

COURT OF APPEALS  
STATE OF NEW YORK

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CARMEN BRUNO, et al., :  
 :  
 Appellants, :  
 :  
 v. : Index Number in  
 : Supreme Court,  
 ROBERT J. McGUIRE, et al., : County of New York  
 : 21946/76  
 Respondents, :  
 :  
 and :  
 :  
 THOMAS J. CALLANAN, :  
 :  
 Defendant. :  
 :  
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BRIEF OF AMICI CURIAE IN  
SUPPORT OF APPELLANTS

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Preliminary Statement

This brief is submitted in support of appellants' position in order to supplement the appellants' legal arguments, without repeating them herein. Amici wish to bring to this Court's attention the importance and impact its decision will have upon the lives of battered women, not only in New York but across the nation.

STATEMENTS OF INTEREST OF THE AMICI

Women's Survival Space

Women's Survival Space is a non-profit organization which has been serving the needs of battered women in the New York City area for almost two years. We are the first organization of this kind to receive funding from the State of New York.

We provide shelter for battered women and their children, as well as counselling and legal advocacy. Women's Survival Space maintains a 24-hour-a-day hotline to assist battered women in crisis situations, and makes legal and medical referrals.

The goals of the organization include providing an atmosphere of safety and support to enable battered women to free themselves from their violent husbands, and to create new lives for themselves and their children. It is in this context that legal remedies available to battered wives in the Family Court of the State of New York become critically important. Legal sanctions against wife-beating in the form of Orders of Protection issued by the Family Court have proved to be, in our experience, powerful deterrents in cases of marital violence. We have observed that the policy of denying battered women access to Family Court judges and the resultant under-utilization of the Order of Protection as a legal remedy in such cases, actually encourages battering husbands to continue their violent behavior by tacitly condoning such

conduct. Women's Survival Space feels it can bring to this Court its special experience with the pervasive and continuing nature of the denial by defendants of battered women's access to Family Court, and the effect that that denial has in the life of a battered woman.

#### The Park Slope Safe Homes Project

The Park Slope Safe Homes Project, co-sponsored by Children and Youth Development Services (CYDS) and the Park Slope Clergy Association, is a non-profit, community-based, local effort to coordinate existing formal and informal support systems which provide interim emergency and/or short term services to battered women, their children and abusing husbands. We serve the residents of Park Slope, a community in Brooklyn of approximately 85,000 persons. We have trained volunteer community residents to staff a hotline and to provide counselling to battered women. We also provide emergency short-term shelter for battered women and their children and offer ongoing community outreach and education. Extensive referrals to contact agencies within the health, law enforcement, legal, court and social services are made. Borough- and city-wide services are monitored through referrals and follow-up, in an attempt to insure that assistance is properly provided.

The effectiveness of our work depends upon the responsiveness of the agencies to which we refer those who seek

our help. Through our extensive contacts with battered women, which includes accompanying women to the Family Court, we have found that our best efforts to inform battered women about their rights are often thwarted by the indifference and obstructive tactics of the Family Court staff. In our experience, time is of the essence in cases of wife abuse. We have consistently found that women are unnecessarily delayed in obtaining access to the Court, and are not informed of their legal remedies and options, for example, their right to bypass certain probation procedures in order to expedite their cases. In addition, battered women are often unable or discouraged by Family Court personnel from attempting to move through the Family Court procedures without the assistance of an advocate, assistance which should be unnecessary to initiate a case in a pro se court.

We are joining as amicus curiae in this brief because we have found from our first-hand experience that urgently needed access to Family Court judges is often delayed and/or barred by improper conduct by Family Court personnel including persons in the Probation Department.

The Jane Addams Center, Inc.

The Jane Addams Center, Inc. is a not-for-profit corporation located in New York City. Formed two and one half years ago, it is presently funded by the federal government

through the Comprehensive Education and Training Act, and is engaged in a project which is intended to sensitize hospital emergency room workers to enable them to identify battered women at the earliest possible time. In addition to conducting this training program, the Center staff sees approximately 15 battered women each month and counsels another 25 per month by telephone, offering crisis intervention assistance in the form of counselling, legal advocacy, and social worker referrals.

Members of the Center periodically accompany battered women to the Family Court in an effort to obtain Orders of Protection. Our experience has been that battered women are required to undergo coercive and unnecessary counselling by probation officers. Women are given incorrect information about their rights in the Court and are told by these personnel that they should not bother to file petitions because they will not be granted relief. These practices continue to the present.

The Jane Addams Center has found that battered women suffer as a result of this treatment, that even when battered women are accompanied by knowledgeable advocates, the Family Court personnel continue to engage in the above practices. The Center is interested in the outcome of Bruno v. Codd because of the direct impact it will have upon the women whom the Center seeks to assist in the Family Court.

The National Council of Churches of Christ, U.S.A.

The National Council of Churches of Christ, U.S.A. (the "Council") is a cooperative agency of 31 national religious bodies of the Protestant, Anglican and Eastern Orthodox traditions in the United States, which have over 40,000,000 members. The Council is organized for religious purposes and provides a forum in which denominations can work "together to be the Church in a broken world." One of the means by which it promotes its purposes is to "study, and to speak and to act on conditions and issues in the nation and world which involve moral, ethical, and spiritual principles inherent in the Christian Gospel."

The Council believes that the right of persons to file a petition and to have "proper access to the court for that purpose," particularly for those most likely to be in need of such access, involves moral, ethical, and spiritual principles. The Council accordingly, in keeping with its stated purposes, regards it necessary "to speak and to act" before courts and other agencies considering and declaring the rules and guidelines applicable to such rights of petition and access to the court.

In exploring and developing ecumenical action on the issue of physical or sexual assault against women in the context of domestic violence, the Council has found that the problem of the battered wife is pervasive throughout American society. Various sources of research on the problem



estimate "that one-third to one-half of all married women experience brutality at the hands of their husbands."<sup>\*/</sup> Such estimates can only partially rely on records of law enforcement agencies and the courts because women have historically received a minimum response from these institutions when they have attempted to report such physical attacks by their spouses and to file petitions for protective orders. This response has not only hindered women from seeking institutional relief, but has served to reinforce the assumption that such institutions as law enforcement and the the judiciary accept wife-beating as a "right" retained by the husband within the bounds of a marriage license. The consequences reaped from such actions by police and courts consistently and increasingly place the life of the battered wife in potential danger, and in fact, do nothing to "stabilize" the family into a healthy functioning unit of society. The Council recognizes that law enforcement agencies and the judiciary cannot solve the entire phenomenon of the battered wife but neither are they free to disregard such a problem when brought to their attention.

The plaintiffs have a serious grievance that should be dealt with by the courts on its merits. For the Appellate Division to dismiss the complaints of the battered women on what is, in essence, a technicality, seems an abdication of

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<sup>\*/</sup> Schneider and Jordan, "Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault," Center for Constitutional Rights, New York, 1978, p. 10.

judicial responsibility and precisely the denial of protection of the law complained of by the women. The Court of Appeals should reverse and remand this case so that justice may finally be done.

Shelter Our Sisters, Inc.

Shelter Our Sisters, Inc. is a shelter for battered women located in New Jersey. We shelter women from the metropolitan New York and New Jersey areas. We have sheltered New York residents who have been forced to leave their homes in order to obtain protection from their husbands.

We are seeking leave to file this amicus curiae brief because of our familiarity with the practices of the defendants and the effect of their practices on battered women. Our experience is that many women are deterred or discouraged from getting assistance from the Family Court of the City of New York by court clerks and Probation employees. Numerous women are not advised of their right to file a petition and many are not permitted to exercise that right. The failure of the court personnel to provide assistance to these women often gives them no other choice but to flee from their homes.

The Coalition for Abused Women, Inc.

The Coalition for Abused Women, Inc. is a not-for-profit corporation which operates a 24-hour-a-day hotline in Nassau County, New York. Its members speak with more than 300 battered women each month, and offer them counselling and, where possible, attempt to obtain emergency shelter. In addition, Coalition members accompany battered women to Family Court as lay advocates assisting the women's attempts to obtain Orders of Protection and Temporary Orders of Protection. The Coalition's experience in the Nassau County Family Court is that battered women are not told that they have a right to file a petition and to ask for a Temporary Order of Protection on the day of their first visit. They are instead told that they must return to court as much as six weeks later for a hearing in order to request an Order of Protection. Moreover, probation officers often dissuade women from filing petitions at all.

While the Coalition has no direct experience in New York City, the practices of Family Court and Probation personnel in the Nassau County Family Court are similar to those described in the complaint and supporting affidavits in Bruno v. Codd. The Coalition believes that this Court's decision will inevitably have an impact on the practices of the Nassau County Family Court and the lives of the battered women whom we counsel.

The New York City Coalition for Battered Women

The New York City Coalition for Battered Women is a city-wide group of organizations and individuals working on behalf of battered women. Our membership of 500 includes representatives from shelters, counselling services, hotlines, advocacy groups and follow-up services for battered women.

In furtherance of its goals to advise battered women and educate the public about the nature of the problem of wife-assault, the Coalition has represented the interests of battered women with administrative agencies, the police department and courts. The members of our coalition have extensive experience working with battered women who have sought the assistance of the Family Court. These women are often discouraged or completely deterred from filing a petition for an Order of Protection and seeking the temporary emergency protection to which they are entitled.

As a product of our collective experience with the practices of the defendants and our unique familiarity with the problems faced by battered women, we believe we can be of special assistance to this Court.

New York Women Against Rape (NYWAR)

New York Women Against Rape is a non-profit, rape crisis intervention and counselling service located in New York City, offering support to victims of rape, women

who most often have no one else to assist them. NYWAR counsellors have assisted more than 3,000 rape victims during the past five years. Members of NYWAR also conduct community outreach programs, public speaking and training for hospital and social agency personnel.

Our experience with rape victims has been that the legal system's treatment of these victims of male violence has systematically intimidated them and obstructed them from pursuing their legal remedies against their assailants. Recently, our hotline has received increasing numbers of calls from battered women in New York City who ask us for Family Court assistance and/or referral to legal services. Some of these women have been subjected to violent sexual assaults by their husbands. Our counsellors have been to Family Court with battered women on several occasions. We have seen the same hostility towards battered women by Family Court personnel as exists in the Criminal Court towards rape victims, and have witnessed the double emotional trauma that battered women suffer when they turn to the courts for assistance and find that their legitimate allegations are arbitrarily dismissed by non-judicial intake personnel as trivial.

#### All The Queens Women

All The Queens Women files this amicus curiae brief because of its concern for the treatment accorded battered women by the Probation and Family Court employees. We are a volunteer community organization which provides support

and peer counselling to women of Queens. Among the women we assist are battered women. We counsel battered women and often refer them to courts and public agencies for assistance.

Thousands of battered women turn to the Family Court in New York City for assistance. The Order of Protection which can be issued by the Family Court is often the only means of securing protection from their husbands' violent attacks.

Our experience is that battered women are routinely coerced into returning up to six weeks later for involuntary probation interviews and counselling. We have also observed that battered women are turned away outright from the Family Court by the defendants in this case.

Battered women typically have no other recourse but to return home to their husbands' violence.

The Asian American Legal Defense and Education  
Fund

The Asian American Legal Defense and Education Fund is a national organization of attorneys, law students and community workers committed to defending the civil rights of Asian Americans through litigation and education.

The problem of wife assault cuts across economic, ethnic and social class lines. Although the problem is now being discussed more openly, the stigma attached to acknowledging this sensitive problem still remains.

Our experience is that a woman who calls upon the police for assistance is often ignored. If she pursues the matter in Family Court, she encounters resistance and delay. To permit the practices of the defendants to continue will not

only discourage Asian women from seeking relief against their violent husbands, but will leave them with no alternative but to continue to endure the violence.

The National Conference of Black Lawyers (NCBL)

The National Conference of Black Lawyers is an incorporated association of Black lawyers and law students in the United States and Canada, established in December of 1968 for the purpose of serving as an effective advocate of the rights of minorities and the poor. In the furtherance of its stated purpose, NCBL has brought federal and state litigation and has monitored the work of state and federal legislatures, administrative agencies, courts, and the executive branch to insure that the interests of the poor and national racial groups are properly represented.

NCBL fully recognizes that the social and political issues affecting battered women cut across all class and racial lines and are part of the larger social issue of securing full protection of the law for all women. The denial of protection for battered women is part of the fabric of the institutional misfeasance or malfeasance which seriously affects the health or vitality of the poor and national racial communities. In recognition of the institutional needs of our communities and the need to provide all women with full access to the institutions and agencies of society, NCBL has established a women's rights task force. It has been the experience of our members that battered women

seeking assistance from Family Court have been unduly hampered in getting access to judges. We submit this brief in the hope that this Court will act to facilitate such access.

NOW Legal Defense And Education Fund, Inc.  
(NOW LDF)

NOW Legal Defense and Education Fund, Inc. is a non-profit, civil rights organization established in 1971 to perform a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure full and equal rights. Its parent organization, the National Organization for Women, is a national membership organization of over 75,000 women and men in 700 chapters throughout the country.

The NOW LDF has received innumerable requests for assistance from battered women across the nation who have been frustrated in their efforts to secure protection against their violent husbands. Recognizing the need for the relief sought in this action and the importance of the precedent which it will set for courts and women across the nation, NOW LDF joins as an amicus in supporting appellants' request for relief.



The National Lawyers Guild, New York City  
Chapter

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The National Lawyers Guild, New York City Chapter, is part of a national bar association, and has more than 600 members in the New York City area. Since its inception in 1937, the Guild has been dedicated to safeguarding and extending the rights of workers, women and minority groups, to eliminating racism, and to maintaining and protecting the civil rights and liberties of all. Guild members actively seek equality before the law and the fair administration of justice for all people.

The legal work of many Guild members concerns the problems of battered women. Work regarding this problem has been given priority in the organization. In many situations, battered women are forced to turn to the courts for protection: at present it is often their only recourse. The Guild is aware and concerned that many New York women wish to appear pro se in the Family Court, but are prevented from doing so by the practices and conduct of both Court and Probation personnel.

## ARGUMENT

PLAINTIFFS SHOULD HAVE AN OPPORTUNITY TO PROVE AT A TRIAL THAT THE FAMILY COURT AND PROBATION DEFENDANTS' CONTINUING PRACTICE OF DENYING BATTERED WIVES ACCESS TO COURT, ON A MASSIVE SCALE AND IN CLEAR VIOLATION OF NEW YORK LAW, DEPRIVES BATTERED WIVES OF JUDICIAL PROTECTION FROM THEIR VIOLENT HUSBANDS AND SUBJECTS THEM TO GRAVE AND IRREPARABLE HARM.

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The judgment of the Appellate Division dismissing the complaint ignores the fundamental and urgent issues raised in this suit, namely, official condonation of serious and widespread violence against married women by their husbands.

The organizations joining in this brief have direct, regular contact with large numbers of battered woman who have been denied access to the Family Court. The nature of these experiences is reflected in the sworn testimony appearing in the record below. The widespread occurrence of wife-assault is only beginning to be documented. It appears from recently published studies, however, that as many as one-third to one-half of all married women are victims of this long-standing and traditionally underreported crime.<sup>\*/</sup>

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<sup>\*/</sup> Most available statistics measure the prevalence of wife assault in particular localities. Thus, for example, 70% of the assault victims received at the Boston City Hospital Emergency Room are known to be women who have been attacked in their homes. Warrior, "Battered Lives," Houseworker's Handbook (1975), p. 25. In Atlanta, Georgia, 60% of all

footnote continued on next page.

It is clear that the impact of the illegal practices of Family Court and Probation personnel in turning away battered women seeking judicial protection affects and will continue to affect countless women.

The impact of the defendants' nonfeasance is immeasurable in the life of each battered woman. Most battered women are afraid even to turn to the Family Court for assistance. They are ashamed to tell anyone that they have been battered. Tremendous family and social pressure is exerted on them to learn to accept the violence. Often their husbands threaten to kill them if they dare tell anyone, let alone go to court about it.

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\*/ police calls on the night shift are "domestic disputes" Id. The figure in New York is 40% of all calls for police assistance. "Wife-Beating: The Hidden Offense," New York Law Journal, April 29, 1976, p. 1. The problem is rural as well as urban. More than 40% of all cases of alleged assault in Washtenaw County, Michigan are cases of wife assault. Eisenberg and Micklow, Michigan Study, 1974. Wife-abuse cuts across economic class lines. Physical abuse is a factor in 22% of middle-class divorces, according to a study conducted in 1966. Edmiston, Women's Day, March, 1976, p. 61. The Federal Bureau of Investigation estimates that wife-assault is underreported by a factor greater than 10 to 1. Durbin, "Wife-Beating", Ladies Home Journal, June, 1974, p. 64. Finally, a report issued by the National League of Cities and the United States Conference of Mayors has concluded that "half of all wives will experience some form of spouse-inflicted violence during their marriage, regardless of race or socio-economic status." Langley and Levy, Wife-Beating: The Silent Crisis(1977), p. 4.

The woman who finally reaches out to the Family Court, as a consequence, feels extremely vulnerable, unsupported and afraid. When she gets to court, rather than being helped in her quest for protection, as is her right under the law, she is instead told that there is nothing the court can do to help her, or that what her husband has done to her is not serious, or, worse yet, is perfectly acceptable conduct by a husband. The battered woman is thus left at the mercy of her violent husband. If her husband learns that she has been to court, he may retaliate against her, protected by his knowledge, as confirmed by the conduct of the court personnel, that he need not fear the law.

As a result of the foregoing, the Family Court provides little or no deterrence to this violence. Its quiescence promotes an ever-escalating series of threats; threats lead to assaults; assaults become more frequent. Too often, death is the result.<sup>\*/</sup>

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<sup>\*/</sup> In 85% of all homicide cases in Kansas City between spouses in 1971, the police had been summoned at least once before the murder occurred, and in 50% of the cases, they had been called five or more times. See Kansas City Police Report cited in Martin, Battered Wives, Glide Publications, 1976. Nationally, in killings of spouses by spouses, husbands are the victims almost as often as wives, but wives are motivated by self-defense almost seven times as often as are husbands. See FBI Uniform Crime Reports, 1973 and Crimes of Violence, staff report to the National Commission on the Causes and Prevention of Violence (Washington, D.C. USGPO, 1969), p. 360, both cited in Martin, supra.

The avenues of escape from this nightmare existence are few and difficult to travel. Physically weaker than their husbands and untrained in the skills necessary to defend themselves, most battered women are unable to deter their husbands' conduct without assistance. Many women must leave town or go into hiding (often being forced to give up a much-needed job so that their husbands cannot follow them home from their place of work), living in 24-hour fear that they will be discovered. The woman who cannot find work may be forced to rely on public assistance. Especially if she has children, she will have difficulty affording or obtaining the daycare necessary to enable her to earn enough to survive.<sup>\*/</sup>

It is the betrayal by the legal system which condemns battered women to a world dominated by their husbands' violence. Nothing short of swift and effective access to judicial sanctions can give these victims the protection they need to escape repeated and escalated injuries. As a pro se court dealing with persons in crisis, the Family Court has a unique responsibility to scrupulously and consistently enforce the battered woman's clear statutory right to immediate access to a judge in order to request a Temporary Order of Protection.

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\* / Even if she can find work, she will earn only 57 cents for every dollar earned by a man for doing the same work. The Earning Gaps Between Men and Women, United States Department of Labor, Employment Standards Administration, Women's Bureau, 1976, p. 1.

It is the experience of our organizations that battered women are so profoundly discouraged by their initial experiences in Family Court that they are deterred from again seeking the protection of the Family Court or indeed from revealing their situation and seeking outside help from any source.

The only avenue of legal redress open to battered wives is an opportunity to prove their claims at a trial of this suit, and to be afforded appropriate post-trial relief.

The egregious practices of the defendant agencies remain unchecked. The experiences of the women with whom the organizational amici come into contact confirm this continuing pattern of unlawful denial of access to court. If the agency officials had even a presumptive good faith interest in curing the illegal practices charged in the complaint, such presumption has been conclusively rebutted by their failure to alter their practices to date.<sup>\*/</sup>

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<sup>\*/</sup> Amici understand that the pendency of this suit has not been the only incentive for corrective changes in practices in the court. New rules governing intake of battered women were promulgated January 1, 1977. 22 NYCRR 2500 et seq. They too, have been ineffective.

CONCLUSION

For the reasons stated above, amici curiae respectfully submit that the judgment of the Appellate Division should be reversed.

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September 28, 1978

Respectfully submitted,

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