

Appendix

This appendix provides detailed information regarding the methods of case selection that I adopted in chapters two through five. While I have provided information specific to each chapter below, there were several guiding principles that informed the project as a whole, and I will discuss those here first. 1

Throughout the book, I chose the cases upon which to focus my research by adopting a multi-layered approach. First, I examined via archival research the work and writing of contemporary activist organizations, in order to ascertain which cases they perceived to be the most significant (as evidenced by their participation in those cases). Because this book examines the role of activists—and the interaction between courts and activists—in shaping and responding to the problem of domestic violence, I adopted this method as a means of ensuring that I did not exclude any cases in which activists had (or attempted to have) a significant influence. This method of preliminary case identification was most important and most useful during those periods when anti-domestic violence efforts focused on judicial activity (i.e., since the 1980s). This method played a less important role in determining which cases I discussed from earlier periods, when activists placed less emphasis on judicial strategies. Likewise, in some instances, secondary sources were helpful in confirming or supplementing my research, by identifying cases that had received substantial attention from activists and/or legal scholars. 2

Second, I chose to focus my research almost exclusively on appellate-level cases. While the majority of domestic violence litigation occurs at the local and lower-court levels, this study focuses on appellate cases for two reasons. In a practical sense, individual appellate cases can be studied in greater depth because the opinions in these cases, unlike those of lower courts, are often published. In addition, these opinions, while fewer in number than the judgments rendered by trial courts, have precedential value and often present the court's perspective on the case within historical and social context. In other words, the opinions issued by appellate courts often serve several functions. In addition to resolving the case itself, appellate opinions also consider the central issue within the context of other, related cases. Furthermore, these opinions frequently provide judicial commentary or guidance on the issue more broadly, as well as on relevant legal concepts (such as the right to privacy). Because this work examines the impact of judicial attitudes on the problems of privacy and domestic violence, each of the various functions served by such appellate decisions are important to this study. As a means of obtaining these opinions, I searched the LexisNexis Academic Universe database using categories and keywords germane to each chapter (details below). 3

The case selection method I have adopted here has been extremely beneficial to this study. Yet, like all methodological approaches, this one has inherent limitations that should be understood. The approach I have taken has proven particularly useful for understanding the role of activists as well as courts in responding to the problem of domestic violence in this 4

country. It has also provided important insight into the historical development of concepts of privacy, in both legal and cultural contexts. Such an approach would be of little or no use, however, in a study that sought to quantify the numbers of domestic violence cases heard at the local level in a given area, or to identify patterns of case disposition by trial courts.

In fact, the multitude of cases that do not result in published opinions are undeniably significant to the issue of domestic violence. Furthermore, judicial tactics and responses at the trial level do not always mirror—and indeed, they sometimes contradict—those exhibited at appellate levels. This study, therefore, should not be viewed as a comprehensive analysis of all judicial attitudes toward and responses to the problems of domestic violence and privacy. Instead, by adopting the case selection method I have described here, I have been able to trace broadly both the historical development of the right to privacy in the United States, and the role of privacy in the most significant domestic violence cases of the nineteenth, twentieth, and early twenty-first centuries. Ultimately, this approach has enabled me to explore the interaction of courts and activists with regard to the issues of privacy and domestic violence. I now turn to the individual chapters to review the method of case selection for each one. 5

Chapter Two

As the problem of domestic violence (or "chastisement") was still gaining legal recognition during the nineteenth century, the number of domestic violence court cases brought during this era was fairly small, and the number of appellate-level cases even smaller. This chapter, therefore, examines all of the cases brought in state appellate courts for assault and battery of wives by husbands. As divorces began to be granted on the grounds of cruelty during this era, this chapter also examines the published opinions from those cases. Additionally, the research undertaken by Elizabeth Pleck to identify such cases matches my own findings and suggests that the cases I examine here represent a comprehensive whole. 6

Chapter Three

During the period of the 1970s examined in this chapter, domestic violence cases proliferated within trial courts. Activity at the appellate level, however, was much slower to appear. This chapter thus focuses primarily on the interrelationships of the anti-rape, reproductive rights, and battered women's movements, culminating in a critical case study of *People v. Liberta*. I argue that the most significant cases to emerge from the late 1970s were in fact the *Bruno v. Codd* and *Scott v. Hart* cases, which are discussed in chapter four as precursors to the decade of civil litigation that developed during the 1980s. 7

Chapter Four

Many of the cases in this chapter were selected by their prominence in the literature of the National Center on Women and Family Law and the National Battered Women's Law Project, organizations which were keeping meticulous track of the litigation in this area nationwide; disseminating that information to shelters, activists, and attorneys; and writing numerous articles about the significance of this wave of cases. This extensive documentation led me to many of the cases examined in this chapter. In addition, I supplemented the lists I developed through these archival materials by searching LexisNexis for federal cases brought on grounds of "Section 1983" that also included the phrases "domestic violence," "domestic abuse," "family violence," "spousal abuse," or "battered wom!," or the word combinations "husband OR wife OR boyfriend OR girlfriend OR spouse W/3 [within three words' proximity to] violen! OR abus! OR murder! OR kill! OR batter! OR assault!" (Note that exclamation points are wildcard symbols used to retrieve words with variant endings—so that, for example, a search for violen! will retrieve documents containing violence and violent, and a search for abus! will retrieve documents containing abused, abusive, abuse, abuser, abused, etc.)

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Chapter Five

Like chapter two, this chapter explores an area of law containing a relatively small number of cases. Numerous factors—including the uneasy relationship that has historically existed between homosexuals and the judicial system in this country, as well as homophobia within police departments and courtrooms—have contributed to low rates of arrest, reporting, and judicial response to cases of same-sex domestic violence. Again, the number of appellate cases is even smaller. As a result, the number of relevant cases that exist at the appellate level is so small that I am able to discuss all of them in this chapter. In order to find these cases, I turned to LexisNexis to search each state's appellate cases for those that employed the following terms: "gay OR lesbian OR homosex!" AND "relationship OR boyfriend OR girlfriend OR partner OR dating" W/3 [within three words of] "violen! OR abus! OR murder! OR kill! OR batter! OR assault! OR domestic violence OR family violence OR domestic abuse"

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In this appendix I have explained the priorities and principles that informed my case selection for the book in an overarching sense, as well as the details that are specific to each chapter. By examining the methods that I used to locate the cases for my research, I hope to further explain the ways in which I developed my analysis of the interaction and influence of activists and courts on the issues of domestic violence and privacy.

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