

The Threat is Coming from Inside the Bar: Using the Rules of Professional Discipline to Challenge Gender-Based Threats and Violence

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ABSTRACT

This article argues that the legal profession has failed to effectively recognize and address violent misogyny as it occurs within the profession. It lays out a roadmap for the American Bar Association (“ABA”) and state bar associations across the country to follow in order to more successfully address this problem.

The article begins by exploring a high-profile incident of violence within the legal profession—the violence Roy Den Hollander committed against United States District Court Judge Salas’s family, as well as his killing of another attorney. It asks why this has not been treated as not only a crime against a member of the federal judiciary and her family, but as a gender-coded crime of violence. The article then argues that in the wake of this violence and other incidents like it, the ABA and state bar associations across the country must do three things as a first step in preventing a similar failure in the profession’s self-regulation from recurring. First, they must recognize the Den Hollander killings for what they were: gender-motivated killings that followed this particular perpetrator’s long history of gender-based discrimination and gender-based threats. Second, they must publish ethics opinions emphasizing that his actions, and actions like them, are violations of the Model Rules of Professional Conduct—specifically, Model Rules 8.4(b) and 8.4(g)—and that lawyers who engage in such behavior will be subject to the disciplinary process. Moreover, these opinions must include clarifications that his actions, and actions like them, are serious violations of the professional rules, subject to the mandatory reporting requirements of Model Rule 8.3. Third, the article argues for a larger reckoning: It asserts that the profession and its members must explicitly grapple with the reality that violence against judges is not the only problem Den Hollander’s actions brought to light, and in doing so we must assess and develop strategies to counter gender-based violence and misogyny in the legal profession.

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INTRODUCTION

In July 2020, attorney Roy Den Hollander shot and killed Marc Angelucci outside Angelucci’s California home. Angelucci was a fellow lawyer that Den Hollander considered to be a professional rival.¹ Eight days later, Den Hollander shot and killed United States District Court Judge Esther Salas’s son, Daniel Anderl,² and critically wounded Judge Salas’s husband, attorney Mark A. Anderl, at the threshold of their New Jersey home.³ Hours later, Den Hollander turned his gun on himself and died by suicide.⁴

1. Nicole Hong, William K. Rushbaum, Mihir Zaveri & Katherine Rosman, *Suspect in Death of N.J. Judge’s Son is Linked to California Killing*, N.Y. TIMES (July 22, 2020), <https://nyti.ms/2OV1zyZ> [<https://perma.cc/6DRZ-RN2B>].

2. Den Hollander shot and killed Judge Salas’s son Daniel when he opened the door to the house he shared with his parents. *Id.*

3. Gail Abbott Zimmerman, *Killer’s Misogyny Started in Third Grade when He Tried to Forcibly Kiss Girls in His Class*, 48 HOURS (Feb. 19, 2021), <https://www.cbsnews.com/news/roy-den-hollander-killer-misogyny/> [<https://perma.cc/NPS7-35LW>].

4. Hong, Rushbaum, Zaveri & Rosman, *supra* note 1. That these victims are all men highlights how violent misogyny is everyone’s problem. Put differently, Den Hollander may have “despised [women]. But only men were killed.” Dennis Wagner, *‘Lunatic hiding in plain sight’: The bitter tale of a woman-hating lawyer accused of killing a rival and a judge’s son*, USA TODAY (Aug 3, 2020), <https://www.usatoday.com/story/news/nation/2020/08/01/roy-den-hollander-bitter-tale-misogynist-lawyer-turned-killer/5532110002/> [<https://perma.cc/84Z3-K7MF>]; see also Meredith Deliso, *Threats to judges are increasing, and experts say misogyny is a problem*,

Den Hollander's wave of lethal violence is shocking. But it was not entirely out of the blue. For years, Den Hollander's behavior waved red flags of warning about his capacity for violence. He "was a 72-year-old attorney with a prestigious academic background and impressive resume"⁵—his J.D. was from George Washington University, his M.B.A. was from Columbia,⁶ and he had worked as an associate at Cravath.⁷ But his misogynist pedigree was equally notable. As one article written after his campaign of violence observed, his "misogyny started in third grade when he tried to forcibly kiss girls in his class."⁸ However, his violence and misogyny—and his violent misogyny—remained on full display to his family members, colleagues, and others who crossed his path.

As court records show, during his lifetime, Roy Den Hollander "harassed, sued, threatened and abused countless" individuals.⁹ Examples of such threats and abuse, all of which occurred and were known to law enforcement, legal authorities, and at least some of his fellow attorneys before he murdered Judge Salas's son in a failed attempt on her life, include the following: his ex-wife filed a police report wherein she accused him of assault and obtained a protective order.¹⁰ He "attacked [an opposing attorney, Paul Steinberg] in a courthouse corridor after a hearing and the two grappled on the floor. Steinberg [then] informed court security that Den Hollander posed a threat, urging them to read his 'fantasies of violence against women.'"¹¹ And long before Den Hollander killed

ABC NEWS (Aug. 2, 2020), <https://abcnews.go.com/US/threats-judges-increasing-experts-misogyny-problem/story?id=72061296> [<https://perma.cc/A238-ZHJ3>].

5. Zimmerman, *supra* note 3.

6. Valerie Katz, *Size Matters: Can a Wet T-Shirt Contest Form the Basis of a Niche Practice?*, ABOVE THE LAW (Apr. 7, 2011), <https://abovethelaw.com/2011/04/size-matters-can-a-wet-t-shirt-contest-form-the-basis-of-a-niche-practice/> [<https://perma.cc/Z44S-8BLU>].

7. Staci Zaretsky, *Old Fart Anti-Feminist Lawyer, Formerly of Cravath, Loses Dubious Bottle Service Discrimination Suit*, ABOVE THE LAW (Aug. 5, 2013), <https://abovethelaw.com/2013/08/old-fart-anti-feminist-lawyer-formerly-of-cravath-loses-ridiculous-bottle-service-discrimination-suit/> [<https://perma.cc/3EF7-YRWF>]; see also Debra Cassens Weiss, *Men's Rights Lawyer, Now Dead, Is Suspect in Fatal Shooting at Federal Judge's Home*, A.B.A. J. (July 21, 2020), <https://www.abajournal.com/news/article/mens-rights-lawyer-now-dead-is-suspect-in-fatal-shooting-at-federal-judges-home> [<https://perma.cc/G7NM-URSX>].

Den Hollander had worked as a contract lawyer at Quinn Emanuel Urquhart & Sullivan in New York from 2011 to 2014 . . . [although he did so through a temporary agency and was never an employee]. He also worked as a contract lawyer doing document review at several firms, including Paul, Weiss, Rifkind, Wharton & Garrison; Simpson Thacher & Bartlett; and Reed Smith.

8. Zimmerman, *supra* note 3.

9. Wagner, *supra* note 4.

10. *Id.*

11. *Id.* This was not the end of their saga. "In 2008, Den Hollander unsuccessfully sued Steinberg, alleging he violated copyright law by submitting some of Den Hollander's anti-woman essays in legal proceedings. A judge threw out the case, so Den Hollander sued him for ruling 'in accordance with the ideology of the feminist establishment.'" *Id.* Specifically, in the case against Steinberg, the court "*sua sponte* grant[ed] summary judgment to Steinberg." Hollander v. Swindells-Donovan, No. 08-CV-4045 (FB) (LB), 2010 WL 844588, at *1 (E.D.N.Y. Mar. 11, 2010), *aff'd sub nom.* Hollander v. Steinberg, 419 F. App'x 44 (2d Cir. 2011). In the case against the judge, as "[a]ll of [Den] Hollander's allegations concern actions that Judge Block took in a judicial

Angelucci, he threatened violence against the President of the interest group that Mr. Angelucci was Vice President of—the National Coalition for Men—because he was “absolutely enraged” about Angelucci’s pursuit of a gender-related lawsuit against the Selective Service Administration.¹² Indeed, as those reporting on Den Hollander observed after his suicide, it was “not difficult to discover Den Hollander’s mindset; it’s splattered over thousands of internet pages.”¹³

Crucially, the “internet pages” that showcased his mindset of threats and abuse were those on his professional, legal services website. On his professional website there is a solicitation for business, including his services as a litigator, a note that he put on the page stating that the page constitutes “Attorney Advertising,”¹⁴ and the briefs he filed in his numerous men’s rights cases. Alongside his briefs and a solicitation for clients is a blog containing, *inter alia*, sexist jokes and thinly veiled threats of violence against women, as well as positive citations of Nazis such as Joseph Goebbels.¹⁵ There, he posted what he described as anti-“Feminazi” screeds.¹⁶ He also foreshadowed his own violent death, observing that despite what he saw as the men’s movement’s poor prospects, “there is one remaining source of power in which men still have a near monopoly—firearms.”¹⁷

To what professional discipline was Den Hollander subject for the misogynist, violent, and threatening behavior in which he engaged before his killing spree? Available public records indicate: none.¹⁸ Fellow attorneys were given no notice

capacity and within his jurisdiction, [the court held that] Judge Block [wa]s entitled to absolute immunity.” *Hollander v. Block*, No. 10-CV-1713 NGG CLP, 2010 WL 1779995, at *1 (E.D.N.Y. Apr. 29, 2010).

12. Hong, Rushbaum, Zaveri & Rosman, *supra* note 1; Nicole Hong, Mihir Zaveri & William K. Rashbaum, *Inside the Violent and Misogynistic World of Roy Den Hollander*, N.Y. TIMES (July 26, 2020), <https://nyti.ms/3jS2E9k> [<https://perma.cc/UJ4F-66WN>].

13. Wagner, *supra* note 4.

14. ROYDENHOLLANDER.COM, <http://www.roydenhollander.com/main/index.htm> [<https://perma.cc/WV92-86QN>] (last visited Nov. 10, 2023). As is discussed below, immediately below the list of articles from his “anti-feminist” cases, including complaints and motions, as well as press coverage is a link to “girl jokes,” which is a five-page document full of sexist jokes. *See id.*; *Girl Jokes*, ROYDENHOLLANDER.COM, http://www.roydenhollander.com/main/Writings/Girl_Jokes_Pics.pdf [<https://perma.cc/9NMJ-Z6V2>] (last visited Nov. 10, 2023) (“At least at the Inquisition you got to appear before your judges, although you were probably tied to the rack, with the VAWA you never know who your judges are and they skip the rack and go right to finding you guilty”; “I have a computer to fight with—who needs a wife.”).

15. *See Who Are More Compassionate, More Civilized: Males or Females?*, ROYDENHOLLANDER.COM, http://www.roydenhollander.com/main/articles.htm#compassionate_civilized [<https://perma.cc/J9SF-5W44>] (last visited Nov. 10, 2023) (“[T]he most virulent feminine evil is Feminism; So what’s to be done with the Feminists? Strap them to missiles and drop them on the Middle East. They’ll know how to deal with them.”).

16. *See id.*

17. *See Why can’t the Men’s Movement get its act together*, ROYDENHOLLANDER.COM, http://www.roydenhollander.com/main/articles.htm#act_together [<https://perma.cc/A8NB-BKPW>] (last visited Nov. 10, 2023).

18. The New York State Courts’ website shows that he had no public record of discipline. It does, however, show that he was admitted as a member of the New York State Bar in December 1987. *Attorney Detail Report for Roy Den Hollander*, NEW YORK STATE UNIFIED COURT SYSTEM, <https://iapps.courts.state.ny.us/attorneyservices> [<https://perma.cc/XLU6-A4HH>] (last visited Mar. 8, 2024) (to access Roy Den Hollander’s Attorney Detail Report, (1) go to the above link, (2) type in “Roy” in the “First Name” box, (3) type in “Den Hollander” in the “Last Name” box, (4) click search, and (5) click the hyperlinked “Den Hollander, Roy”) (“Disciplinary History: No Record of Public Discipline”). Further indicating a lack of professional discipline,

about his past behavior; such notice could have allowed them to take steps to protect themselves accordingly. While his choices were his alone, how is it that this attorney was allowed to continue to practice law without being subjected to public discipline from the bar association tasked with monitoring and governing his professional behavior, as it does with all members of the legal profession within its jurisdiction? And how is it that he was allowed to continue practicing without any warning being given to his colleagues about the safety risk he posed to them?

This article considers these questions, and how the legal profession might prevent, reduce, and flag future violent misogyny from within the profession. It argues that in the wake of Den Hollander's violence, the ABA and state bar associations across the country—as the ones primarily responsible for attorney discipline and for both defining and setting the agenda on what conduct is worthy of such discipline—must do three things as a first step in preventing a similar failure in the profession's self-regulation from recurring. First, they must recognize the Den Hollander killings for what they were: gender-motivated killings that followed this particular perpetrator's long history of gender-based discrimination and gender-based threats. Second, they must publish ethics opinions emphasizing that his actions, and actions like them, are violations of the professional rules—specifically, Model Rules 8.4(b) and 8.4(g)—and that lawyers who engage in such behavior will be subject to the disciplinary process. Moreover, these opinions must include clarifications that his actions, and actions like them, are *serious* violations of the professional rules, subject to mandatory reporting requirements of Model Rule 8.3. Third, the article calls for a larger reckoning: the profession and its members must explicitly grapple with the reality that violence against judges is not the only problem Den Hollander's actions brought to light, and in doing so we must assess and develop strategies to counter gender-based violence and misogyny in the legal profession.

I. REMEDYING THE GENDER-NEUTRAL RESPONSE TO GENDER-CODED CRIMES

In the aftermath of the Den Hollander killings, the response to his horrific crimes has been almost exclusively focused on making judges hardened targets.¹⁹ For example, New Jersey²⁰ “ma[de] it a crime to make public personal addresses and other identifying information about state judges or their families.”²¹ A similar

while these crimes received extensive media coverage, including from very high-profile news sources such as the New York Times, this coverage did not mention any history of professional discipline. *See e.g.*, Hong, Rushbaum, Zaveri & Rosman, *supra* note 1.

19. This is not the first time such legislation has been proposed, several states already had similar legislation in place. *See, e.g.*, Cal. Gov't. Code § 6254.21 (2023); 705 Ill. Comp. Stat. 90/1-1 to 90/4-99 (2012); Tex. Gov't. Code Ann. § 552.117 (2023); Wash. Rev. Code § 4.24.680 (2006).

20. Judge Salas is a U.S. District Judge for the U.S. District Court for the District of New Jersey, and she sits in Newark, New Jersey. *See Esther Salas*, U.S. DIST. CT., DIST. N.J., <https://www.njd.uscourts.gov/content/esther-salas> [https://perma.cc/VXV6-HEJH] (last visited Nov. 10, 2023).

21. *See* N.J. P.L. 2020, c. 371 (“Daniel’s Law”) (signed Nov. 20, 2020). This law would have had no impact in the case at hand because it protects only state judges. Nina Totenberg, *An Attacker Killed a Judge’s Son*.

judicial security bill was introduced in Congress two days after the attack on Judge Salas's family.²² The federal bill—the Daniel Anderl Judicial Security and Privacy Act of 2020²³—received wide support from the legal community upon its proposal, and the ABA continued to publicly advocate for its passage in 2021.²⁴ The Director of the Administrative Office of the U.S. Courts observed it is “critical that this legislation is enacted. . . . Judges’ lives are at stake.”²⁵ The ABA passed a resolution urging Congress to adopt the measure; underscoring the profession’s unanimity on the issue, it passed 384–4 at the ABA’s virtual mid-year meeting.²⁶ Fifty-one state attorneys general signed a letter sent to the House and Senate Judiciary Committees in support of the bill.²⁷ These efforts were publicly

Now She Wants to Protect Other Families, NPR (Nov. 20, 2020), <https://www.npr.org/2020/11/20/936717194/a-judge-watched-her-son-die-now-she-wants-to-protect-other-judicial-families> [https://perma.cc/TH47-SZKR]; *Judge Esther Salas Remembers the Night of Assailant’s Attack on Her Family*, ALL THINGS CONSIDERED (Nov. 19, 2020), <https://www.npr.org/2020/11/19/936783691/judge-esther-salas-remembers-the-night-of-assailants-attack-on-her-family> [https://perma.cc/MRZ9-ZYRQ].

22. Matt Reynolds, *A.B.A. House Urges Congress to Pass Judicial Security Bill*, A.B.A. J. (Feb. 22, 2021), <https://www.abajournal.com/news/article/aba-house-urges-congress-to-pass-judicial-security-bill> [https://perma.cc/H7EN-G9Y8]; Totenberg, *supra* note 21. The Daniel Anderl Judicial Security and Privacy Act of 2020 was proposed by New Jersey Senators Robert Menendez and Cory Booker. Reynolds, *supra* note 22.

23. S. 4711, 116th Cong. (2020); H.R. 8591, 116th Cong. (2020); *Judicial Security Bill Advances: Judge Who Lost Son Urges Final Passage*, U.S. CTS. (Dec. 2, 2021), <https://www.uscourts.gov/news/2021/12/02/judicial-security-bill-advances-judge-who-lost-son-urges-final-passage> [https://perma.cc/E6MN-63TT].

24. See generally *Resolution 10E*, A.B.A. H.D. (Feb. 22, 2021) <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/10e-midyear-2021.pdf> [https://perma.cc/9QSB-A8F2]. Indeed, in this Resolution, the A.B.A. went further than advocating for the passage of this single proposal. It also urged the passage of similar legislation by “all state, territorial, tribal, and local governments,” and urged “all national, state, local, territorial, tribal and affinity bar associations and other entities which collect personally identifiable information to create safeguards to protect the personal information of active, senior, recalled, or retired judges, including prohibiting the publication of home addresses or other personal contact or identifying information in association membership directories or online databases without the affirmative consent of the judge.” *Id.* However, similar proposals were not uniformly well-received. See e.g., Caroline Spiezio, *A.B.A. asks Congress to protect judges’ personal info after shooting, surge in threats*, REUTERS LEGAL (Feb. 22, 2021), <https://www.reuters.com/article/lawyer-judges-protection/aba-asks-congress-to-protect-judges-personal-info-after-shooting-surge-in-threats-idUSL1N2KS2E4> [https://perma.cc/PMJ7-XBU4] (“[T]he proposal gained bipartisan support in 2020 [it] was [initially] shelved after U.S. Senator Rand Paul, a Republican from Kentucky, insisted it be expanded to add protections for Congress members’ personal information.”).

25. *Judiciary Calls for Passage of Security Legislation*, U.S. CTS. (Dec. 4, 2020), <https://www.uscourts.gov/news/2020/12/04/judiciary-calls-passage-security-legislation> [https://perma.cc/YK45-UTL8]. The Director did so in the context of a letter sent September 21, 2020, to Mitch McConnell, Senate majority leader; Charles “Chuck” Schumer, Senate minority leader; Steny Hoyer, House majority leader; and Kevin McCarthy, House minority leader. He also sent an earlier letter on September 4, 2020, cosigned by Judge David W. McKeague, chair of the Judicial Conference’s Committee on Judicial Security, and “urged Congress to approve and fund safety measures to prevent violence targeting judges and federal courthouses.” *Judiciary Steps up Calls to Enact Security Measures*, U.S. CTS. (Sept. 22, 2020), <https://www.uscourts.gov/news/2020/09/22/judiciary-steps-calls-enact-security-measures> [https://perma.cc/CG5J-PUYW].

26. Spiezio, *supra* note 24.

27. Letter from the National Association of Attorneys General to Lindsay Graham, Sen. Judiciary Comm. Chairman; Jerrold Nadler, House Judiciary Comm. Chairman; Dianne Feinstein, Sen. Judiciary Comm. Ranking Member & Jim Jordan, House Judiciary Comm. Ranking Member (Dec. 14, 2020), <https://www.naag.org>.

and vociferously supported by Judge Salas²⁸ and other judges.²⁹ And, they were ultimately a success. On December 16, 2022, Congress passed the Daniel Aderl Judicial Security and Privacy Act.³⁰

Protecting judges and their families via state and federal legislation is vitally necessary as threats against judges have been increasing. As the ABA observed in the Report published alongside its Resolution in support of the passage of the Daniel Aderl Judicial Security and Privacy Act, there have been “literally thousands of threats against judges nationwide, [yet, at that time] there [was] no federal legislation which protects the home address or other personal contact or identifying information of current or former judges from public disclosure.”³¹ The legal community is right to loudly support such measures and Congress was right to pass the Daniel Aderl Judicial Security and Privacy Act.

However, judicial security cannot be the only reform that comes from this tragedy. Although it is a necessary improvement, it is also one that largely ignores the intersectional nature of Den Hollander’s violence. Judge Salas was not targeted *only* because she was a judge. Rather, she was targeted because she was a judge who was *also* a woman and a Latina. As she observed, “[Den Hollander] was angry with me for being a woman,” “He was angry with me for being

org/policy-letter/supports-daniels-law/ [https://perma.cc/H2AJ-M7S] [hereinafter Letter]. Perhaps unsurprisingly, the lead states on the letter were New Jersey and Arizona; Arizona’s chief federal judge, John Roll, was killed in the same 2011 shooting that killed five others and wounded thirteen, including then-U.S. Representative Gabrielle Giffords. See John D’Anna, *The Story You Didn’t Hear: Slain Federal Judge John Roll*, USA TODAY (Jan. 7, 2021), <https://www.usatoday.com/in-depth/news/politics/2021/01/07/gabby-giffords-tucson-shooting-federal-judge-john-roll/6588219002/> [https://perma.cc/2M4B-XX5W].

28. Two weeks after her son’s killing, Judge Salas posted an emotional nine-minute video “asking everyone to help her ensure that no one ever has to experience this kind of pain . . . [by] mak[ing] it hard for those who target us to track us down.” *Statement from U.S. District Judge Esther Salas*, YOUTUBE (Aug. 3, 2020), <https://www.youtube.com/watch?v=sLWJPIAIPvE> [https://perma.cc/5WQ6-9YU3].

29. Timothy J. Corrigan, *Florida-based Judge Once Targeted by Gunman Says Congress Needs to Provide Better Security*, ORLANDO SENTINEL (Dec. 4, 2020), <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-federal-judges-need-better-security-column-20201204-mtsfvvh65nbo3mhsbly7s5tlaa-story.html> [https://perma.cc/WB3E-4K4Y].

30. *Congress Passes the Daniel Aderl Judicial Security and Privacy Act*, U.S. CTS. (Dec. 16, 2022), <https://www.uscourts.gov/news/2022/12/16/congress-passes-daniel-aderl-judicial-security-and-privacy-act> [https://perma.cc/4WMD-AK6B].

31. A.B.A. H.D., *supra* note 24, at 1. As U.S. District Court Judge Timothy Corrigan noted in an op-ed written in support of the federal bill, “[s]ince 1978, four federal judges have been murdered and two judges have lost family members to violence.” *Id.* Corrigan himself has been the target of such violence. In 2013 someone fired a shot from a hunting rifle into his living room where he and his wife were sitting; a sheriff’s lieutenant later told him, “[y]our honor . . . someone sat outside your window and shot and tried to kill you.” *Id.* Since the attempted killing of Judge Corrigan, the threat has been worsening, and “[a]ccording to the U.S. Marshals Service, which provides security for federal judges, there were 4,449 threats and inappropriate communications targeting judges in 2019 compared to 926 such incidents in 2015—a nearly 400% increase.” Spiezio, *supra* note 24. These threats have been aided by social media. Charles Toutant, *Attacks on Judges Can’t Be Eliminated, but Vigilance Can Reduce the Number of Attacks, Experts Say*, N.J. L.J. (2020). Reflecting this rise in violence, when 572 judges were polled by the National Judicial College in August 2020, nearly 85% of them “said security for their families is inadequate.” Spiezio, *supra* note 24.

Latina.”³² Others have made similar observations about the intersectional nature of the threats that members of the bench can receive. For example, Emily Martin, of the National Women’s Law Center, argued that:

[b]eing a federal judge in general is a role that can make enemies. People can be pretty upset about your decisions When you layer that with the fact that if you are a woman, if you are a person of color, there’s a deeper vein of hostility and hatred that those reactions can tap into.³³

Reflecting how Den Hollander focused his ire on *female* judges, before he was found dead, the FBI “contacted New York State’s chief judge, Janet M. DiFiore, to notify her that Mr. Den Hollander had her name and photo in his car.”³⁴ “The name of another female state judge, who presided over a case that Mr. Den Hollander was involved in, was also found in his car.”³⁵ Following his death, “authorities found a dossier on [Justice] Sotomayor in a locker used by”³⁶ him, indicating he “had his sights on” her.³⁷

But it must also be noted that Den Hollander’s violence ultimately took the lives of *men*—including the son of a judge and an attorney who practiced in the same area as Den Hollander. This highlights how male supremacist violence endangers us all.³⁸ As Kate Manne observed, this case demonstrates how “misogyny can really distort someone’s worldview so that they’re a danger to pretty much anyone.”³⁹

32. Totenberg, *supra* note 21. It also entirely ignores that Den Hollander killed *two* people—his other victim has been ignored by the responses explored herein.

33. Deliso, *supra* note 4. Lecia Brooks, chief of staff for the Southern Poverty Law Center, emphasized that the killing was at the nexus of the legal system and gender, observing the likely role that Den Hollander’s “ill-conceived belief that women controlled the legal system” played in his crimes. *Id.* She elaborated that “[h]e felt like women who controlled the legal system were able to grant greater leniency and rights upon women. He had this whole warped belief about what was true.” *Id.* Similarly, the Hispanic National Bar Association released a statement saying that the “horrific attack reminds us that there are people who want to kill us solely because of our gender, the color of our skin, our ethnic background—or just because we are different.” Press Release, Hisp. Nat’l Bar Ass’n, HNBA Follow-Up Statement Regarding the Attack on Judge Esther Salas’s Family (July 24, 2020), <https://www.insidernj.com/press-release/hnba-follow-statement-regarding-attack-judge-esther-salass-family/> [https://perma.cc/D4M8-E56X].

34. Hong, Rushbaum, Zaveri & Rosman, *supra* note 1.

35. *Id.*

36. *Federal judge whose son was killed in attack says gunman targeted Sonia Sotomayor*, CBS NEWS (Feb. 19, 2021), <https://www.cbsnews.com/news/esther-salas-sonia-sotomayor-60-minutes-2021-02-19/> [https://perma.cc/W8BW-LBPU].

37. *Id.*

38. Alex DiBranco, *Male Supremacist Terrorism as a Rising Threat*, INT’L CTR. FOR COUNTER-TERRORISM – THE HAGUE (Feb. 10, 2020), <https://www.icct.nl/index.php/publication/male-supremacist-terrorism-rising-threat> [https://perma.cc/Q7HE-CFCM] (observing that some mass killers motivated by misogyny attack “general targets,” such as campuses or busy streets, rather than exclusively female dominated spaces); *see also supra* text accompanying note 4.

39. Deliso, *supra* note 4 (quoting interview with Kate Manne, Associate Philosophy Professor, Cornell University).

In order to effectively counter such threats, it is important that those responsible for managing attorney discipline, and those in the legal community more broadly, recognize that this was not just anti-judicial violence—it was also misogynist, racist violence that was continuous with this particular attorney’s threatening and discriminatory past professional and personal behavior. Focusing only on his final murderous acts and describing Den Hollander as merely “a deranged attorney”⁴⁰ erases this history. This focus also closes off all of the possible intervention points that came before his final days. The profession could have—and should have—intervened earlier (for example, after any one of the several times he threatened other women, such as his ex-wife).⁴¹ Having failed to intervene in the past, the legal profession must reflect on how it can do so in the future. As a first step, the ABA and state bar associations must explicitly recognize these crimes for what they are: misogynist killings, committed by a member of the legal profession who—entirely unchecked by the profession—used his position as a lawyer to vocally discriminate on the basis of gender and race in his work as an attorney and to threaten others, especially women. Such a step would not require much time or effort on the part of the ABA. Indeed, they could do so via press release.⁴² But this recognition is a crucial first step.

II. DEPLOYING THE RULES OF PROFESSIONAL DISCIPLINE TO UNCOVER AND CHALLENGE VIOLENT MISOGYNY IN THE PROFESSION

The ABA and state bar associations must next recognize that Den Hollander’s pre-killing behavior, including his gender-based violence, threats, and intersectionally-discriminatory statements and actions, were violations of the existing rules of professional conduct, that they are serious breaches subject to mandatory reporting requirements, and that those who commit similar acts will be subject to discipline.⁴³ Then, they must follow through with that discipline. While the ABA has issued clarifying guidance on proximate issues—*e.g.*, discussing the scope of Model Rule 8.4(g),⁴⁴ thus signaling its willingness to take such steps—existing

40. See Letter, *supra* note 27. The letter in no way acknowledged Den Hollander’s history of violence against women or his racism or misogyny.

41. See *supra* Introduction.

42. As of April 2021, the A.B.A. had only released one Press Release about the targeting of Judge Salas’s family, predictably ignoring the gendered nature of the killings, describing Den Hollander only as “a lawyer with a grudge against [Judge Salas],” and telling judges to take charge of their own security. See Press Release, Am. Bar Ass’n, Judges Should Protect Their Security Online, At Home (Nov. 9, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/11/judicial-security/> [<https://perma.cc/285R-WEH5>]; MODEL RULES OF PROF’L CONDUCT R. 8.4(b) (2021) [hereinafter MODEL RULES].

43. For example, although the A.B.A. has released several Formal Opinions since Den Hollander’s killing spree, none of them touch on gender-based violence in the profession. See *Ethics Opinions*, AM. BAR ASS’N, https://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions/aba_formal_ethics_opinions_index_by_issue_dates/ [<https://perma.cc/MH8X-SN7N>] (last visited Nov. 15, 2023) (listing Formal Opinions 494–504 as having been published between July 29, 2020 and March 1, 2023).

44. A.B.A. Comm. on Ethics & Prof’l Resp., Formal Op. 493 (2020) [hereinafter Op. 493]; see also A.B.A. Comm. on Ethics & Prof’l Resp., Formal Op. 04-433 (2004) (clarifying scope of duty to report under Model

ethics opinions are not sufficiently on point regarding behavior like Den Hollander's. That Den Hollander's pre-killing acts went unchallenged is a failure in the enforcement of our professional rules. That even his killings have not yet been publicly and officially recognized as rule-violating is a failure of our profession's disciplinary apparatus. Thus, in the wake of Den Hollander's violence, a Formal Opinion clarifying that racist and misogynist behavior like his will no longer be tolerated with impunity within the legal profession is an essential step forward in challenging and discouraging such behavior.

A. DISCIPLINING GENDER-BASED THREATS AND DISCRIMINATION UNDER RULE 8.4

Model Rule 8.4(b) states, "it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."⁴⁵ The killings committed by Den Hollander violated this Rule—there is hardly something that could reflect more poorly on one's fitness as a lawyer than resolving a disagreement with a professional adversary via lethal gun violence—but his pre-killing violence and gender-based threats violated this Rule as well.

Den Hollander was licensed to practice law in New York state, so it is important to note that these actions also violated New York's version of this Rule. Under New York's version, a lawyer "shall not engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer."⁴⁶ As the Comment to New York's Rule stresses, "[i]llegal conduct involving violence . . . is illustrative of conduct that reflects adversely on fitness to practice law."⁴⁷ Den Hollander's threats of violence and his violence itself—such as the alleged threats made against his wife, his abuse of her, and the assault of attorney Steinberg—especially when considered together, qualify as misconduct under Rule 8.4(b). These are instances of illegal conduct involving violence for which Den Hollander should have been disciplined. Instead, his conduct appears to have been ignored, which empowered him to return to the courtroom

Rule 8.3(a)); A.B.A. Comm. on Ethics & Prof'l Resp., Formal Op. 94-383 (1994) (assessing "whether a lawyer may threaten to file a disciplinary complaint against opposing counsel in order to induce agreement to a settlement in a civil case" and how the question implicates Model Rule 8.3); *cf.* A.B.A. Comm. on Ethics & Prof'l Resp., Formal Op. 03-429 (2003) (explaining, *inter alia*, the scope of duty to report in context of mentally impaired lawyers); A.B.A. Comm. on Ethics & Prof'l Resp., Formal Op. 03-431 (2003) (analyzing duty to report under Model Rule 8.3 in context of questions about fitness to practice).

45. MODEL RULES R. 8.4(b).

46. N.Y. RULES OF PROF'L CONDUCT R. 8.4(b) (N.Y. BAR ASS'N 2020).

47. *Id.* at cmt. 2; *see also* MODEL RULES R. 8.4(g) cmt. 2 ("Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category."). The Comment goes on to observe that "[a] pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." *Id.*

as a member of the legal profession and prevented colleagues from learning vital information about his capacity for violence.⁴⁸

Den Hollander's conduct also violated Rule 8.4(g),⁴⁹ the *Model Rules'* anti-discrimination provision. The broad scope of this rule is particularly notable and relevant to this context. As the ABA recently clarified,

Rule 8.4(g) prohibits conduct that is not covered by other law, such as federal proscriptions on discrimination and harassment in the workplace. Although conduct that violates Title VII . . . would necessarily violate paragraph (g), the reverse may not be true. For example, a single instance of a lawyer making a derogatory sexual comment directed towards another individual in connection with the practice of law would likely not be severe or pervasive enough to violate Title VII, but would violate Rule 8.4(g).⁵⁰

Looking at Den Hollander's behavior in the context of the comments to the Model Rule, such as the comment quoted above, makes it clear that Den Hollander's website violated the far-reaching strictures of Rule 8.4(g). First, Comment [3] to the Rule defines "[s]uch discrimination [as] includ[ing] harmful verbal or physical conduct that manifests bias or prejudice towards others[.]" and "[h]arassment [as] includ[ing] sexual harassment and derogatory or demeaning verbal or physical conduct."⁵¹ Den Hollander's website includes statements at a

48. His discriminatory conduct on the basis of gender—as it relates to judges—also arguably violates Model Rule 8.4(d), which states that “it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.” MODEL RULES R. 8.4(d). As the A.B.A. recently noted in Formal Ethics Opinion 493, under this rule, a lawyer can be subject to discipline for making derogatory comments on the basis of sex when doing so is prejudicial to the administration of justice. The Standing Committee relied on Comment [3] to the prior version of Rule 8.4(d) in supporting this conclusion, which stated:

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) *when such actions are prejudicial to the administration of justice*. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

Op. 493, *supra* note 44 (quoting MODEL RULES R. 8.4(d) cmt. 3). While much of his discriminatory conduct falls under Rule 8.4(g), some of Den Hollander's sexist public writings, as they relate to the female judges before whom he appeared, should be considered violations of Rule 8.4(d). These are not exclusively violations of Rule 8.4(g)—*e.g.*, on his professional website “Den Hollander wrote disparagingly of several female judges.” Deliso, *supra* note 4. They should also properly be considered Rule 8.4(d) violations because of their close connections to the justice system; they “have no place in our system of justice [as] when attorneys engage in such actions they do not merely reflect their own lack of professionalism but they disgrace the entire legal profession and the system of justice that provides a stage for such oppressive actors.” Op. 493, *supra* note 44 (quoting *Mullaney v. Aude*, 730 A.2d 759, 767 (Md. Ct. Spec. App. 1999) (quoting trial judge in the case)).

49. For simplicity, in this section “Rule 8.4(g)” is used to refer to Model Rule 8.4(g). New York State's anti-discrimination provision is in the same location as the anti-discrimination provision of the Model Rules of Professional Conduct—8.4(g)—but these rules are not identical. *Compare* N.Y. RULES OF PROF'L CONDUCT R. 8.4(g) (N.Y. BAR ASS'N 2020) *with* MODEL RULES R. 8.4(g). As discussed below, Den Hollander's conduct violates both versions of Rule 8.4(g).

50. Op. 493, *supra* note 44.

51. MODEL RULES R. 8.4(g) cmt. 3.

link entitled “Girl Jokes” that include five pages of statements that are profoundly sexist and racist, manifest bias and prejudice towards others, and include derogatory and demeaning statements.⁵² Second, both the New York Rules and the *Model Rules* require that the behavior occur “in the practice of law.”⁵³ In Comment [4] to Model Rule 8.4(g), the *Model Rules* define this category of activity by observing that,

[c]onduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.⁵⁴

The derogatory and discriminatory statements on Den Hollander’s website place his behavior squarely within that covered by Rule 8.4(g). The “Girl Jokes” on his website’s front page fall immediately below a list of filings, motions, and opinions from the cases he litigated, and are on the same page as a) a solicitation imploring readers to “[c]ontact Roy to help battle the infringement of Men’s Rights by the Feminists and their fellow sisters the PCers,”⁵⁵ and b) his notation that “Roy Den Hollander is available for interviews, debates, speaking engagements, litigation, and civil disobedience. Attorney Advertising.”⁵⁶ With his

52. For instance, one “joke” entitled “ABCNY niche marketing for lawyers” reads:

Key is to place yourself in the position of members of the market you’re targeting so as to understand their values. Now all I have to do is imagine I’m an 18-25 year old female. Hmmm, I think I’ll make myself a tall blonde with big balloons. You can call me Barbie. Do blondes have any values other than money?

Girl Jokes, ROYDENHOLLANDER.COM, http://www.roydenhollander.com/main/Writings/Girl_Jokes_Pics.pdf [<https://perma.cc/9NMJ-Z6V2>] (last visited Nov. 10, 2023). Another “joke,” entitled “Court,” reads:

Appellate Division-First Department involves a fight with 5 judges at once. A black Feminist judge accused me of “inappropriate conduct” toward a City bureaucrat at the City Human Rights Commission. The bureaucrat, an Hispanic male, authored a decision saying I was not discriminated at a club based on age because clubs could enforce whatever image they chose. The club would not let me and a fellow gray hair buddy in unless we bought a \$350 bottle of watered down, brand-less vodka. We declined. In the wetback’s Order, excuse me, Hispanic’s Order, he failed to put page numbers, which made citing statements in it really difficult. So I numbered the page with uno, dos, tres and so on. The self righteous, zealot Feminist judge called that “inappropriate.” To which I responded, “The bureaucrat in an official government document, not only tried to make citing that document overly difficult in the hopes of deterring an appeal, but also insulted my marital status—divorced, my beliefs, the anti-feminist lawsuits I filed, and how I exercise my speech by having nothing good to say about my ex-wife. So in the spirit of quid pro quo—one bad turn deserves another—I insulted him by using Spanish for the page numbers. As is typical of these Feminists, she edited the facts to make me appear malicious by saying I erased the original numbers and then put in the Spanish words.

Id. at 4–5.

53. MODEL RULES R. 8.4(g); N.Y. RULES OF PROF’L CONDUCT R. 8.4(g) (N.Y. BAR ASS’N 2020).

54. MODEL RULES R. 8.4(g) cmt. 4.

55. ROYDENHOLLANDER.COM, *supra* note 15.

56. *Id.*

solicitation for business, the explicit statement that this is “attorney advertising,” and placement in the same column as his legal briefs, his “Girl Jokes” are derogatory statements that incontrovertibly occurred in the practice of law— “[a]s many courts have emphasized, [such discriminatory] behavior is unacceptable generally but especially when engaged in by members of the bar.”⁵⁷

In terms of attorney discipline, it should be noted that courts have begun to occasionally sanction attorneys for committing acts of domestic violence. For example, the Iowa Supreme Court has held that an attorney’s domestic abuse—which included significant injuries and repeated violations of a no-contact order—showed disrespect for the law, which reflected adversely on his fitness to practice and violated Rule 32:8.4 (which is Iowa’s version of Rule 8.4).⁵⁸

Courts have sometimes explicitly stated that this type of sanctioning is important as a signaling mechanism to the broader profession; as a way to “send[] a message to other lawyers that this misconduct is considered a serious breach of a lawyer’s ethical duty and will not be tolerated.”⁵⁹ This is a positive step forward and an approach that should be followed by courts in other jurisdictions. However, “there has not been a uniform approach to the appropriate discipline. Some form of suspension is the usual discipline, but the length of the suspension often varies.”⁶⁰ The failure to address grievous, repeated conduct like Den Hollander’s highlights that the legal community needs to do more. Thus, the publication of formal opinions stating that actions such as Den Hollander’s threats and discriminatory acts are violations of these rules, and that those who commit similar actions will not enjoy the public

57. Op. 493, *supra* note 44, at 8 (referencing racial discrimination, but as part of general discussion about how “[u]se of a racist or sexist epithet with the intent to disparage an individual or group of individuals demonstrates bias or prejudice”). It is important to note that such statements are not exempt from discipline due to the First Amendment. Rather the ABA, and many courts, have recognized that allowing discipline for such conduct “promotes a well-established state interest by prohibiting conduct that reflects adversely on the profession and diminishes the public’s confidence on the legal system and its trust in lawyers.” *Id.* at 11. Further, because “Rule 8.4(g) protects specific categories of victims from identified harm, and a violation can only take place when the offending conduct engaged in is ‘related to the practice of law’ and the lawyer knows or reasonably should know that it constitutes harassment or discrimination,” the Rule is not overbroad. *See id.*

58. *See* Iowa Sup. Ct. Att’y Disciplinary Bd. v. Axt, 791 N.W.2d 98, 101 (Iowa 2010); *see also* Iowa Sup. Ct. Att’y Disciplinary Bd. v. Sears, 933 N.W.2d 214, 222 (Iowa 2019) (“[Attorney] Sears’s criminal act of domestic abuse assault causing bodily injury violated rule 32:8.4(b). Sears’s decision to act on his hostility and use violence reflects adversely on his ability to practice law.”); David L. Hudson, Jr., *Disciplinary Actions Against Lawyers Who Commit Acts of Domestic Violence Appear to Be on the Rise*, A.B.A. J. (Nov. 1, 2015), https://www.abajournal.com/magazine/article/disciplinary_actions_against_lawyers_who_commit_acts_of_domestic_violence_a [<https://perma.cc/V58H-MZY9>].

59. *State ex rel. Okla. Bar Ass’n v. Zannotti*, 330 P.3d 11, 17 (Okla. 2014) (tying an attorney’s two-year suspension from the practice of law for a Rule 8.4(b) violation involving, *inter alia*, the attorney’s criminal assault and battering of his mistress, to protection of the public, the integrity of the judicial system and the reputation of the bar).

60. Hudson, *supra* note 58, at 2 (quoting Peter Joy, Professor of Ethics at the Washington University School of Law).

impunity he did, is essential.⁶¹ These opinions, alongside other measures, will ensure that the promises of these rules are realized and they will challenge norms of silence and impunity around such actions.⁶²

B. RATTING OUT VIOLENT MISOGYNISTS: CLARIFYING THE APPLICABILITY OF RULE 8.3(a)

Norms of silence and impunity around misogynist behavior in the profession are entrenched by lawyers who are aware of, yet fail to report, such violations. But it is essential that attorneys who commit misogynist violence, make misogynist threats, or violate Model Rule 8.4(g) by discriminating against women or others in the scope of their practice come to the attention of bar counsel. This would allow these attorneys to be appropriately investigated and disciplined, and for those who might be endangered by them to be properly warned.⁶³ To ensure such comments are not swept under the rug going forward—and to confirm these are *grave* breaches of professional conduct—the ABA and state bar authorities must make it clear that Rule 8.3(a)'s reporting requirements apply to threats of violence against women and discriminatory conduct of the sort engaged in by Den Hollander, and that attorneys who know about similar conduct have a professional duty to report it.⁶⁴

61. However, it is crucial that any discipline be equitable, and not reinforce pre-existing societal biases. In particular, those responsible for professional discipline must ensure that it is not administered in a racially discriminatory way. This is arguably already a problem in the profession; e.g., in California “1.6% of Black male attorneys were disbarred, compared with 1% of white males.” Caroline Spiezio, *Racial Bias in Attorney Discipline? Few States Track For It*, REUTERS LEGAL (June 29, 2020), <https://www.reuters.com/article/lawyer-bar-race-and-discipline-idUSL1N2E60D2/> [<https://perma.cc/C5VG-P9YU>]. Similarly, in Texas, “in 2019[–] 2020, Black attorneys made up 10% of disbarments or resignations, but just 6% of the bar. During that same period, white attorneys accounted for almost 67% of disbarments or resignations but 78% of the bar.” *Id.*

62. On the issue of silence, a broadened use of Rule 8.4 has been objected to by some observers, and some courts, on First Amendment grounds. See, e.g., Michael Ariens, *Anti-Discrimination Ethics Rules and the Legal Profession*, 50 HOFSTRA L. REV. 501, 509–20 (2022); *Greenberg v. Haggerty*, 491 F. Supp. 3d 12, 27, 29, 30, 33 (E.D. Pa. 2020); see also Op. 493, *supra* note 44. See generally Robert N. Weiner, “Nothing to See Here”: *Model Rule of Professional Conduct 8.4(g) and the First Amendment*, 41 HARV. J.L. & PUB. POL’Y 125 (2018); Rebecca Aviel, *Rule 8.4(g) and the First Amendment: Distinguishing Between Discrimination and Free Speech*, 31 GEO. J. LEGAL ETHICS 31 (2018); Margaret Tarkington, *Reckless Abandon: The Shadow of Model Rule 8.4(g) and a Path Forward*, 95 ST. JOHN’S L. REV. 121 (2021). This paper focuses on other issues and opportunities presented by Rule 8.4. But readers should be aware of this related debate, which has been extensively discussed elsewhere. See generally Margaret Tarkington, “Breathing Space to Survive”—*The Missing Component of Model Rule 8.4(g)*, 50 HOFSTRA L. REV. 597 (2022).

63. Depending on the nature of the threat, Model Rule 1.6(b)(1) might be implicated, but further analysis of this potential interaction is beyond the scope of this paper. See MODEL RULES R. 1.6(b)(1) (“A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.”).

64. Rule 8.3 is not identical across jurisdictions. Some states have adopted the language from Model Rule 8.3. See, e.g., MASS. RULES OF PROF’L CONDUCT R. 8.3(a) (MASS. BAR ASS’N 2015). However, others “have changed various aspects of Model Rule 8.3 in their enactment of the *Model Rules*, adopting slightly different requirements. For example, Louisiana retains the *Model Code* provision requiring lawyers to report all violations, while exempting judges from the reporting requirements.” Michael J. Burwick, *You Dirty Rat!! Model Rule 8.3 and Mandatory Reporting of Attorney Misconduct*, 8 GEO. J. LEGAL ETHICS 137, 142 (1994); see also

Model Rule 8.3(a)⁶⁵ states that “[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”⁶⁶ When a lawyer threatens gender-based violence against another person—including another lawyer—or commits domestic violence, under Model Rule 8.3(a), fellow lawyers must be understood to have a duty to report the threatening or otherwise offending attorney. This construal of the reporting requirement aligns with the narrow interpretation usually given to Model Rule 8.3, which is understood to apply to, *inter alia*, criminal acts that reflect adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer.⁶⁷ As Comment [2] to New York’s Rule 8.4(g) already specifies, “[i]llegal conduct involving violence . . . is illustrative of conduct that reflects adversely on fitness to practice law.”⁶⁸

Three aspects of Model Rule 8.3 could impede the reporting and appropriate disciplining of such conduct.⁶⁹ First, “knowledge” of a disciplinary violation is required for Model Rule 8.3(a) to apply.⁷⁰ In cases with flagrant threats, the knowledge requirement should be no impediment; *e.g.*, at least two attorneys had

Thomas R. DeBray Jr., *No One Likes a Tattletale: Why Alabama Should No Longer Force Attorneys to Report the Professional Misconduct of Other Attorneys*, 34 J. LEGAL PROF. 181, 190–94 (2009) (comparing differences between Alabama’s Rule 8.3 and the Model Rule version). A more nuanced analysis of Rule 8.3 as it varies across jurisdictions is beyond the scope of this analysis; however, it should be noted that in adopting this suggestion, each jurisdiction must align any recommendation with the specific language in their rules of professional conduct.

65. Colloquially, this Rule is known as the “Rat Rule.” See Burwick, *supra* note 64, at 137.

66. MODEL RULES R. 8.3(a). This Rule interacts with Model Rule 1.6’s confidentiality requirements. However, the interaction between these rules varies appreciably across jurisdictions, see Burwick, *supra* note 64, at 142, and a discussion of this issue is beyond the scope of this analysis.

67. Lindsay M. Oldham & Christine M. Whiteledge, *The Catch-22 of Model Rule 8.3*, 15 GEO. J. LEGAL ETHICS 881, 881–82 (2002).

68. N.Y. RULES OF PROF’L CONDUCT R. 8.4(b) cmt. 2 (N.Y. BAR ASS’N 2020); see also MODEL RULES R. 8.4(g) cmt. 2 (“Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.”). Behavior that does not fall into one of the listed categories is reported discretionarily. Oldham & Whiteledge, *supra* note 67, at 881–82. However, Model Rule 8.4(g) violative behavior, such as overt and continued gender-based discrimination related to legal practice, should also be interpreted as falling under the mandatory reporting strictures of Model Rule 8.3, as it strikes at the heart of the legal system’s commitment to equality under law, and thus adversely reflects on the lawyer’s fitness to serve as a lawyer in a system dedicated to such values.

69. Beyond the phrasing of Model Rule 8.3(a), another key issue that could impede such reporting is the safety threat that doing so could present to a reporting attorney, if the reported attorney discovered that the reporting attorney made such a report. For the safety of reporting attorneys, it is thus essential that any such reports be kept anonymous. If ethics committees need information from reporting attorneys to pursue disciplinary charges, their identities should be kept as protected as possible. Additionally, physical protection must be offered to reporting attorneys by state bar associations and, where appropriate, the courts.

70. MODEL RULES R. 8.3(a). Similarly, Comment [1] to Model Rule 8.3 “requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct.” MODEL RULES R. 8.3(a) cmt. 1. While this means actual knowledge, the Model Rules state that such knowledge may be inferred from circumstances. See *id.*

actual knowledge about Den Hollander: Paul Steinberg and Marc Angelucci.⁷¹ Regardless, this requirement should be construed liberally; indeed, “[s]ome state bar ethics committees have implied that Model Rule 8.3 is generally concerned with knowledge that is simply ‘more than a mere suspicion’ [while] in other jurisdictions, even uncertain suspicions should be reported.”⁷² Because of the vital non-discrimination values at issue and the real threat of violence behind such utterances, a suspicion-, rather than actual knowledge-, based understanding of this requirement should be adopted by the ABA and state ethics committees.⁷³

The second potential Rule 8.3(a) obstacle is the rule’s seriousness requirement. As Comment [3] to Model Rule 8.3 makes clear, requiring lawyers to report *every* violation

proved to be unenforceable. T[h]us, t[h]is Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term “substantial” refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.⁷⁴

As discussed below, the profession has failed to treat misogyny and gendered violence with the seriousness it merits.⁷⁵ This hesitancy is why it is essential that ethics committees take the lead in clarifying that misogynist and racist threats and discrimination are “substantial” offenses and are the type a self-regulating profession must vigorously endeavor to prevent. While fully debating Rule 8.3 reform is beyond this article’s scope, some scholars have proposed that as part of Model Rule 8.3 reform, “mandatory to report” offenses be enumerated.⁷⁶ Enumerating the offenses discussed here as “mandatory to report” is a path that should be pursued.

The final hurdle is enforcement. Disciplinary boards notoriously “neglect[] to pursue disciplinary proceedings for alleged violations of” Rule 8.3(a).⁷⁷ Similarly, although “in specific instances where attorneys failed to come forward with information as required under the rules, the courts *have* been willing to

71. Steinberg warned a courtroom security guard, demonstrating knowledge. And the knowledge requirement would have been satisfied when Den Hollander called Angelucci’s boss and threatened violence, once Angelucci learned of that conversation. See *supra* notes 11–12 and accompanying text.

72. See Burwick, *supra* note 64, at 142.

73. *Id.* (providing that lawyers may report suspicions “as long as the information is not privileged” (citing Cleveland Bar Ass’n Prof’l Ethics Comm., Op. 85-1 (1985))).

74. MODEL RULES R. 8.3(a) cmt. 3.

75. See *infra* Part III.

76. See Burwick, *supra* note 64, at 153–54.

77. Laurel Fedder, *Obstacles to Maintaining the Integrity of the Profession: Rule 8.3’s Ambiguity and Disciplinary Board Complacency*, 23 GEO. J. LEGAL ETHICS 571, 571 (2010). To the extent those responsible for enforcement might face threats from those being disciplined, the steps already taken to protect judges could be helpful (where judges are responsible for administering professional discipline), and further mechanisms could be implemented where needed.

sanction lawyers,”⁷⁸ they almost never discipline attorneys *solely* for failing to come forward.⁷⁹ Here, as it is unlikely attorneys violating Rule 8.3 will be part of the original misconduct, courts are unlikely to discipline them for the Rule 8.3 violation. Thus, “lawyers in a position to report misconduct [will have] little incentive to” do so.⁸⁰ Indeed, they face the opposite incentive; “fear of damage to [a lawyer’s] working relationships and reputation often results in a lawyer’s unwillingness to report another lawyer’s misconduct.”⁸¹

Given the gravity of the offenses at issue, judges should discipline attorneys for *solely* failing to make a Rule 8.3 report when it concerns discriminatory threats or violence, unless the attorney delayed doing so in the interest of their own safety; *e.g.*, if an attorney is threatened, the threatened attorney should not be disciplined for failing to immediately report if they reasonably felt that doing so could have placed them or their loved ones in danger.⁸² But absent such a judicial shift, rule change—*e.g.*, “set[ting] a statutory period when after obtaining clear and convincing evidence of an enumerated violation, an attorney must come forward or be subject to disciplinary action”⁸³—might be necessary to add teeth to Rule 8.3 and to realign incentives to encourage reports.

III. GRAPPLING WITH THE PROFESSION’S MINIMIZATION OF VIOLENT MISOGYNY

Ethics opinions grappling with how violent misogyny will be addressed under the profession’s ethical rules are an important, and necessary, step forward. But alone, such opinions will be insufficient because they fail to address a larger problem: that these ethics opinions are only necessary because the profession has continually ignored and minimized the problems of intersectional, gender-based violence, violent misogyny, and flagrant intersectional and gender-based discrimination.

This problem exists on two levels. First, across the profession, lawyers, judges, and other actors are facing increasing threats of violence from inside and outside

78. See Burwick, *supra* note 64, at 143 (emphasis added).

79. *Id.* at 148 (observing that not only was *In re Himmel*, 533 N.E.2d 790 (Ill. 1988), “the first case where an attorney was disciplined solely for failing to come forward with information, but it may well be the only case”). Instead, “Model Rule 8.3 is used as a catch-all to reprimand attorneys for other actions which the disciplinary body may be unable to prove.” *Id.* at 150.

80. Oldham & Whiteledge, *supra* note 67, at 882.

81. Ryan Williams, *Reputation and the Rules: An Argument for a Balancing Approach under Rule 8.3 of the Model Rules of Professional Conduct*, 68 LA. L. REV. 931, 933 (2008). As with reports of other violations of the *Rules of Professional Conduct*, prospective damage would disincentivize false reporting.

82. However, failing to report someone who, in turn, failed to report would likely be insufficient to be a stand-alone violation of Rule 8.3(a). This is due to the rule’s knowledge requirement. It is also unclear that this secondary form of “failure to report” would necessarily meet the requirements of comment 3 to Rule 8.3(a), although whether it does is something that merits further analysis beyond the scope of this paper.

83. See Burwick, *supra* note 64, at 154.

the profession.⁸⁴ These threats of violence are often gendered, and also racialized, yet have garnered very little attention. The violence faced by Judge Salas is a particularly overt example of gender violence in the profession.⁸⁵ But another example is female attorneys being threatened with rape.⁸⁶ Yet another is the high level of violence endemic to family law.⁸⁷ This disproportionately impacts female attorneys as they traditionally have been more likely to practice in family law.⁸⁸ The threat of suffering profession-connected violence is even higher “for lawyers who

84. While the majority of this violence is from clients, some is from attorneys. One family attorney noted that during a divorce case he was “approached by an opposing counsel in such a threatening way that courthouse personnel intervened. ‘He was a criminal law attorney who was acting as an attorney for his friend in this arena,’ . . . ‘I guess he just let his closeness to his friend get the better of him when he was not prevailing.’” Lorelei Laird, *The Job is Killing Them: Family Lawyers Experience Threats, Violence*, A.B.A. J. (Sept. 1, 2018), https://www.abajournal.com/magazine/article/the_job_is_killing_them_family_lawyers_experience_threats_violence [https://perma.cc/J6CT-EW3J].

85. It is overt in the sense that the threats were explicitly based on her gender (and race); before killing her son, Den Hollander called her “a lazy and incompetent Latina judge appointed by Obama,” and “raged about female judges, including fantasizing about the rape of another judge who presided over his divorce case.” Ben Collins & Brandy Zadrozny, *Suspect in Federal Judge’s Home Ambush Railed Against Her in a Misogynistic Book*, NBC NEWS (July 20, 2020), <https://www.nbcnews.com/tech/tech-news/suspect-federal-judge-s-home-ambush-railed-against-her-misogynistic-n1234408> [https://perma.cc/GSX7-6FP7]. It is also reflective of how in the past few decades courts have become a venue where “men’s rights activism ha[s] taken root. The movement, which primarily argues that men are discriminated against in areas such as the government and justice system, has been criticized for the hateful messaging or violence of extreme adherents, like Den Hollander.” Deliso, *supra* note 4.

86. Beyond Den Hollander’s expressed desire to rape the judge in his divorce case, other examples of this phenomenon abound. For example, “[a]n Iowa lawyer wrote in 2013 about receiving a call at home from someone threatening to rape the lawyer’s preschool-age daughter.” Laird, *supra* note 84. Larry Nassar’s attorney, a woman, received multiple death threats related to her representation of the former Michigan State University physician, including one that “came through an intake form on her website from someone who wrote: ‘I’m going to rape your children. And then rape you in front of your children. And then murder your children in front of you but let you live.’” Tresa Baldas, *Larry Nassar’s Lawyer Gets Death Threats in MSU Sex Abuse Case: ‘It’s been Insane,’* DETROIT FREE PRESS (Jan. 31, 2018), <https://www.freep.com/story/news/local/michigan/2018/01/31/nassar-lawyer-death-threats-msu/1083909001/> [https://perma.cc/FTZ5-94KR]. Such threats are rarely made against men, and even when threats of rape are made they are often to rape a family member of the man, rather than the man himself. For example, one male state judge “who urged leniency for a teenage boy accused of sexual assault because the boy came from a ‘good family’” faced death threats when his decision came to light, and also received an email that “included the hope that a family member be raped, ‘by a man stronger than you.’” Luis Ferré-Sadurní & Sarah Maslin Nir, *Judge Gets Threats After Saying Teenager In Rape Case Was From ‘Good Family,’* N.Y. TIMES (July 8, 2019), <https://www.nytimes.com/2019/07/08/nyregion/judge-james-troiano.html> [https://perma.cc/QHW3-WB58].

87. Laird, *supra* note 84 (“A series of surveys on violence against lawyers shows that family lawyers face disproportionate amounts of threats and violence compared to other lawyers. Almost all lawyers in the 27 states surveyed said they’d received some kind of threat or experienced violence. But the rate for family lawyers was higher While lawyers in general were more likely to say they were threatened or attacked by a client, only 38 percent said they were attacked or threatened by an opposing party. For family lawyers, that rate was a much higher 54.4 percent.”). That said, the prevalence of such violence should not be overstated—“[d]espite getting threats, practicing family lawyers say actual violence isn’t frequent—even for people who regularly represent domestic violence victims.” *Id.*

88. See Louise B. Raggio, *Women Lawyers in Family Law*, 33 FAM. L.Q. 501, 503, 513 (1999) (observing that because family law was seen as less prestigious, it was easier for women to break in, and they have remained well represented here).

represent victims of domestic violence.”⁸⁹ Notably, this threat of violence overwhelmingly comes from men.⁹⁰ This threat is not only faced by those who directly represent victims of domestic violence—attorneys who have prosecuted men who have threatened women have faced similar issues.

A particularly high profile example of this problem was faced by the prosecutor who worked on Anthony Elonis’s 2010 case.⁹¹ As Justice Roberts wrote, summarizing Mr. Elonis’s actions that led him to the Supreme Court, “[i]n May 2010, Elonis’s wife of nearly seven years left him, taking with her their two young children.”⁹² At that point, Mr. Elonis “began listening to more violent music and posting self-styled rap lyrics inspired by the music” on social media.⁹³ “Elonis’s posts frequently included crude, degrading, and violent material about his soon-to-be ex-wife.”⁹⁴ After viewing some of the posts, “his wife felt extremely afraid for her life,” which led to a state court granting “her a three-year protection-from-abuse order (essentially, a restraining order)” against Elonis.⁹⁵ Mr. Elonis made similar posts about others, which ultimately led to a grand jury indicting him “for making threats to injure patrons and employees of [a] park, his estranged wife, police officers, a kindergarten class, and an FBI agent,”⁹⁶ in violation of federal law. Ultimately, and on remand from the Supreme Court, his conviction was upheld, and Mr. Elonis was sent to prison for the threats; he served 44 months in federal custody from his arrest in 2010 until his release in February 2014.⁹⁷

89. Laird, *supra* note 84.

90. Explaining this elevated risk, Vivian Huelgo, chief counsel for the A.B.A. Commission on Domestic & Sexual Violence observed that in such cases “the opposing parties have a history of violence—but they’re less likely than criminal defendants to be locked up. . . . [Further,] they’re also used to having power and control over victims. They might see lawyers as a threat to that control.” *Id.* Huelgo’s “power and control” observation highlights the way in which this threat is gendered. E.g., recent data from the Colorado Domestic Violence Fatality Review Board found that, of the total domestic violence fatalities that occurred in that state in 2022, 97% of the victims were female and 95% of the perpetrators were male. See ANNUAL REPORT 2023, COLO. DOMESTIC VIOLENCE FATALITY REV. BD. 19 (2023), <https://coag.gov/app/uploads/2023/10/Colorado-Domestic-Violence-Review-Board-Annual-Report-2023-FINAL-2.pdf> [perma.cc/Y5N6-4VWG] (last visited Mar. 20, 2024). Thus, in cases of intimate partner violence, the threat posed to attorneys is overwhelmingly likely to be from men. This is something attorneys opposing men accused of past violence need to be particularly wary of, as “[a]mong men, a history of committing domestic violence is a strong predictor of future violence.” Toutant, *supra* note 31.

91. Tony Rhodin, *Man Whose Previous Threats Case Went to U.S. Supreme Court, Found Guilty of Cyber Stalking*, LEHIGH VALLEY LIVE (Aug. 8, 2022), <https://www.lehighvalleylive.com/news/2022/08/man-whose-previous-threats-case-went-to-us-supreme-court-found-guilty-of-cyber-stalking.html> [https://perma.cc/J8FG-GEPW].

92. *Elonis v. United States*, 575 U.S. 723, 726 (2015).

93. *Id.*

94. *Id.* at 727.

95. *Id.* at 728–29.

96. *Id.* at 731.

97. *Lehigh Valley Man at Center of Supreme Court Free Speech Case is Convicted of Cyberstalking Prosecutor, Ex-Wife and Former Girlfriend*, MORNING CALL (Aug. 8, 2022), <https://www.mcall.com/2022/08/08/lehigh-valley-man-at-center-of-supreme-court-free-speech-case-is-convicted-of-cyberstalking-prosecutor-ex-wife-and-former-girlfriend/> [https://perma.cc/W8QN-CQJN].

Mr. Elonis's actions during and after his incarceration are particularly relevant to the issues at hand. Once he was in custody, he not only resumed threatening the women in his life, *he also began threatening the prosecutor in his 2010 case*. As prosecutors later alleged,

[w]hile he was in prison, he started sending letters to a prosecutor involved in the case. . . . The first letter included a threat to "set fire to a cross" in the prosecutor's front yard. The next letter included, "You may have won the battle but you'll never stop me from wearing my I am Adam [Lanza] t-shirt in public."⁹⁸

Indeed,

Elonis sent numerous threatening, harassing and intimidating emails directly to [a] governmental employee [in the Eastern District of Pennsylvania], and sent or posted numerous threatening, harassing and intimidating communications via Twitter, text message, voice mail or other form of electronic communication regarding the governmental employee, his former girlfriend, and his ex-wife.⁹⁹

For these actions, Mr. Elonis was again found guilty, this time of cyberstalking, and on March 23, 2023, U.S. District Court Judge Edward G. Smith sentenced him to 151 months in prison.¹⁰⁰ It is notable that Mr. Elonis's violent misogyny was, after his first conviction, no longer cabined to the women in his private life, rather he felt empowered to expand his ire to a federal prosecutor. This example illuminates the larger problem faced by those in the profession who seek to hold those who threaten and harm women to account.

Second, the whitewashing of Den Hollander's violence and discrimination after his death, and the inaction on these issues before it, is connected to the profession's dismissiveness towards intersectional, gender-based violence and discrimination.¹⁰¹

98. *Id.*

99. Press Release, Dep't of Just., Northampton County Man Sentenced To 151 Months In Prison For Cyberstalking (Mar. 24, 2023), <https://www.justice.gov/usao-mdpa/pr/northampton-county-man-sentenced-151-months-prison-cyberstalking> [https://perma.cc/5W5L-9SCD]. About the others stalked,

Elonis harassed his ex-girlfriend through text messages, calls and voicemails despite the protection from abuse order. After he was found guilty of violating the order, he posted a sexually explicit picture of the woman on Twitter. Elonis continued to harass her and was found guilty of violating the order again, but continued to post on Twitter about her, including a photo of her pregnant in a grocery store.

MORNING CALL, *supra* note 97.

100. Dep't of Just., *supra* note 99.

101. Showcasing that little recent attention has been paid to this issue within the ABA, although the Commission On Women in the Profession has a webpage on tackling sex-based harassment, many of the links on the page are broken. *See Zero Tolerance*, A.B.A. COMM'N ON WOMEN IN THE PROF., https://www.americanbar.org/groups/diversity/women/initiatives_awards/the-zero-tolerance-program-toolkit/zero_tolerance/ [https://perma.cc/THH7-NVA2] (last visited Nov. 10, 2023). While the A.B.A. has a Commission on Domestic & Sexual Violence, their work is outwardly focused. *See Our Projects*, A.B.A. COMM'N ON DOMESTIC & SEXUAL VIOLENCE, https://www.americanbar.org/groups/domestic_violence/our-projects/ [https://perma.cc/H8VH-5C7L] (last visited Nov. 10, 2023).

While this culture is not unique to the legal community,¹⁰² it is our community that laughed at Den Hollander¹⁰³ rather than taking him, and those like him, to be a serious threat. More broadly, it is our community's anemic treatment of sexual violence that partially drives low reporting rates.¹⁰⁴ This is because our community, or at least parts of it, not only holds problematic beliefs about victims of this violence but also has the unique ability to insert these beliefs into the criminal process.¹⁰⁵ As an example, victims of sexual assault are treated so poorly, so frequently, that it sparked the creation of the term "the second rape," to describe survivors' experience of the judicial system post-sexual assault.¹⁰⁶ Zooming out even more, our community has failed to challenge its own "fraternity culture,"¹⁰⁷ wherein allegations of sexual harassment and discrimination based on gender are rife,¹⁰⁸ and women continue to be

102. See Sharon Cowan, *Sense and Sensibilities: A Feminist Critique of Legal Interventions Against Sexual Violence*, 23 EDINBURGH L. REV. 22, at 1 (2019) (arguing the legal system's "failures to punish sexual violence in a meaningful way suggests that we need to think again about how we deal with issues of sexual violence in contemporary society").

103. An example of legal community insiders laughing at Den Hollander is how the Above the Law blog wrote about one of Den Hollander's lost "men's rights" suits. The blog noted the futility of his cause in observing that "[a]llowing beautiful young women free entry furthers the club's image because it attracts old farts like Hollander to its doors in the first place." Zaretsky, *supra* note 7.

104. Specifically, low prosecution rates, which are in part a result of low chances of conviction, are tied to low reporting rates. See Wendy Larcombe, *Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law*, 19 FEMINIST LEGAL STUD. 27, 28 (2011). "Lack of consistency in contacts with police and prosecutors, exclusion from decision-making, and time delays are also known to have a significant impact on the complainant's continued participation in the criminal justice process." *Id.* at 32 (citing Haley Clark, *Seminar Review: The Legal System's Response to Sexual Assault*, 14 ACSSA NEWSL. (Aus. Inst. Fam. Stud., 2007)). Other factors include conflicting emotions, discouragement from police, and "fear of the perpetrator and fear of defamation, the wish to move on with life and the wish to spare the perpetrator." J. Mulder, T.A.M. Teunissen, E.S. Pranger, A. Hiddink-Til & A.L.M. Lagro-Janssen, *Reporting After Sexual Violence: The Influence of Victim, Assault and Perpetrator Characteristics*, 79 J. FORENSIC & LEGAL MED. 1, 6 (2021).

105. E.g., Cowan, *supra* note 102, at 14 ("[R]esearchers have demonstrated that prosecutors, defence lawyers and judges hold problematically stereotypical views about what constitutes a real victim of sexual assault, and what sorts of information is relevant in deciding whether or not the assault has taken place.").

106. See generally Rebecca Campbell, Sharon M. Wasco, Courtney E. Ahrens, Tracy Seff & Holly E. Barnes, *Preventing the "Second Rape": Rape Survivors' Experiences With Community Service Providers*, 16 J. INTERPERSONAL VIOLENCE 1239 (2001) (describing how post-assault contact with systems exacerbates distress).

107. See Bret Rappaport, "Smile More": *Kindling for Kindness on the Practice of Law*, 44 L. & PSYCH. REV. 172-73 (2020) ("[I]n a lawsuit filed against Jones Day by female associates alleging discrimination based on [inter alia,] gender . . . the complaint described a 'fraternity culture' within which 'Jane Doe 3 was advised to smile more.'").

108. A full recounting of such allegations is well beyond the scope of this article, but some of the most recent, high-profile examples include accusations against members of the bar across all areas of the profession. For example, in the past few years alone, there have been allegations of sexual harassment made against judges, such as Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit. See Matt Zapotosky, *Prominent Appeals Court Judge Alex Kozinski Accused of Sexual Misconduct*, WASH. POST. (Dec. 8, 2017), https://www.washingtonpost.com/world/national-security/prominent-appeals-court-judge-alex-kozinski-accused-of-sexual-misconduct/2017/12/08/1763e2b8-d913-11e7-a841-2066faf731ef_story.html [<https://perma.cc/2TQX-JRR8>]. Allegations have also been made against his colleague on the Ninth Circuit, Judge Stephen Reinhardt. See Josh Gerstein, *Ex-Clerk Says Deceased Federal Appeals Judge Was Sexual Harasser*, POLITICO (Feb. 2, 2020), <https://www.politico.com/news/2020/02/13/ex-clerk-accuses-late-9th-circuit-judge-of-harassment-114817> [<https://perma.cc/Q57Z-55RJ>]. They also include allegations made against law firms, such as Jones Day, Kirkland

marginalized across the profession in terms of compensation¹⁰⁹ and in access to positions of power.¹¹⁰

A full analysis of the intersectionally-biased¹¹¹ culture endemic to the legal profession is beyond the scope of this analysis. But it is crucial to recognize the jarring extent of this problem, and that it is continuous with, not distinct from, our failure to take Den Hollander and the violent misogyny he represents to be a serious threat rather than a joke. It should not be assumed this culture will start to take such threats seriously now. That it has swept Den Hollander's history of

& Ellis, and Levi & Korsinsky. See Rappaport, *supra* note 107, at 173; David Thomas, *Jones Day, Ex-Associates Lose Sanctions Bids in Law Firm Bias Case, For Now*, REUTERS (July 10, 2023), <https://www.reuters.com/legal/litigation/jones-day-ex-associates-lose-sanctions-bids-law-firm-bias-case-now-2023-07-10/> [<https://perma.cc/9P8T-DTLT>]; Kovalenko v. Kirkland & Ellis, LLP, 3:22-cv-05990 (N.D. Ca. Oct. 12, 2022); Diana Novak Jones, *Ex-Levi & Korsinsky Partner Wins Retaliation Claim Against Law Firm*, REUTERS (Sept. 28, 2023), <https://www.reuters.com/legal/government/ex-levi-korsinsky-partner-wins-retaliation-claim-against-law-firm-2023-09-28/> [<https://perma.cc/D5SE-DFW7>]. And, they include sexual harassment allegations against law professors, including Jed Rubenfeld at Yale Law School. See Mihir Zaveri, *Yale Law Professor Is Suspended After Sexual Harassment Inquiry*, N.Y. TIMES (Aug. 26, 2020), <https://www.nytimes.com/2020/08/26/nyregion/jed-rubenfeld-yale.html?smid=url-share> [<https://perma.cc/U2QD-5ZL5>].

109. Jennifer Cheeseman Day, *Number of Women Lawyers At Record High But Men Still Highest Earners*, AMERICA COUNTS: STORIES BEHIND THE NUMBERS, U.S. CENSUS BUREAU (May 8, 2018), <https://www.census.gov/library/stories/2018/05/women-lawyers.html> [<https://perma.cc/L854-KSXH>] (“Young in their career (under age 35), median earnings between women and men lawyers are relatively close, at \$77,000 and \$85,000 annually (a 91 percent ratio). These differences increase with age, so that by mid-career (ages 45 to 54) median earnings for women are \$121,000 compared with \$156,000 of men (a ratio of 78 percent).”). Reports indicate that the gendered pay gap has recently widened. See Debra Cassens Weiss, *Pay Gap Has Widened for Male and Female Partners in Larger Law Firms, New Report Says*, A.B.A. J. (Sept. 15, 2020), <https://www.abajournal.com/news/article/pay-gap-has-widened-for-male-and-female-partners-in-larger-law-firms-report-says> [<https://perma.cc/6GRZ-JEX4>].

110. See, e.g., Cynthia L. Cooper, *Broken Rungs on the Career Ladder: A New Analysis of Problems Encountered by Women Lawyers in Private Practice*, PERSPECTIVES: A.B.A. COMM’N ON WOMEN IN THE PROF’N (Jan 21, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2020/january/broken-rungs-the-career-ladder-new-analysis-problems-encountered-women-lawyers-private-practice/> [<https://perma.cc/6JLQ-VEET>] (“In 2018, women comprised only 19.5 percent of equity partners and 30.5 percent of nonequity partners in the nation’s 200 largest firms. . . . That’s only a 3 percent increase of equity partners from 12 years earlier.”); Athar Mirza & Chiqui Esteban, *Female Judges Were A Rarity When Ruth Bader Ginsburg Was Born. They Still Are.*, WASH. POST (Sept. 21, 2020), <https://www.washingtonpost.com/politics/2020/09/21/female-judges-were-rarity-when-ruth-bader-ginsburg-was-born-they-still-are/> [<https://perma.cc/W4WU-9HBB>] (“Today, women still make up only 27 percent of all federal judges.”); Zoe Tillman, *There Are 93 U.S. Attorneys. Seven Are Women and Only Two Are Black*, BUZZFEED NEWS (June 28, 2020), <https://www.buzzfeednews.com/article/zoetillman/trump-us-attorneys-lack-diversity-justice-department> [<https://perma.cc/K6LF-6TDP>] (assessing diversity among U.S. Attorneys during Trump Administration).

111. While this discussion has focused on gender, it is important to note that similar, but complex, disparities exist in relation to race, sexuality, disability, and other identities as well, and these manifest to disadvantage and marginalize legal actors in an intersectional way. See, e.g., David B. Wilkins, *From Separate Is Inherently Unequal to Diversity Is Good for Business: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1554 (2004) (discussing race); Atinuke Adediran, *The Journey: Moving Racial Diversification Forward from Mere Commitment to Shared Value in Elite Law Firms*, 25 INT’L J. LEGAL PROF. 67, 74 (2018) (discussing race); Peter Blanck, Ynesse Abdul-Malak, Meera Adya, Fitore Hyseni, Mary Killeen & Fatma Altunkol Wise, *Diversity and Inclusion in the American Legal Profession: First Phase Findings from A National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 23 UDC/DCSL L. REV. 23, 24–26 (2020) (discussing sexuality and disability).

violent misogyny under the rug indicates the opposite is likely true. Promisingly, a few courts have started to take domestic violence seriously as attorney misconduct,¹¹² and these pathbreakers should be recognized as important models of how our profession should take gendered violence seriously, rather than minimizing or setting it aside as a personal, rather than a professional, problem. Indeed, highlighting that the time is especially ripe for foregrounding this issue as a high-profile ethics concern across the profession is former New York Attorney General Eric Schneiderman's recent, but temporary, loss of his law license.¹¹³ His one-year suspension from law was a result of disciplinary proceedings following revelations in the media that he "physically abus[ed] two women during long-term relationships and a third woman, a lawyer, during a romantic encounter."¹¹⁴ This suspension was imposed by the New York Supreme Court, Appellate Division, and it is a positive step in ensuring that incidents of violence against women committed by members of the profession are properly addressed.

However, one of the reasons the Appellate Division imposed this relatively short disciplinary period was because—as the court observed and the parties conceded—"there [wa]s no case directly on point."¹¹⁵ Since such violence is endemic to our society,¹¹⁶ this lack of precedent indicates that too rarely is this violence being acknowledged by the profession. In the wake of another prominent New York attorney's sexual harassment scandal—former Governor Andrew Cuomo—observers opining on whether the allegations of sexual harassment would impact

112. See *supra* Part II.A.

113. Jordan Williams, *Former NY Attorney General Schneiderman Loses Law License for A Year Over Abuse*, THE HILL (Apr. 27, 2021), <https://thehill.com/homenews/state-watch/550616-former-ny-attorney-general-schneiderman-loses-law-license-for-a-year?rl=1> [<https://perma.cc/9CHF-LAYG>].

114. Debra Cassens Weiss, *Former New York AG Eric Schneiderman is Suspended for Abusing Women*, A.B.A. J. (Apr. 28, 2021), <https://www.abajournal.com/news/article/former-new-york-ag-eric-schneiderman-is-suspended-for-abusing-women> [<https://perma.cc/8FYT-96AV>]. This abuse was not confined to a one-time incident. As the parties stipulated, "[b]etween July 2013 and December 2014, respondent was involved in a long-term, consensual sexual relationship with M.B. On a number of occasions during their relationship respondent slapped M.B, placed his hands on her neck and applied pressure without obtaining consent, and at times he was verbally and emotionally abusive," and "[b]etween August 2016 and September 2017, respondent was involved in a long-term, consensual sexual relationship with T.S. During their relationship, respondent slapped T.S., placed his hands on her neck and applied pressure without obtaining consent, and at times he was verbally and emotionally abusive," and finally, "[d]uring a romantic encounter in August 2016, respondent slapped an unidentified attorney twice." *In re Schneiderman*, 144 N.Y.S.3d 436, 438 (N.Y. App. Div. 2021).

115. *In re Schneiderman*, *supra* note 114, at 439; see also Jason Grant, *Ex-AG Eric Schneiderman, Who Resigned in 2018 Amid Abuse Scandal, Has Law License Suspended*, LAW.COM (Apr. 27, 2021), <https://www.law.com/2021/04/27/ex-ag-eric-schneiderman-who-resigned-in-2018-amid-abuse-scandal-has-law-license-suspended/> [<https://perma.cc/FUA5-D9Q2>]. Because of this, the court was left to rely on cases that largely involved one-time incidents of violent male attorneys injuring women in very different circumstances. See, e.g., *In re Schneiderman*, *supra* note 114, at 439 (citing *In re Cherkasky*, 120 N.Y.S.3d 325 (N.Y. App. Div. 2020) (suspending license of assistant district attorney, who drunkenly assaulted a woman at a bar, for two months)).

116. The World Health Organization estimates that approximately one in three women worldwide has "been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime." *Violence Against Women*, WHO (Mar. 9, 2021), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [<https://perma.cc/J4J9-5FRS>].

his law license observed that it was not likely that it would. This was because “[e]xamples in recent years show attorneys have harassed - and physically abused - women in recent years and managed to avoid disbarment, if not suspensions.”¹¹⁷ This lack of guidance about appropriate discipline for attorneys who commit violent, misogynist acts—especially those that are repeated over the course of years, as in the case of Den Hollander, Schneiderman, and others—must be addressed, particularly in light of the fact that the profession has largely continued to downplay the seriousness of the threats and discrimination women face.

Ultimately, the profession must do more than just publish ethics opinions. An analysis of possible structural changes is beyond the scope of this article. But the ABA should, at the very least, empanel a Standing Commission on Violence Against Women in the Legal Profession. It could push against the profession’s problematic culture to ensure that the above proposed actions are taken, and that these first steps are built upon¹¹⁸ in a way that reflects the seriousness of the threat at hand and a commitment to changing norms that have allowed such threats to endure in our profession with little pushback. But such ethics opinions, staking out the position that this violence is intolerable in our community, are an essential start to this broader project.

CONCLUSION

The non-response to Den Hollander’s misogyny, and the non-response to gender violence in the profession, do not exist in a vacuum. They exist within a professional culture that has minimized such threats and continues to do so. To begin to change this culture, this article proposes the ABA and state bar associations do three things: (i) recognize Den Hollander’s acts as specifically misogynist, (ii) issue ethics opinions reinforcing that gender-based violence, threats, and discrimination are professional misconduct, subject to discipline and mandatory reporting requirements, and (iii) make the broader changes required to truly ameliorate the legal profession’s problem with gender-based violence. While these are only first steps, they are needed to prevent similar tragedies from recurring, and to move the profession towards one that finally treats this issue with the gravity it merits.

117. Robert Gavin, *Law Beat: Can Cuomo’s Law License Be Casualty of Scandal?* TIMES UNION (Aug. 29, 2021), <https://www.timesunion.com/news/article/Law-Beat-Can-Cuomo-law-license-be-casualty-of-16401962.php> [https://perma.cc/3GXE-78N4].

118. As just one example of what such actions could look like, the A.B.A. domestic violence standards of practice advise that safety planning and lethality assessments be undertaken in cases where there’s a risk of violence against women, in order to protect the client. See *Standards of Practice*, AM. BAR ASS’N. COMM’N ON DOMESTIC & SEXUAL VIOLENCE, https://www.americanbar.org/groups/domestic_violence/Initiatives/standards-of-practice/ [https://perma.cc/K7NX-H5MH] (last visited Nov. 10, 2023). These should be assessed for application to lawyers who work on these cases to ensure they, not just their clients, are safe. Where lawyers pose a safety threat, the applicability of these measures to their colleagues should also be considered.