL HEALTH KNOWLEDGE, ATTITUDES AND EXPERIENCES 3 (2003). For the inadequacy of secondary sex education programs, see Michelle J. Anderson, *Negotiating Sex*, 78 S. CAL. L. REV. 1401, 1434 (2005).

³⁸ For a conclusion that “intensive, sustained rape education efforts play a vital role in dismantling rape supportive culture,” see Klaw et al., *supra* note 36, at 48. For a description of a successful, long-term attitudinal change in some men after a multi-session intervention and a demonstration of the value of culturally relevant materials in interventions among racial minorities, see Heppner et al., *supra* note 36.

³⁹ DEBORAH L. RHODE, JUSTICE AND GENDER 239 (1989).

⁴⁰ See Sue E. Eisenberg & Patricia L. Micklow, *The Assaulted Wife: “Catch 22” Revisited*, 3 WOMEN’S RTS. L. REP. 138, 156 (1977) (quoting INT’L ASSOC. OF POLICE CHIEFS, TRAINING KEY NO. 16: HANDLING DOMESTIC DISTURBANCE CALLS 94 (1968–69)).

not to insure victims' safety but rather to "preserve the peace," and that they should attempt to "pacify [the] parties" and use arrest only as "a last resort;" never should they "create a police problem where there [was] only a family problem existing."⁴¹ Given such attitudes, it is perhaps not surprising that a 1982 Civil Rights Commission report found the odds of a spousal abuse case ending up in court to be about 100 to 1.⁴² The prevailing assumption was that battered women were responsible for provoking or tolerating their abuse. As so many repeatedly put it, "Why don't they just leave?"⁴³

Researchers helped supply the answer. Millions of women have had nowhere safe to go and no way of adequately supporting themselves and their children. Even now, the United States still has more shelters for animals than for survivors of domestic violence, and many groups, such as gays, lesbians, immigrants, and the elderly, are especially underserved.⁴⁴ Some evidence suggests that the most serious assaults and greatest risk of homicide may occur after women attempt to leave an abusive relationship.⁴⁵

As research has also made increasingly clear, the human and social costs of unchecked domestic violence are staggering. The best estimate is

⁴¹ *Id.*

⁴² U.S. COMM'N ON CIVIL RTS., UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 36 (1982).

⁴³ RHODE, *supra* note 13, at 114–19.

⁴⁴ For the animal shelter claim, see Sarah M. Buel, *Family Violence and the Health Care System: Recommendations for More Effective Interventions*, 35 HOUS. L. REV. 109, 111 (1998); see also Kerry Kennedy Cuomo, *Speak Truth to Power*, 73 PA. B. ASS'N Q. 169, 170 (2002). For the difficulties facing victims of same-sex domestic violence who seek assistance, see Tara R. Pfeifer, Note, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence*, 109 PENN. ST. L. REV. 1251, 1251 (2005); see also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 50 (1991) ("Homophobia in society deters many battered lesbians from invoking the legal system."). For an explanation of the unique barriers facing battered immigrant women, see Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 247–48; see also Jenny Rivera, *The Availability of Domestic Violence Services for Latinas in New York State: Phase II Investigation*, 21 BUFF. PUB. INT. L.J. 37, 77–78 (2003) (concluding that "[l]atinas do not receive adequate intimate partner violence services. Monolingual Spanish-speaking Latinas are most adversely affected by the lack of bilingual/bicultural services, and undocumented women are the ones least likely to receive services."). For a description of the inability of most shelters to provide needed services for elderly women, see Mary Twomey et al., *Courts Responding to Domestic Violence: From Behind Closed Doors: Shedding Light on Elder Abuse and Domestic Violence in Late Life*, 6 J. CENTER FOR FAMILIES, CHILD. & CTS. 73, 73 (2005) ("[R]ecognition of elder abuse as a social and legal problem is years behind child abuse and domestic violence."). For a discussion of the inadequacy of shelters for women with disabilities, see Karen Nutter, *Domestic Violence in the Lives of Women with Disabilities: No (Accessible) Shelter from the Storm*, 13 S. CAL. REV. L. & WOMEN'S STUD. 329, 330 (2004) ("[R]esearchers . . . agree that the provisions of protective orders and crisis shelters . . . are grossly inadequate to serve the needs of women with disabilities.").

⁴⁵ See PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, 37–38 (2000).

that about twenty-five percent of women and eight percent of men will experience such abuse at some point in their lifetimes.⁴⁶ Domestic violence is a leading cause of injury to women and costs the nation several billion dollars annually in health care, absenteeism, lost wages, legal expenses, and incarceration.⁴⁷ Researchers have also documented the interplay of social, economic, and psychological factors that contribute to abuse, including

- perpetrators' desire for power and control, and inability to handle anger and stress;
- victims' economic and psychological dependence;
- inadequate societal strategies for deterrence and protection; and
- family histories and cultural reinforcement of violence.⁴⁸

Yet as with other issues of sexual abuse, we have a much better picture of the causes and consequences of domestic violence than the strategies that can prevent it. On some issues, the problem is not an absence of studies but an absence of answers. For example, researchers are divided about the effectiveness of policies requiring arrests, medical reporting of injuries, and prosecution regardless of victim consent.⁴⁹ Some studies find that mandatory policies are helpful in forcing the criminal justice system to take domestic violence seriously, in deterring future abuse, and in minimizing victims' vulnerability to pressure and retaliation by taking the decision to proceed out of their hands.⁵⁰ By contrast, other researchers find

⁴⁶ *Id.* at iii.

⁴⁷ BARTLETT & RHODE, *GENDER AND LAW*, *supra* note 35, at 500 (estimating annual costs of \$3 billion to \$5 billion); RHODE, *SPEAKING OF SEX*, *supra* note 13, at 108 (estimating annual costs of \$5 billion to \$10 billion).

⁴⁸ BARTLETT & RHODE, *supra* note 35, at 469–75. *See generally* Carolyn Puzella, *Domestic Violence: Social Scientists' Perspectives on the Causes of Spousal Abuse*, 11 J. CONTEMP. LEGAL ISSUES 37 (2000).

⁴⁹ For an analysis of mandatory arrest policies as they relate to race, see generally Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & L. 171 (1994). For an explanation of mandatory arrest policies and their use, see Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 562 n.55 (1999). For a description of the impact of a Kentucky mandatory reporting law on the provision of domestic violence services, see generally Linda K. Bledsoe et al., *Understanding the Impact of Intimate Partner Violence Mandatory Reporting Law*, 10 VIOLENCE AGAINST WOMEN 534 (2004). For an analysis of mandatory prosecution policies, see Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996).

⁵⁰ For the support of mandatory arrest policies, see CHRISTOPHER D. MAXWELL ET AL., NAT'L INST. OF JUSTICE, RESEARCH IN BRIEF: THE EFFECTS OF ARREST ON INTIMATE PARTNER VIOLENCE: NEW EVIDENCE FROM THE SPOUSAL ASSAULT REPLICATION PROGRAM (2001); *see also* Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929 (1994). For the support of mandatory reporting laws, see Bledsoe et al., *supra* note 49, at 538. For the support of mandatory prosecution policies, see Hanna, *supra* note 49. For one of the only studies asking battered women about their own preferences (in which approximately three-fourths supported mandatory arrest and medical reporting laws and two-thirds supported

little deterrent effect, increased risks of retaliation, and increased likelihood that victims will fail to call the police or seek needed services.⁵¹ Critics also worry that disregarding victims' own assessments of the risks and benefits of legal intervention further victimizes victims, by compounding their trauma and further eroding their sense of efficacy and self-esteem.⁵²

More large-scale research is necessary to test these competing claims and to assess the viability of alternative, more qualified policies that make victims' safety the preeminent concern. For example, some studies suggest that arrest and prosecution work best for perpetrators with the most to lose from criminal sanctions, and that risks of violence escalate with those who have the least to lose, those who are unemployed, unmarried, poorly educated, and/or already have a criminal record.⁵³ How best to tailor law enforcement policy in light of different offender profiles is a crucial societal question on which further research is essential.

The same is true concerning the batterer intervention programs that serve as an alternative to incarceration or that are offered in prison. Since the late 1970s, a growing number of jurisdictions have adopted such programs in the hopes of rehabilitating offenders through attitude change and improved behavioral skills such as anger management.⁵⁴ Despite the

mandatory prosecution policies), see Alisa Smith, *It's My Decision, Isn't It?: A Research Note on Battered Women's Perceptions of Mandatory Intervention Laws*, 6 VIOLENCE AGAINST WOMEN 1384, 1394–96 (2000).

⁵¹ For an overview of this issue, see BARTLETT & RHODE, *supra* note 35, at 491–92. For criticisms of mandatory arrest policies, see, for example, Robert C. Davis et al., *The Deterrent Effect of Prosecuting Domestic Violence Misdemeanors*, 44 CRIME & DELINQ. 434, 441 (1998) (“We found no evidence that prosecution outcomes affected the likelihood of recidivism in domestic violence misdemeanor cases.”); Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL'Y & L. 465, 467 (2003) (“For many battered women, prosecution of their batterers actually creates a greater long-term risk of harm.”). For criticism of mandatory medical reporting, see Bledsoe et al., *supra* note 49, at 539–40; Ariella Hyman & Ronald A. Chez, *Mandatory Reporting of Domestic Violence by Health Care Providers: A Misguided Approach*, 5 WOMEN'S HEALTH ISSUES 208, 209 (1995) (“[M]andatory reporting can actually discourage battered women from seeking medical care.”); Michael A. Rodriguez et al., *Mandatory Reporting of Intimate Partner Violence to Police: Views of Physicians in California*, 89 AM. J. PUB. HEALTH 575, 577–78 (1999) (summarizing objections of medical professionals); Mia M. McFarlane, *Mandatory Reporting of Domestic Violence: An Inappropriate Response for New York Health Care Professionals*, 17 BUFF. PUB. INT. L.J. 1 (1999). For criticism of mandatory prosecution policies, see Hanna, *supra* note 49, at 1865–66; Epstein et al., *supra*, at 467–69.

⁵² See Mills, *supra* note 49, at 568–83; Epstein et al., *supra* note 51, at 470–72.

⁵³ For a seminal study detailing these risks, see Lawrence W. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 137 (1992); see also Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 281 (1997) (“[R]ecent research suggests that arrest actually may be ineffective in deterring domestic violence among low-income men, and that women of color may have reasons not shared by white women for being dubious about tougher arrest policies.”).

⁵⁴ LARRY BENNETT & OLIVER WILLIAMS, *CONTROVERSIES AND RECENT STUDIES OF BATTERER INTERVENTION PROGRAM EFFECTIVENESS 1* (2001), available at http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_bip.pdf.

prevalence of these initiatives, insufficient research has assessed their effectiveness and findings are inconclusive.⁵⁵ Some studies have found no differences in attitudes toward domestic violence and recidivism rates between men in treatment programs and those on probation.⁵⁶ Other research finds lower recidivism among men who completed the treatment program.⁵⁷ However, the significance of these results is often compromised by high drop-out rates and non-random assignment systems that screen out men with low motivation.⁵⁸ We know even less about the long-term effectiveness of violence prevention programs aimed at adolescents.⁵⁹ In the last five years, the federal government has spent some \$3.2 billion to combat violence against women.⁶⁰ It is shameful that so few resources have gone to learning how to target our interventions most effectively. Crafting sensible public policy on this issue will require a much more solid knowledge base than is currently available.

IV.

Sexual abuse is just one of many areas in which the nation has urgent unmet needs for research targeted at social problems. At the same time, much of the social science scholarship that accumulates annually vanishes without apparent influence. About three-quarters of this published work is never cited.⁶¹ The disconnect between the priorities of academics and the needs of policy communities demands closer attention. What are the institutional and individual incentive structures that get in the way of getting the research that we need?

At the institutional level, the most obvious problem is money. Talk is cheap; good research is not. It often satisfies more constituencies to spend limited resources on efforts to fix the problem than on evaluation of those

⁵⁵ See Ileana Arias et al., *Violence Against Women: The State of Batterer Prevention Programs*, 30 J.L. MED & ETHICS 157, 161 (2002).

⁵⁶ BENNETT & WILLIAMS, *supra* note 54, at 6. For recidivism rates compared to perceptions of the potential for future recidivism by victims and batterers, see Arias et al., *supra* note 55, at 162.

⁵⁷ BENNETT & WILLIAMS, *supra* note 54, at 8, 12–13; SHELLY JACKSON ET AL., NAT'L INST. OF JUSTICE, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? 1–3 (2003); Varsha Pandya & Wallace J. Gingerich, *Group Therapy Intervention for Male Batterers: A Microethnographic Study*, 27 HEALTH & SOC. WORK 47, 48 (2002).

⁵⁸ For an experiment that screened participants, see BENNETT & WILLIAMS, *supra* note 54, at 6 (“Brooklyn Experiment”). For experiments with high attrition rates, see JACKSON ET AL., *supra* note 57, at 2–3.

⁵⁹ For an analysis of the sparse research available and recommendations for future work, see DEAN PEACOCK & EMILY ROTHMAN, WORKING WITH YOUNG MEN WHO BATTER: CURRENT STRATEGIES AND NEW DIRECTIONS (2001), available at http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_juvperp.pdf.

⁶⁰ ALISON SISKIN, CONG. RESEARCH SERVICE, VIOLENCE AGAINST WOMEN ACT: HISTORY, FEDERAL FUNDING, AND REAUTHORIZING LEGISLATION 6 (2001) (updated for fiscal years 2001–2005).

⁶¹ David P. Hamilton, *Research Papers: Who's Uncited Now?*, 251 SCIENCE 25, 26 (1991).

efforts. Moreover, in many contexts, those who develop intervention programs are not eager to hear that they are ineffective, particularly if it is not clear what would work better or how expensive that alternative would be. For example, American employers are willing to invest vast sums in workplace harassment programs despite a lack of evidence about their efficacy, because they help insulate the organization from liability. Managers can claim that they are making good faith efforts to prevent abuse. That claim would be undercut by research indicating that their programs were not affecting workplace behavior. For similar reasons, college campus administrators may be reluctant to subsidize studies that could expose the extent of acquaintance rape and the inadequacy of programs designed to address it. To alter these incentive structures, it may be necessary to impose program evaluation requirements or to provide greater public subsidies for such research. Protecting the confidentiality of results obtained by institutions that undertake voluntary research into these issues might also allay concerns that adverse findings might create more problems than they would solve.⁶²

We also need to address some of the disincentives for empirical research faced by individual scholars. Much of the work on social problems in my own field, law, is glutted with theory but starved for facts. Many law professors have internalized W. H. Auden's celebrated injunction, "Thou shalt not . . . commit [a] social science," and with reason.⁶³ Data are a luxury good. Few legal academics have ready access to financial support on the scale necessary for major empirical research, and raising funds through grants or private donations is a skill that few have shown interest in acquiring. Sociologists are more entrepreneurial, but many have had to abandon valuable project designs for lack of resources.

Moreover, money is only one of many obstacles. Rigorous empirical work generally involves a substantial commitment of time and an equally substantial tolerance for drudgery. Particularly for younger faculty, who face pressure to demonstrate immediate productivity, data collection is an unattractive option. Why bother with burdensome empirical research when you can leap instantly into print by reading others' work in the comfort of your office and saying what you think? In many fields, particularly in the social sciences and professions, what yields the greatest return for scholars is not what would have the most direct value for society. The best way of building an academic reputation is typically high theory and so-

⁶² For discussion of such a privilege, see Bisom-Rapp, *An Ounce of Prevention*, *supra* note 19, at 46 n.360.

⁶³ W.H. AUDEN, *Under Which Lyre: A Revolutionary Tract for the Times*, in COLLECTED SHORTER POEMS 1927-57 at 221, 225 (1966). For elaboration of this point, see DEBORAH L. RHODE, IN PURSUIT OF KNOWLEDGE: SCHOLARS, STATUS, AND ACADEMIC CULTURE 44-45 (2006).

phisticated quantitative analysis, not time-consuming empirical research that could help address practical problems.⁶⁴

The obstacles to such research can be substantial even in disciplines that claim to value it highly. C. Wright Mills, one of America's leading sociologists, famously confessed that "I do not like to do empirical work if I can possibly avoid it. If one has no staff, it is a great deal of trouble; if one does employ a staff, then the staff is often even more trouble."⁶⁵ Methodological complications can be equally vexing for reasons other researchers note: "computers crash; data are incomplete, irrelevant, or miscoded; [and] informants refuse to be candid or fail to return [questionnaires and] telephone calls."⁶⁶ Worse still, after considerable time, expense, and effort, the results may not justify the investment. The response rate may be too low or too unrepresentative of the sample as a whole. Alternatively, findings may appear too obvious; they "'merely' confirm what everybody (especially in retrospect) 'already knows.'"⁶⁷ Research on program evaluation runs the further risk of bringing unhappy tidings to administrators whose cooperation made the research possible in the first place. Their reaction may be to shoot the messenger, which scarcely encourages academics to do that kind of work again.

Not only do many scholars face substantial obstacles to pursuing empirical research, but they also fail to get attention for the research that they do undertake. Social science journals and jargon are uninviting to the uninitiated and too seldom reach the decision makers most in need of guidance. Yet writing in accessible publications for nonacademic audiences is often viewed as *déclassé*. Mere "popularizer" is an epithet to be avoided.⁶⁸ For all but the celebrity scholars with access to the national media, it is safer to produce a deeply theorized if unread tome in an obscure academic journal than to write something useful in plain English for policy makers or the public.

So, too, serious scholars frequently lack the time, taste, and training for getting their research findings to the relevant constituencies. Unless academics are affiliated with a well-funded think tank, they are unlikely to have the networks and public relations skills needed to market their work effectively. Educating reporters can be a tedious and thankless enterprise. They call at inconvenient moments, need time-consuming explanations, garble quotes, or leave them on the cutting room floor. Television is particu-

⁶⁴ Harvey Brooks, *Current Criticisms of Research Universities*, in *THE RESEARCH UNIVERSITY IN A TIME OF DISCONTENT* 231, 231–36 (Jonathon R. Cole et al. eds., 1994).

⁶⁵ C. WRIGHT MILLS, *On Intellectual Craftsmanship*, in *THE SOCIOLOGICAL IMAGINATION* 195, 205 (1959).

⁶⁶ Peter H. Schuck, *Why Don't Professors Do More Empirical Research?*, 39 *J. LEGAL EDUC.* 323, 331 (1989).

⁶⁷ *Id.*

⁶⁸ John Donatich et al., *The Future of the Public Intellectual: A Forum*, *NATION*, Feb. 12, 2001, available at <http://www.thenation.com/doc/20010212/forum> (comments of Stephen Carter).

larly risky for amateurs. If my own limited experience is any guide, academics who are not seasoned performers can seldom count on looking good and sounding good on the same occasion. A typical opportunity arises at the last minute on a bad hair day with no time to prepare. Then, despite a mad scramble to become presentable, the scholar gets one question on the order of: “And so professor, in the fifteen seconds remaining, what does your research tell us about how to end sexual violence?”⁶⁹

Yet while these obstacles to socially engaged research are substantial, we could surely do more to help academics effectively influence public policy. For example, universities could target additional fellowships, stipends, workshops, and related resources to that effort. More institutions could establish policy research centers or consortia that help to steer scholarship toward social issues where empirical work is most needed.⁷⁰ More training and support could be available to assist faculty with media outreach. Professional associations could provide more rewards and recognition for academics who are foot soldiers in the struggle for social change. Law reviews could actively solicit engaged research. As we acknowledge all that social science has helped us achieve, we must not lose sight of the challenges that remain.

⁶⁹ For a description of similar experiences, see Laurie I. Levenson, *TV, or Not TV*, CAL. LAWYER, July 1997, at 95.

⁷⁰ For a description of the development of such a center at Arizona State University, see Jeffrey Brainard, *A More Social Science*, CHRON. HIGHER EDUC., Nov. 18, 2005, at A22–A25.