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## DOUBLY VICTIMIZED: HOUSING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

LENORA M. LAPIDUS\*

Over the last three decades, women's rights advocates have made great strides in raising public awareness of domestic violence and developing systems to prevent and punish such abuse.<sup>1</sup> As Elizabeth Schneider describes in her comprehensive book, *Battered Women & Feminist Lawmaking*,<sup>2</sup> this achievement resulted from a movement of feminist activists and lawyers dedicated to transforming domestic violence from a private problem into a public harm.<sup>3</sup> To redress this public harm, legal procedures and court systems have been established to enable battered women to obtain orders of protection and to facilitate criminal prosecutions of batterers.<sup>4</sup>

In addition to the harms battered women suffer at the hands of their abusers, victims of domestic violence also face discrimination

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1. See Robert H. Humphrey, *Domestic Violence: Detention, Prosecution and Defense*, 51 R.I. B.J. 5, 5 (2003) (discussing the legislation passed as a result of the public awareness about domestic violence).

2. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* (2000).

3. See *id.*

4. See, e.g., Honorable Judge Randal B. Fritzler & Lenore M.J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington Utilizing Innovative Judicial Paradigms*, 69 UMKC L. REV. 139, 144-45 (2000) (demonstrating one state's approach to combating the harm caused by domestic violence).

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from third parties as a result of the battering.<sup>5</sup> Battered women are discriminated against by landlords and housing authorities, employers, child protective service agencies and others.<sup>6</sup> Discrimination against victims of domestic violence means that battered women are more likely to hide the abuse they suffer rather than seek help, resulting in the availability of far fewer resources to protect themselves and change their lives.<sup>7</sup> A present challenge of feminist lawmaking is to develop legal theories and advocacy to address these forms of discrimination.<sup>8</sup> This Article discusses housing discrimination against victims of domestic violence and potential legal theories and advocacy efforts that can be used to combat it. In doing so, the Article also reflects on themes raised by Professor Schneider, while using a housing discrimination case to illustrate some of those themes in practice.

#### I. TIFFANI ALVERA'S CASE

Twenty-four year old Tiffani Alvera was assaulted by her husband in their Seaside, Oregon, apartment on August 2, 1999. She was badly beaten and suffered injuries to her face and ribs. In response, she reported the assault to the police, and her husband was arrested. She subsequently went to the hospital to obtain treatment for her physical injuries. That same day, she went to the county court and obtained a temporary restraining order to keep her husband away from her.

When Ms. Alvera returned to her apartment at the forty-unit Creekside Village Apartments, a complex for low-income tenants subsidized by the federal government, she gave the resident manager a copy of the restraining order. However, rather than express sympathy for Ms. Alvera about the assault she had just suffered, or offer assistance to her as she dealt with the difficult situation, the

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5. See generally Comment, *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?*, 31 TEX. TECH L. REV. 139 (2000) (highlighting the motivations behind employer discrimination of domestic violence victims and delineating effective ways to address problems of domestic violence in the workplace).

6. See, e.g., Ethan Breneman Lauer, *Housing and Domestic Abuse Victims: Three Proposals for Reform in Minnesota*, 15 LAW & INEQ. 471, 471 (1997) (discussing the story of "Margaret" and her landlord who tried to evict her for failing to prevent an assault by her boyfriend in their rented home).

7. See Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer's Responsibility*, 16 LAW & INEQ. 633, 642 (1998) (listing reasons a victim of domestic violence may be reluctant to report the abuse and including the fear of employer discrimination as one such reason).

8. See Suzanne J. Groisser, *Elizabeth M. Schneider's Battered Women and Feminist Lawmaking*, 10 COLUM. J. GENDER & L. 385, 387 (2001) (book review) (explaining the concept of "feminist lawmaking" and its role in changing the law).

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management instead served Ms. Alvera with a notice of eviction. The eviction notice stated: "You, someone in your control, or your pet, has seriously threatened immediately to inflict substantial personal injury upon the landlord or other tenants."<sup>9</sup> The notice specified the assault by her husband. The management company, C.B.M. Group, Inc., a business owning hundreds of apartment complexes in five states, defended the eviction on the ground that the managers "gave Ms. Alvera a 24-hour notice to vacate because it is their policy to evict tenants who pose a threat to the safety and well-being of other tenants in the complex. When one person in the household poses a threat, the entire household is evicted."<sup>10</sup> Thus, as C.B.M. claimed, it was merely applying its zero-tolerance for violence policy to Ms. Alvera.<sup>11</sup>

Ms. Alvera's eviction was both unlawful and unfair. "It wasn't my fault," said Ms. Alvera.<sup>12</sup> "I'd gotten the restraining order. My face was badly battered, and it was two to three months before it healed. I lost lots of hours of work, which meant lots of hours of pay. I didn't feel like I could go looking for a new place to live."<sup>13</sup> She added, "The eviction note on top of that assault left me not knowing what I would do."<sup>14</sup> In addition to being a victim of domestic violence at the hands of her husband, Ms. Alvera was doubly victimized by being evicted from her home by the management company. "I felt what they did to me was wrong," she said.<sup>15</sup>

Ms. Alvera's case presented some interesting questions that had not previously been adjudicated. Could one raise a claim of sex-discrimination under fair housing laws even though the zero-tolerance policy was neutral on its face? What evidence would be needed to prove it? What defenses might the management company raise in response? What other advocacy efforts might be useful in addressing this problem?

Ms. Alvera, with assistance from a legal services attorney, filed a complaint with the United States Department of Housing and Urban

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9. *Alvera v. Creekside Village Apts.*, HUD ALJ No. 10-99-0538-8 (U.S. Dep't of Hous. & Urban Dev., Portland, Or., Oct. 22, 1999).

10. *Id.*

11. *See id.*

12. Tamar Lewin, *Zero-Tolerance Policy is Challenged*, N.Y. TIMES, July 11, 2001, at A10.

13. *Id.*

14. Brad Bolchunos, *Battered Wife Fights for Justice*, DAILY ASTORIAN (Astoria, Or.), July 11, 2001, at 3.

15. *Id.*

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Development (“HUD”).<sup>16</sup> Based on the information gathered in its investigation, the Secretary of HUD issued a Charge of Discrimination finding that the management company had engaged in a discriminatory housing practice in violation of the Fair Housing Act.<sup>17</sup> The agency found that because women constitute the vast majority of domestic violence victims, policies targeting such victims necessarily have a disproportionate impact on women and thus constitute sex-discrimination under the Fair Housing Act.<sup>18</sup>

Through counsel, Ms. Alvera made a timely election to have the charge resolved in a federal civil action. Following this decision, the Attorney General filed a civil action on behalf of Ms. Alvera. On July 11, 2001, Ms. Alvera, represented by Legal Services of Oregon, the Oregon Law Center, the ACLU Women’s Rights Project, and NOW Legal Defense and Education Fund, intervened in the action as a matter of right.

In *United States ex rel. Tiffani Alvera v. C.B.M. Group, Inc.*,<sup>19</sup> Ms. Alvera challenged her eviction under the Fair Housing Act,<sup>20</sup> Oregon’s fair housing law,<sup>21</sup> and the common law. The complaint alleged that the management company engaged in a practice that imposed a disparate impact on women by adopting a policy of terminating the tenancy of and refusing to rent apartments to victims of domestic violence, the vast majority of whom are women. She argued that such a practice discriminates on the basis of sex in violation of the Fair Housing Act<sup>22</sup> and the Oregon fair housing law.<sup>23</sup> The complaint further alleged that the management company intentionally discriminated against Ms. Alvera by terminating her tenancy and refusing to rent her another apartment because she had been the victim of domestic violence; significantly, the management company declined to evict other tenants who were victims of non-intimate

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16. See *Alvera v. Creekside Village Apts.*, HUD ALJ, No. 10-99-0538-8 (U.S. Dep’t of Hous. & Urban Dev., Portland, Or., Oct. 22, 1999).

17. See Secretary, U.S. Dep’t of Hous. & Urban Dev., *ex rel. Alvera v. C.B.M. Group Inc.*, HUD ALJ No. 10-99-0538-8 (U.S. Dep’t of Hous. & Urban Dev., Portland, Or., Apr. 16, 2001).

18. See *id.*

19. No. 01-857-PA (D. Or. June 8, 2001)

20. See 42 U.S.C. § 3601 (2001) (providing that “[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States”).

21. See 51 O.R.S. § 659.033 (2001) (addressing the miscellaneous prohibitions relating to employment and housing discrimination).

22. See 42 U.S.C. § 3604 (a)-(b) (2003) (describing prohibited practices regarding discrimination in the sale or rental of housing).

23. See 51 O.R.S. § 659.033(1)-(2).

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violence. This discrimination on the basis of her sex and victimization violated the Fair Housing Act<sup>24</sup> and the Oregon fair housing law.<sup>25</sup>

The case theory was that because the vast majority of domestic violence victims are women, applying a zero-tolerance for violence policy in the context of domestic violence has a disparate impact on women and thus constitutes sex-discrimination under the Fair Housing Act.<sup>26</sup> No such claim equating discrimination against victims of domestic violence with discrimination on the basis of sex had previously been brought under the Fair Housing Act.<sup>27</sup> By recognizing domestic violence as a form of gender subordination, and seeing it as a harm suffered predominantly by women, the management company's actions could be viewed as sex-discrimination and challenged under the fair housing laws. To prevail, statistical evidence and expert testimony would be required to demonstrate that the vast majority of domestic violence victims are, in fact, women and, as a result, the eviction policy disproportionately harms women.<sup>28</sup> Such evidence is available on both the national and local level; for example, a U.S. Department of Justice report found that women were five times as likely as men to be victims of intimate partner violence,<sup>29</sup> and 86.6 percent of violent incidents between intimate partners were committed against women.<sup>30</sup> This evidence likely supports a disparate impact theory.<sup>31</sup>

To prove the disparate treatment theory, a battered woman might present evidence that although the zero-tolerance policy is gender neutral on its face, in fact, the management company sought to evict the entire household in cases of domestic violence, but did not seek

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24. See 42 U.S.C. § 3604(a)-(b) (2003).

25. See 51 O.R.S. § 659.033(1)-(2).

26. See 42 U.S.C. § 3601.

27. A similar claim, however, had been brought under a state fair housing law. See *Winsor et al. v. Regency Prop. Mgt. et al.*, No. 94 CV 2349 (Dane Co. Cir. Ct., Oct. 2, 1995) (Memorandum Decision & Order) (holding that refusing to rent to a domestic violence victim would establish a prima facie case of sex discrimination under the Wisconsin Open Housing Act).

28. See *Pfaff v. United States Dep't of Hous. & Urban Dev.*, 88 F.3d 739, 747 (9th Cir. 1996) (finding intent to discriminate is not required to establish a prima facie case of disparate impact under the Federal Housing Act, even when the defendant is a private landlord).

29. See CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEPT. OF JUSTICE, *INTIMATE PARTNER VIOLENCE 2* (2000) (discussing trends in violence against intimate partners).

30. See *id.* at 8.

31. See generally Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708 (2002).

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to evict victims of non-intimate violence that occurred in the building. Evidence might show that the management company has applied the policy in several instances of domestic violence but not in other contexts.

In defense against the disparate impact theory, the management company might try to dispute the statistics or demonstrate a business necessity for the policy.<sup>32</sup> The management company would have to show a legally sufficient nondiscriminatory reason for the policy and its enforcement in order to defend against the disparate treatment theory.

Ms. Alvera's case was settled in November 2001, with a consent decree requiring C.B.M. to: (1) change its policy at the hundreds of properties it owns and manages in five states; (2) engage in staff education and training on domestic violence and fair housing; and (3) provide compensation to Ms. Alvera.<sup>33</sup>

## II. OTHER POTENTIAL LEGAL THEORIES

In addition to claims of sex-discrimination under the Fair Housing Act and state fair housing laws, tenants living in government-owned properties may be able to raise various constitutional claims.<sup>34</sup> Constitutional claims were not raised in Ms. Alvera's case because C.B.M. is a private management company, although it receives

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32. See, e.g., *Pfaff*, 88 F.3d at 747 (requiring the landlord to produce a "compelling business necessity" to justify his numerical occupancy restriction, and to show that the policy was the least restrictive means to that end).

33. Under the consent decree, defendants agreed not to evict or otherwise discriminate against any person on the basis that such person has been the victim of violence, including domestic violence; to notify in writing all employees having responsibility for the management of any residential rental property owned or operated by defendants that it is not the policy of C.B.M. to evict or otherwise discriminate against any victim of violence; to review all manuals, handbooks, policy directives or other documents furnished to employees of any residential rental property owned or operated by defendants to ensure that any discussion of procedures relating to eviction of tenants be revised to state unambiguously that it is not the policy of defendants to so evict or otherwise discriminate; and to require all managers and other employees of C.B.M. to attend a program of educational training concerning their responsibilities under federal, state, and local fair housing laws. The consent decree established that defendants' compliance with the terms of the decree would be monitored by the U.S. Attorney for five years and that such monitoring would include record keeping and reporting of all documents pertaining to the eviction of any tenant, at any residential property managed by C.B.M., for any reason other than non-payment of rent. Further, the consent decree provided that pursuant to a separate settlement agreement, defendants would pay Ms. Alvera compensatory damages and that she could seek an award of reasonable attorneys' fees from the court.

34. A tenant may be evicted from, and the Fair Housing Act applies to, government-owned and operated properties, private housing that receives federal or state subsidies, and private housing that does not receive any government aid. See 42 U.S.C. §§ 3601-3619 (2001).

subsidies from the federal government to provide low-income housing. If intentional discrimination can be established, a battered woman may have an equal protection claim under the Fourteenth Amendment.<sup>35</sup> This claim would be similar to the claims of sex-discrimination under the Fair Housing Act, however, it would apply only to intentional discrimination, not disparate impact discrimination.<sup>36</sup>

Further, where the woman has sought police assistance or obtained an order of protection and these actions led to the eviction, she may be able to raise a First Amendment claim under the right to petition the government clause.<sup>37</sup> The argument would be that by evicting women who report abuse to the police or who seek orders of protection, housing authorities chill and punish these tenants' exercise of their First Amendment right to petition the government.<sup>38</sup>

The Supreme Court has held that the right to petition includes access to the courts.<sup>39</sup> Thus the First Amendment embraces the rights of domestic violence victims to seek orders of protection from the court. In addition, courts have held that the First Amendment also protects individuals seeking the aid of law enforcement officers.<sup>40</sup> If a battered woman is evicted after the housing authority learns of the abuse as a result of police activity or an order of protection, she is essentially being punished for exercising her right to petition the government. In turn, other battered women may be wary of seeking assistance from law enforcement and the legal system for fear of similar reprisal, thus effecting a chill of the exercise of their First Amendment rights.<sup>41</sup>

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35. See U.S. CONST. amend. XIV, § 1 (providing that no state "shall deny any person within its jurisdiction the equal protection of the laws").

36. See *Washington v. Davis*, 426 U.S. 229 (1976).

37. See U.S. CONST. amend. I (providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.>").

38. See *Ottensmeyer v. Chesapeake & Potomac Tel. Co.*, 756 F.2d 986, 994 (4th Cir. 1985) (recognizing that there "would be a 'chilling effect' on information given to police if the Sherman Act hovered ominously overhead").

39. See *generally* *California Motor Transp. v. Trucking Unlimited*, 404 U.S. 508 (1972) (holding that it would be destructive of rights of association and petition to hold that groups with common interests may not use channels and procedures of state and federal agencies and courts to advocate their causes without violating antitrust laws).

40. See *Forro Precision, Inc. v. IBM*, 673 F.2d 1045 (9th Cir. 1982) (ruling that employees' assistance in the police investigation of employer was privileged, despite the fact that the employer suffered adverse publicity).

41. See *id.* (finding that employees' invocation of police assistance is to be accorded immunity).

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As justification for the policy, the housing authority might argue that its substantial interest in maintaining order and safety in public housing outweighs any incidental burden on a battered woman's right to petition. While one may concede that the government's interest in safety is substantial, the means employed to curb violence in this context clearly restricts more petitioning activity than necessary to achieve the government's objectives. In fact, the government need not restrict any such activity in order to maintain safety. Once an order of protection has been issued to prevent the batterer from returning to the premises, or the police have arrested and imprisoned the abuser, the violence will be eliminated; evicting the victim does not further enhance achievement of the government's objective in any way. On the other hand, by instilling a justified fear of eviction in battered women, a zero-tolerance policy will deter many women from exercising their right to petition.

If a zero-tolerance policy results in such a chilling effect, the gains made over the last three decades in creating opportunities for women to obtain governmental protection through arrest laws and the creation of court systems to facilitate the issuance of orders of protection may be lost. Just as society has reached a stage where greater numbers of women feel comfortable coming forward with their stories of abuse, pressing criminal charges, and seeking civil orders of protection, this success could be jeopardized by landlords who evict those women who seek to protect themselves through law enforcement and the legal system. Accordingly, it is essential to develop and press legal theories to combat these evictions.

### III. OTHER FORMS OF HOUSING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

In addition to evictions, battered women face housing discrimination in a variety of other ways and at various stages of the housing process.<sup>42</sup> They may face discrimination at the time they apply for housing. Often, landlords, particularly managers of subsidized housing, conduct criminal record checks of individuals who apply to rent an apartment. These record checks generally indicate the names of both the individual convicted of the crime and the complaining victim. Advocates have discovered that housing authority managers frequently reject rental applications from women

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42. See generally NAT'L HOUSING LAW PROJECT, RESPONDING TO CONGRESSIONAL DIRECTIVE TO PROTECT VICTIMS OF DOMESTIC VIOLENCE (2002) [hereinafter NAT'L HOUSING LAW PROJECT], available at [http://www.nhlp.org/html/pubhsg/eid\\_packet/eid-hlb-02-2002.pdf](http://www.nhlp.org/html/pubhsg/eid_packet/eid-hlb-02-2002.pdf).

who have been victims of domestic violence as indicated by the complaining victim's name appearing in the criminal record checks. In addition, as a result of mandatory arrest policies and courts issuing mutual orders of protection, battered women may actually show up on these record checks as the perpetrator of the violence.<sup>43</sup> A second problem that battered women face at the admissions stage is that as a result of the domestic violence, they may not have solid work histories, credit, or references because the batterer has prevented them from holding a steady job, from maintaining a bank account, or from developing relationships with others, each of which may be a strike against them in the application process and may lead landlords to decline their applications.<sup>44</sup>

Those battered women who are able to obtain apartments may face difficulties maintaining them.<sup>45</sup> Problems of continued occupancy include discrimination in the terms and conditions of the tenancy, such as a requirement that no violence occur in the future, a condition that is not imposed on other tenants.<sup>46</sup> Further, in many cases only the husband's name is listed on the lease, leading the housing authority to assert that it cannot evict the abuser and allow the victim to continue her occupancy.<sup>47</sup> Finally, the victim is often held accountable for the acts of the abuser and is required to pay for property damage that he caused.<sup>48</sup>

Obtaining a transfer from one public housing complex to another also poses problems for victims of domestic violence.<sup>49</sup> Public housing authorities do not have policies that accommodate the needs of residents fleeing domestic violence and lack flexible rules that would allow a battered woman to leave the district in which she is

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43. See Susan A. Reif & Lisa J. Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Victims*, 34 CLEARINGHOUSE REVIEW 20, 28 (2000) (noting how domestic violence victims often have a criminal record, particularly in jurisdictions where both the abuser and the abused are arrested in response to reports of domestic violence incidents).

44. See *id.* at 21-22, 27.

45. See *id.* at 30 ("Once domestic violence victims obtain affordable housing, they often continue to struggle to maintain it.")

46. See *id.* at 28-29 (discussing conditions that may be imposed upon domestic violence victims when granted assistance by the housing agency).

47. But see *id.* at 27 (stating how "some abusers place the victim's name on lease contracts so that subsequent evictions for nonpayment will reflect on the victim's credit").

48. See *id.* (suggesting that when the victim's name is also included in the lease agreement, a landlord can hold the victim accountable for any property damage caused by the abuser).

49. See *id.* at 31 (discussing the need for domestic violence victims to relocate or transfer their housing assistance upon the abuser's discovery of the victim's whereabouts).

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residing and obtain public housing elsewhere.<sup>50</sup>

To address these various housing problems, landlords and housing authorities must give more attention to the circumstances of battered women and adopt policies that do not punish them for the acts of their abusers. Feminist lawyers and advocates are working to bring these circumstances to light and to develop strategies to alter current practices by housing authorities.<sup>51</sup>

#### IV. OTHER FORMS OF ADVOCACY

In addition to litigation, legislative and administrative advocacy may be useful in addressing these multiple forms of housing discrimination faced by victims of domestic violence.<sup>52</sup> Federal law currently authorizes public housing authorities and HUD Field Offices to develop and enforce strict screening and eviction policies as part of their anti-drug and anti-crime initiatives.<sup>53</sup> The “one-strike and you’re out”<sup>54</sup> policy permits a public housing authority to evict a tenant for any criminal activity engaged in by a member of the tenant’s household or any guest or other person under the tenant’s control.<sup>55</sup> Under this policy, being beaten by an abuser and calling for help may constitute a disruption of the peaceful enjoyment of the community and furtherance of a criminal activity, and thus provide a basis for eviction.<sup>56</sup> In March 2003, Representative Barbara Lee introduced a bill to amend this law to exempt victims of domestic

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50. *See id.*

51. *Cf. id.* at 33 (concluding that advocates must act now to persuade housing authorities to adopt policies aiding domestic violence victims).

52. In 2002-03, a coalition of civil rights, housing, and domestic violence advocates met with Congress and officials at HUD in such an effort. The groups participating in this advocacy effort were: the American Civil Liberties Union, NOW Legal Defense and Education Fund, McAuley Institute, National Alliance to End Homelessness, National Coalition Against Domestic Violence, National Housing Law Project, National Low Income Housing Coalition, and National Network to End Domestic Violence.

53. Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, 104 Stat. 1481 (1990) (codified at 42 U.S.C. 1437(d)(1)(6)). This provision requires public housing authorities to utilize leases that:

[P]rovide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of the tenancy.

*Id.*

54. *Id.*

55. *See id.*

56. *See id.*

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violence, who were the targets of the criminal activity, from eviction.<sup>57</sup> In addition, federal legislation can be enacted to clarify that housing discrimination against battered women is unlawful under the Fair Housing Act. Further, through the appropriations process, Congress can direct that HUD withdraw federal funding from any public housing authority or other federally subsidized landlord that so discriminates. Although Congress did not go this far, in the Conference Report that accompanied the FY 2002 HUD Appropriations bill, Congress directed HUD to “develop plans to protect victims of domestic violence from being discriminated against in receiving or maintaining public housing because of their victimization.”<sup>58</sup>

With this congressional mandate, HUD is currently taking steps to provide guidance to public housing authorities across the country informing them that it is unlawful to evict or otherwise discriminate against victims of domestic violence. In 2003, HUD is expected to issue a handbook to public housing authority managers on these issues.<sup>59</sup> The handbook should set forth the various ways in which domestic violence impacts women living in public housing and provide guidance to housing authority managers on appropriate and lawful responses. HUD is also considering ways to encourage public housing authorities to work with local domestic violence groups to develop trainings for staff and residents to ensure protection of and non-discrimination against victims of domestic violence.<sup>60</sup>

In addition to federal efforts, advocates are working to enact state legislation that explicitly prohibits evictions and other housing discrimination against victims of domestic violence.<sup>61</sup> This legislation may be tied to broader anti-discrimination provisions, prohibiting discrimination against battered women in housing, employment, and other contexts.

#### V. TIFFANI ALVERA'S CASE AS AN EXAMPLE OF FEMINIST LAWMAKING

These responses to housing discrimination against victims of

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57. See H.R. 1429, 108th Cong. (2003). The bill would also apply to tenants of housing assisted under the Section 8 Program.

58. H.R. Conf. Rep. No. 107-272, at 120 (2001).

59. As of March 2003, this handbook had not been issued.

60. See generally NAT'L HOUSING LAW PROJECT, *supra* note 42.

61. Several states have enacted laws prohibiting evictions or other discrimination against tenants because they are victims of domestic violence. See, e.g., COLO. REV. STAT. § 10-3-1104.8 (2003); WASH. REV. CODE ANN. § 59.18.352 (West 2003); MINN. STAT. § 504B.205 (2002); N.M. STAT. ANN. § 47-8-33(J) (2002); WIS. STAT. ANN. § 106.50(5m)(d) (2000).

domestic violence all derive from a deep understanding of the actual experiences facing battered women and from efforts to bring these experiences to light. Feminist lawmaking over the last thirty years provides a basis for developing approaches to address current forms of discrimination against battered women.

Indeed, an analysis of housing discrimination against victims of domestic violence, and Tiffani Alvera's story specifically, provides an illustration of many of the themes addressed in Professor Schneider's book. When Ms. Alvera first sought legal assistance, her primary goal was to remain in the apartment from which she was being evicted. She viewed her situation as one affecting her alone. She was young, scared, battered, and in need of assistance. After working with the domestic violence advocates and the attorneys on this case, however, she began to see her situation and herself in a different light. Not only was the eviction unfair because she had not done anything wrong and thus did not deserve to be evicted, but Ms. Alvera began to see that what had happened to her was happening to many other women who, like she, were victims of domestic violence. She began to conceptualize the zero-tolerance policy not only as unjust toward her individually, but as part of a broader pattern of discrimination against women.

This transformation demonstrates the power of feminist lawmaking. As Professor Schneider writes:

For individuals, a claim of right can be an assertion of one's self-worth and an affirmation of one's moral value and entitlement . . .

The articulation of women's rights provides a sense of self and distinction of individual women, while at the same time supplying an important sense of collective identity.<sup>62</sup>

By viewing Ms. Alvera's eviction as part of a larger systemic problem of discrimination against domestic violence victims, a sex-discrimination claim under the Fair Housing Act could be articulated. This articulation empowers the individual abused woman who has been evicted and provides a basis for law reform that will benefit other victims of domestic violence in similar situations.<sup>63</sup>

Zero-tolerance housing policies, such as the one applied against Ms. Alvera, also illustrate the ways in which society facilitates and exacerbates domestic violence by holding women accountable for the abuse they suffer.<sup>64</sup> By evicting battered women, public housing

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62. See SCHNEIDER, *supra* note 2, at 39.

63. See *id.*

64. See *id.* at 12 (explaining that while domestic violence is a physical assault against one person, society as a whole facilitates the commission of these assaults

authorities punish the women for being abused. Although the policies typically state that the reason for the eviction is that “you or someone in your control”<sup>65</sup> has threatened immediate injury to another tenant or has engaged in violent or criminal activity, zero-tolerance policies are used as a basis to evict the victim, who clearly had no control over her abuser. Moreover, holding women accountable in these circumstances may result in chilling their efforts to report the abuse to police or to seek orders of protection. This chilling effect, in turn, facilitates and supports the abuse by silencing women and holding them hostage to further abuse in exchange for maintaining shelter for themselves and their children. Thus, the same patterns that allow abusers to victimize battered women—by shaming and silencing them—victimize them a second time by thwarting the efforts of the most diligent women to report the abuse.

Related to the issue of holding women accountable for the abuse of their partners is the theme of distrusting women. In Ms. Alvera’s case, the resident manager stated that one reason the management company applied the zero-tolerance policy to the entire household was that in the management’s view, restraining orders are ineffective and abuse victims seldom take steps to prevent a reoccurrence of violent acts.<sup>66</sup> This view is consistent with that held by many that a woman with a protective order will ultimately reconcile and let the abusive partner return. Rather than assisting a woman like Ms. Alvera in enforcing the order of protection by agreeing to call the police if the abuser arrives at the apartment complex in violation of the order, landlords and resident managers with these attitudes reinforce women’s victimization and make it more difficult for such women to escape future abuse.

Evictions of battered women also demonstrate the ways in which women’s economic and other forms of dependency on their batterers exacerbate their vulnerability. For low-income battered women, obtaining and maintaining affordable housing is a major problem. Victims of domestic violence make up a significant percentage of the homeless population.<sup>67</sup> “Women become homeless as a result of battering, their homelessness is made more difficult to remedy because they are battered, and they are more vulnerable to further

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through the perpetuation of existing gender inequalities).

65. *Alvera v. Creekside Village Apts.*, HUD ALJ No. 10-99-0538-8 (U.S. Dep’t of Hous. & Urban Dev., Portland, Or., Oct. 22, 1999).

66. See *Alvera*, HUD ALJ No. 10-99-0538-8 at 4.

67. See Reif & Krisher, *supra* note 43, at 21 (arguing that homelessness may be the result of isolation by the abuser and that some researchers find domestic violence to be one of the four primary causes of homelessness).

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battering because they are homeless.”<sup>68</sup> Poor women of color who are victims of domestic violence are particularly vulnerable to homelessness. As Professor Schneider notes:

The intersection of racism and sexism exacerbates many of the problems commonly faced by white women in a battering relationship. The racial bias inherent in the housing market, for example, and the disparity between the earning power of black and white women, intensify the difficulties that confront a woman of color who is attempting to leave a battering relationship.<sup>69</sup>

Policies of evicting battered women, or of denying admission to those with a prior record of having been victims of domestic violence, add unnecessarily to this already tenuous situation. It is hard enough for victims of domestic violence, who may be entirely dependent on their abusers for financial support needed to rent an apartment, to find ways to make it on their own; to force a woman who has just suffered abuse and who is unable at that time to seek employment or to continue her current job, to find new housing may be impossible. For women like Ms. Alvera, a poor Latina woman, the racial and ethnic discrimination of the workforce and of the housing market combine to make the search for a new home even more difficult.

Finally, Ms. Alvera’s case also illustrates the problem of viewing domestic violence in gender-neutral terms rather than as gender subordination, as some sociologists have done.<sup>70</sup> To some extent, holding women responsible for the actions of their abusive partners, and evicting all members of a household following an incident of domestic violence, may result from viewing the violent household as a whole, rather than the abusive man alone, as the problem. In addition, gender-neutral explanations of family violence that have resulted in mutual restraining orders not only impede women’s ability to obtain the support they need from the legal system, but also impose obstacles in their attempts to find housing. As discussed above, mutual restraining orders pose particular problems when housing authorities conduct background criminal history checks and deny housing applications of women who have obtained protective orders.<sup>71</sup>

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68. See SCHNEIDER, *supra* note 2, at 12-13

69. See *id.* at 63.

70. See *id.* at 24 (noting that gender-neutral explanations are a result of the conceptual shift to a family violence theory, which looks at the dysfunction of the whole family as the underlying reason for and cause of the violence).

71. See *supra* notes 42-44 and accompanying text.

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## CONCLUSION

The last three decades of feminist advocacy have produced a significant change in the ways in which society views and responds to domestic violence, as described so thoroughly in Professor Schneider's book. Much of this progress has addressed punishing and preventing the abuse itself. Now attention must be given to secondary repercussions of the abuse; namely, discrimination against victims of domestic violence by third parties. The understanding and theories that provided the basis for feminist lawmaking thus far should now be used to develop new approaches to address this secondary victimization and to protect battered women from discrimination in housing and other contexts.