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## Mainstream Legal Responses to Domestic Violence Versus Real Needs of Diverse Communities

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# **MAINSTREAM LEGAL RESPONSES TO DOMESTIC VIOLENCE VS. REAL NEEDS OF DIVERSE COMMUNITIES**

## **Keynote Speaker**

MARCIA ANN GILLESPIE  
*Editor-in-Chief*  
*Ms. Magazine*

## **Panelists**

HOLLY DEVINE  
*Domestic Violence Program Director,*  
*Barrier Free Living Domestic Violence Program*

LOUISA GILBERT  
*Co-Director, Social Intervention Group,*  
*Columbia University School of Social Work*

KIMBERLY A. MADDEN  
*Legal/Social Work Elder Assistance Program,*  
*Jewish Association for Services for the Aged*

JENNY RIVERA  
*Professor, CUNY School of Law*

AURORA SALAMONE  
*Director, Elderly Crime Victims Resource Center,*  
*New York City Department of Aging*

## **Moderators**

ELIZABETH MURNO  
*Assistant Director, Domestic Violence Law Project,*  
*Safe Horizon*

JESSICA F. VASQUEZ  
*Soros Fellow, Sanctuary for Families*

MS. DOUGLASS: It is my very great honor to introduce our keynote speaker. Marcia Ann Gillespie has served as *Ms. Magazine's*<sup>1</sup> editor-in-chief since 1993. In addition to her role as top editor, Ms. Gillespie was named the president of Liberty Media for Women L.L.C., a limited liability corporation comprised of women investors that purchased the magazine in November 1998.<sup>2</sup> She brings her vibrant creative vision and finely-honed business acumen to her role as pioneering journalist and corporate strategist.

Gillespie's association with *Ms. Magazine* dates back to 1980 when she became a contributing editor. She went on to become a featured columnist and, subsequently, the executive editor of *Ms.*, before being promoted to the top editorial position.

A trailblazer in the magazine industry as the editor-in-chief of *Essence*<sup>3</sup> from 1971 to 1980, Gillespie is credited with transforming the then-fledgling publication into one of the fastest-growing women's magazines in the United States.<sup>4</sup> During her tenure, *Essence* won a National Magazine Award,<sup>5</sup> the industry's most prestigious honor.

A vice president of Essence Communications, Inc. and a member of its board of directors, Gillespie was named one of the Fifty Faces for America's Future by *Time* magazine.<sup>6</sup>

At *Ms.*, Marcia Gillespie has made a priority of moving the discussion of feminism forward while keeping it real with readers. To those who think they know what *Ms.* has to say, she says, "Think again." A feminist who wears makeup and high heels, Gillespie says that *Ms.* is a welcome table for a range of voices and views. Under her leadership, the magazine has reached an ever-more-di-

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1. *Ms. Magazine* began as an insert in *New York Magazine* in 1971 and became a magazine in 1972. It is currently a landmark institution and source in women's rights. See, e.g., Nadine Brozan, *Party Marks the 10th Anniversary of Ms. Magazine*, N.Y. TIMES, June 24, 1982, at C6 (describing the history and development of *Ms. Magazine*).

2. Alex Kuczynski, *Ms. Is Bought By a Concern Led by Steinem*, N.Y. TIMES, Dec. 2, 1998, at C1.

3. Laurie Johnston, *Herbert Klein Named Chief Editor of Copley Chain*, N.Y. TIMES, July 21, 1980, at C16.

4. Georgia Dullea, *Essence Marks 15 Years of Serving Black Women*, N.Y. TIMES, Apr. 5, 1985, at B6.

5. *Letters; Women's Magazines*, N.Y. TIMES, July 13, 1980, at 31.

6. Lisa Wright, *Ms. Editor Opens Lectures Publishing Star "High-Heels Feminist"*, TORONTO STAR, Feb. 20, 1994, at A2.

verse readership, attracting increasing numbers of younger women to the fold.<sup>7</sup>

We are so happy and honored to have you. Marcia Gillespie.

**Marcia Ann Gillespie**

*Editor-in-Chief*  
*Ms. Magazine*

MS. GILLESPIE: Good morning.

The thing that always pulls me to this subject starts out being personal. I always talk about the moments in life that mark you. I was eight years old. I was eating a bowl of strawberry ice cream with my best friend on my grandmother's porch. It was a hot summer day. Suddenly, an argument erupted across the street between a husband and wife. I guess it started inside the house, moved to the porch, and spilled out into the street. Then he beat her and beat her up and down the street. Neighbors looked and no one did a thing. Finally, someone called the police. After the police came, they chatted awhile, got back in their car and drove away. Nothing happened—just another woman being beaten.

A year later that same woman was dead. Her husband had killed her one night in a drunken rage. I remember my father sitting at the dining room table and saying to me and my sister and my mom: "You know, the terrible thing is he will be out before you've even remembered he was put in jail, because no one really cares when a husband kills his wife." Sadly, that was true.

I think it is always important to declare, so let me declare. I had a boyfriend once. I was in college. I have a big mouth. I said something that clearly rubbed him the wrong way. We were going up a flight of stairs. One minute we were going up a flight of stairs having an argument, and the next moment I was flying down a flight of stairs. Never in my wildest imaginings did I think someone was going to raise their hands and strike me. I had never been struck by my father. I will never forget hearing him say "I'm sorry, I'm sorry," over and over again, after I pulled myself up off the ground, trying to figure out if anything was broken.

Thank God again, my dear father, his words echoed in the back of my head. He said to me, "You know, if a man hits you once, he's going to tell you he's sorry. He may even cry. But if you stay,

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7. See, e.g., *Ms. Magazine Adds an Editor*, N.Y. TIMES, Apr. 19, 1988, at D26 (discussing Ms. Magazine's increase in circulation from 450,000 to 500,000 and plans for further increases by January 1989).

he will hit you again; and pretty soon it will be like brushing his teeth—he won't even notice."

This is not an issue, therefore, that is distant from me. I am not the only person in this room who could stand and declare having had an incident, or more than one incident. I know there are people in this room who are victims and survivors. I know there are also people in this room who have been witnesses.

Everyone in this room is committed to making a difference. I am not a lawyer. I am not an expert in domestic violence. I do not run a shelter. I do not work in family courts. But I am an observer and an activist.

Forty-some years ago, when this phrase, "domestic violence," first appeared,<sup>8</sup> it was a shock because the silence was broken at last. We had given an unnamed factor of life a name. We were able for the first time to look at a phenomenon not as an isolated incident, but as something that was part and parcel of our society—domestic violence.

We have created a shelter system.<sup>9</sup> We have created laws never before on the books.<sup>10</sup> We have changed the way society views one of its most pervasive problems.

At the same time, although we have made several steps in the right direction, there are still many obstacles to overcome. Newspaper headlines, like the ones in the *New York Post*, often talk about a partner who goes on a killing spree and kills his wife, and perhaps even his children. The *Post* called it "love gone awry."<sup>11</sup> What's love got to do with this?

Far too often we still see news reports about someone with a restraining order whose husband or partner still managed to find

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8. ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF AMERICAN SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 45-52 (1987); see also N.Y. COMP. CODES R. & REGS. tit. 18, §§ 452-455 (1995) (providing for residential programs for victims of domestic violence in the State of New York).

9. Press Release 559-96, New York City Mayor's Office, Comprehensive Action Plan Endorsed by 50 Prominent Public-Private Partners: 100 New Domestic Violence Shelters to be Added, available at <http://www.nyc.gov/html/om/html/96/sp559-96.html> (on file with the Fordham Urban Law Journal).

10. See EVE S. BUZAWA & CARL G. BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 58 (1990) (discussing domestic violence reform); see, e.g., Interstate Travel to Commit Domestic Violence, 18 U.S.C. § 2261 (1994); Interstate Travel to Violate an Order of Protection, 18 U.S.C. § 2262 (1994); Interstate Stalking, 18 U.S.C. § 2261A (1994).

11. Tracy Connor, *Love's Slasher Strikes: Wounded S.I. Kid Saves Kin: Cops*, N.Y. POST, Jan. 31, 2000, at 7 (describing an attack as a "boxcutter blood bath in a lovesick frenzy").

them and murder them, often in front of their children—another statistic, another life lost.<sup>12</sup>

We know, too, that there is this still very pervasive feeling in many communities that this is a private matter we should not be intruding in, and the most important thing is to let families work out their problems.<sup>13</sup>

In this country today, we are seeing one of the greatest increases of immigration since the turn of the prior century.<sup>14</sup> We are seeing more and more people coming in from varying communities in which the whole conversation about domestic violence is yet to begin.<sup>15</sup>

We are seeing something else as well. We are seeing a period in this country where, for lots of reasons, people are feeling silenced about a domestic violence issue. They are feeling silenced for many reasons.

“I am a woman and an undocumented alien. I am terrified of going to the authorities. If I speak out to the authorities, I may end up in holding in a detention center en route back to the place I tried so desperately to leave.<sup>16</sup> I’m silent.”

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12. See, e.g., Donatella Lorch, *Suspect in Brooklyn Slaying Had an Order to Stay Away*, N.Y. TIMES, Apr. 6, 1990, at B3; see also Press Release, Office of the Governor of New York State, Governor Creates Commission to Study Domestic Violence Fatalities, Oct. 1, 1996 (“This year, in New York City and Long Island, we have witnessed seven brutal murders committed against women who had orders of protection out against a husband, ex-husband or boyfriend.”), available at <http://www.state.ny.us/governor/press/oct1.html> (last accessed Nov. 1, 2001).

13. BUZAWA & BUZAWA, *supra* note 10 at 43 (“It has long been established that there is a persistent bias against the use of arrest in domestic violence cases. In fact, the closer the relationship between the offender and victim, the less likely it is that an arrest will occur.”)

14. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, IMMIGRANTS IN THE UNITED STATES 2000: A SNAPSHOT OF AMERICA’S FOREIGN-BORN POPULATION 1 (2001) (stating that 28.4 million immigrants are in the United States, which represents a 43% increase in the immigrant growth rate since 1990. As a percentage of the population, immigrants now account for more than 1 in 10 residents (10.4%), the highest percentage in seventy years), available at <http://www.cis.org/articles/2001/back101.htm>.

15. Patricia A. Seith, Note, *Escaping Domestic Violence: Asylum as a Means of Protection for Battered Women*, 97 COLUM. L. REV. 1804 (1997) (describing the state of domestic violence laws and asylum procedures in the United States).

16. See, e.g., Mae M. Cheng, *Sent Back To Serbia/Asylum Request Rejected*, NEWS-DAY, Aug. 10, 1997, at A04 (reporting that a battered woman who killed her husband in self-defense was deported).

"I am a woman who speaks very little English, and therefore the whole maze of who to call and who to talk to, eludes me because I am distanced by the barrier of language."<sup>17</sup>

"I am an African American woman living in this country, only too aware that more African American men spend time in jail than spend time outside of jail.<sup>18</sup> I worry that I am merely adding to an overburdening problem, one which reverberates on me and my community and family in a thousand different ways."

"I am an old woman in need of constant care from family members. I am being abused by a member of my family, and I am shocked and ashamed and vulnerable, and I fear if I turn in my family member, I will end up institutionalized someplace, and that is the last thing that I want."

There are lots of reasons we still see silence.

"I am a well-to-do woman living a relatively 'privileged and affluent' life, and the price of that privileged and affluent life is that my husband knocks me around on occasion. But I am terrified of what would happen to me and my children if I stepped out and spoke out, losing the things that have kept me comfortable even in my pain."

We are still silent because the truth is we have cobbled together a system of protection. We have cobbled together something out of nothing. Yet, the fact remains that for many of us that system is still not strong enough or secure and it is terribly frightening.

"Why should I have to leave my home? Why should I have to leave my home to be safe?" is what women ask. "Why should I have to abandon everything I have known in order to be safe?" a woman asks. "Why should I have to uproot my children and end up in sometimes unsafe environments for all of us while fleeing an unsafe environment in my home?"

We know the problem is still larger than our solutions. Within the judicial system there are still judges who do not get it, who do not understand what we are talking about and who still want to blame and dismiss and belittle the problem.<sup>19</sup> And we know some-

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17. Chris Hogeland, *Immigrant Women in United States History*, in *DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN V-2* (Deeana Jang et al. eds., 1991).

18. Jerry Seper, *Prison Population in U.S. Expected to Top 2 Million*, WASH. TIMES, Apr. 21, 2000, at A4.

19. See, e.g., Lisa C. Smith, *Prosecutors Tried to Protect Abused Women*, N.Y. TIMES, Mar. 6, 1996, at A20 (positing that Judge Lorin Duckman "sought to turn the clock back 30 years to a time when the credibility of women was automatically challenged in cases like this" and that Judge Duckman's actions contributed to the later

thing else, that the cycle of violence does not start or stop with one person; it is a continuing spiral that affects generations after generations after generations.<sup>20</sup>

Whatever we are doing when the violence is happening does not address the fact that we have to get to the root of the problem. We are managing band-aids, but still not getting at why people strike out and hurt each other. We have not moved to make anger management something like reading, writing, and arithmetic, something taught and discussed from the time we are little people throughout our adult lives. We cannot just pretend that if we do not talk about the root of this problem we are going to get to the real root of the solution.

You know I am the editor-in-chief of *Ms. Magazine*. That means I am a feminist, does it not? I know in America today, that is the biggest “F” word you can come up with. “Spawn of the Devil,” if you listen to some folks talk about people like me.

I am perfectly willing to take whatever they want to call me, because until we really look at issues of power and control—the distortion of what power is, the distortion of what that means—we are never going to get this problem solved.

I am going to talk about patriarchy<sup>21</sup> because that is part of what I do all the time. Let me be clear. I am not talking about men. I am talking about the system that we all live under—not men bad, women good. This is about a system that is corrupting.

It is corrupting because it is a top-down system. When I listen to some of the more conservative congressmen going on their family values crusades, those interminable family values guys, they always want to do this thing about the “nuclear” family. There needs to be a “head” of the family and a “foot.”<sup>22</sup> You know, when Louis

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murder of the victim when the abuser was released on low bail). See also Richard J. Gelles, *Public Policy For Intimate Violence and Child Maltreatment: A Few Successes, Many False Promises*, 69 UMKC L. REV. 25, 26 (2000) (“[P]olice, prosecutors, and judges were not just indifferent to domestic violence, some were outright hostile toward the female victim. I personally heard one judge, after listening to the testimony of a victim of a beating at the hands of her husband, lean over the bench and say to the husband, ‘If she were my wife, I would have done the same thing.’”).

20. LENORE E. WALKER, *THE BATTERED WOMAN* 55 (1979).

21. Patriarchy is defined as “a form of social organization in which the father or eldest male is the head of the family and descent is reckoned through the male line.” *THE CONCISE OXFORD DICTIONARY* 1046 (Judy Pearsall ed., 10th ed. 1999).

22. Mike Hendricks, *Cultural Civil War Draws Concern of Conservatives; They Perceive a Moral Decline in U.S., with Many Issues as Dividing Lines*, *KANSAS CITY STAR*, Dec. 10, 1995, at A1.



Farrakhan went on his Million Man March,<sup>23</sup> he was talking about the “head of the family” and that stuff.

But do you know what that means? If there is a top, there has got to be a bottom. So who is on the bottom? It is the children and women.

Essentially, patriarchy presupposes there is a top; there is a bottom, and men are supposed to be the on the top.<sup>24</sup>

In truth, it boxes everybody. It puts men in a “manhood box,” a box that says how one is supposed to behave, how one is supposed to express one’s emotions and what emotions and feelings one is supposed to cut off. We, as women, participate in this “boxing” by the ways we raise our sons, the ways we help perpetuate the roots of the tyranny that come back to bite us. We say to little boys, “You shouldn’t cry.” We say to little boys, “You have to be tough, you have to be strong, you have to really be silent,” that there is a whole range of soft emotions not supposed to be part of the manhood thing.

We raise a lot of men who have such tight strictures around their hearts and emotions that the only ways that they have learned to act those feelings out is through something physical. So we see men who think sex is the same thing as saying “I love you,” but in fact sex is sex and saying “I love you” is very different. We see men who think hitting is the only way they can get out all the other feelings they have. We see men who close down and are unable to engage in the kind of conversations that women, who are socialized to be verbal and not to be physical, look to in our relationships.

We want to know how men feel. Men want to know why we ask them those questions. We want to talk about feelings. Men have been trained not to express feelings. We, therefore, often end up at loggerheads, because men have great trouble talking about their fears, their pains, their uncertainties. When we begin to challenge them on these areas, they often lash out.

The causes of domestic violence are clear when you consider the rules dictating human behavior. Domestic violence is no secret when we have trained women to be passive-aggressive. That is part of what patriarchy does. Girlfriends, do not be mad at me when I say this. We often do not say what we really mean, but move to get what we really want. We do it in indirect ways. We do it by “going

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23. Don Terry, *Family Values; Marching to the Beat of a Million Drummers*, N.Y. TIMES, Oct. 15, 1995, at 1 (discussing the values likely to be espoused during Louis Farrakhan’s Million Man March of October 16, 1995).

24. THE CONCISE OXFORD DICTIONARY, *supra* note 21.

cold,” when we really want to move someone. We do it by not expressing what is really most on our minds, but doing it outside or in another room or talking under our breaths. The one thing I always remembered about my mother was that I could always tell when she was really pissed with my father—not because of what she said to him, but because she usually went around humming one particular song for the next two days, until she had either worked it out or moved on.

This results in people unable to communicate openly and honestly about how they feel and what their needs are. We create pressure cookers.

We also create pressure cookers because we say to men, “You are not a man if you do not earn a certain amount of money. You are not a man if you are not bringing that money regularly into a household. You are not a man if you are not being ‘respected’ and deferred to by other men in the world. You are not a man if you cannot shoulder your burdens.”

So what happens when that man loses his job? What happens when he gets passed up for promotions? What happens when he has to always pretend “I am okay, I am okay, I am okay,” and meanwhile everything around him and inside of him is crumbling?

We need to look at the roots.

We also need to look at other things going on in this society. We need to look at the fact that we have a society that commercializes women, that turns us into pieces of meat, that uses our bodies to sell automobiles, paint, computer parts—you name it. That commercialization symbolizes that women are sexually available at all times, that women are to be looked at strictly in terms of their physicality, that whatever else is going on with them really is not important. We have allowed a society where men find it perfectly acceptable to make comments about a woman’s body to her face and behind her back, which only furthers the notion that women are nothing but pieces of meat to be used, to be handled, to be moved around.

Good men collude with this. Good men collude with this because when they are out with other guys and the other guys make comments they know are wrong, they tend to be silent, because you do not want to end up perhaps in a physical confrontation with someone, because it can go there. In the meantime, we set up something that feeds into what we call domestic violence.

What else do we do? We have created a whole industry of music that talks about women as “bitches” and “whores.”<sup>25</sup> I have heard a phrase more times in the last several months than I thought I would hear in my life, when people talk about “bitch slap.” You know what I mean? “I think I might have to bitch slap somebody.” I hear women using the term and I hear men using the term. Every time I hear it, I shudder inside, because that is not a joke phrase to me. That is about what really does go on in so many households in this country. We are now moving to accept language that in fact helps to perpetuate the violence that we seek to stop, and nobody is speaking out and saying “enough.”

The other day on the subway I was coming back from work late, having had one of those crazy days. I am sitting on the subway and doing what everybody does—you know, how we go into the zone? You know the zone, the subway zone?—and, all of a sudden, I had to hear—I must have heard the “B” word at least five times before it penetrated. A group of young people, all together, standing up talking, and every other word out of one young man’s mouth was the “B” word. The young women he was talking with were going right along with the program. He kept going on and on, until finally—I know people say you should not do these things because you could get into trouble, but I have come to that stage in my life, because I am now way into my fifties, where I feel like I have to go to that place where my grandmother used to be, which is “Uh, uh, I have to be the crazy black woman,” all right?

I got up out of my seat and I walked over there and I said to these young people: “You know what? I really have a problem here because every time you use that ‘B’ word part of me just dies. It is like using the ‘N’ word. It is the worst kind of insult I can think of. While you all do not seem to mind it, I mind it a lot, and I would like you not to use that word.”

Well then, of course, I had to get the “You should mind your own business.” And I am at the place that is “You are my business. You are my business. You could be my children. I care about you. I want you to understand what happens when you use this word, what you are saying about all women, what you are saying about yourselves, what you are saying about your mother.”

Then we had the best conversation. For four stops our conversation went. Other people in the car joined in the conversation. We had a consciousness-raising session on the subway.

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25. Greg Kot, *Teens' Take on Eminem: It's the Beat . . . It's Outrageous*, CHI. TRIB., Feb. 18, 2001, at 16 (discussing teenagers' reactions to rap lyrics).

My point is that people use language without thinking about it, because when you take something and you make it commonplace, you do not think about how you are using it, it just becomes part of the vocabulary. We have to make people conscious of what they are saying. We have to remind them words have power, words can kill, words set up situations where violence occurs, where people are demeaned.

We also need to do something else. I ask everybody to be a bit crazier, if you will, in terms of remembering we are supposed to be each other's keepers, we are supposed to take responsibility for others around us, and that part of the way we do it is by stepping up to the plate and speaking out, by stepping up and writing to the *New York Post*<sup>26</sup> and reminding them that "love gone awry"<sup>27</sup> is an improper way to describe acts of violence.

We have to do it by reminding our judiciary system that judges who consistently believe this is not an issue to take seriously need to be reprimanded. We should be asking for them to be removed from the bench. We cannot be passive about the ways we contribute to the violence we are trying to stop in society.<sup>28</sup>

We have to be clear about the kinds of laws we enact. For example, the kinds of laws we have seen in a lot of states now, where, regardless of whether a woman wants to press charges or not, the process moves forward.<sup>29</sup> We have to know that woman who did

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26. See Connor, *supra* note 11 and accompanying text.

27. *Id.*

28. For an example of efforts to remove judges based upon their handling of domestic violence cases see Adam Nossiter, *Brooklyn Judge Taking Time off Amid Escalating Criticism*, N.Y. TIMES, Feb. 24, 1996, at A2.

29. CONN. GEN. STAT. ANN. § 46b-38b (West Supp. 1994); MO. REV. STAT. § 455.080(2) (1986); see also, e.g., D.C. CODE ANN. 16-1031 (Supp. 1993) ("A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person: (1) Committed an intrafamily offense that resulted in physical injury . . . ."); KAN. STAT. ANN. § 22-2307 (Supp. 1993) ("The officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed."); NEV. REV. STAT. § 171.1225 (1991) (requiring officers to inform suspected victims of acts of domestic violence that "if I have probable cause to believe that an act of domestic violence has been committed against you in the last 4 hours I am required, unless mitigating circumstances exist, to arrest immediately the person suspected of committing the act"); N.J. STAT. ANN. § 2C:25-21 (West Supp. 1993) ("The law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence . . . ."); OR. REV. STAT. § 133.055(2)(a) (1993) (noting that "the officer shall arrest and take into custody the alleged assailant or potential assailant"); R.I. GEN. LAWS § 12-29-3(B) (Supp. 1993) ("When a law enforcement officer responds to a domestic violence situation and has probable cause to believe that a crime has been committed, . . . the officer shall arrest and take into custody the alleged perpetrator (in certain situations) . . . ."); 16 V.I. CODE ANN. § 94 (1991) (noting that an officer "shall make an arrest without a war-

not speak out may have some very valid reasons for not wanting to speak out. We cannot just make “one size fits all” laws for something as complicated as domestic violence.

We also need to have those who advocate for survivors and victims spend more time listening to survivors and victims talk about their issues and needs, as opposed to us doing the patriarchal thing, which is moving top-down, deciding for them what is in their own best interest. It is still infantilizing women. We need to stop infantilizing them and listen, which is why it is so important to have conferences like this.

Most importantly, experts are not just people with degrees. Experts are people with the life experience of the problem. They know what is going on and they often feel they have been both helped and victimized by systems supposedly set up for them.

What do we want our children to learn in schools? We want them to learn to read and write and use computers and do math. We want them to turn into good citizens of this country. Part of that is helping them to learn how to express themselves in ways that create peaceful environments and not violent ones. We want to have, after the reading, writing, and arithmetic, time for socialization skills and training, something we should be, as activists and advocates, really pushing for in our societies.

We also need to pressure politicians who continue to view domestic violence in a wrong light. They are so busy trying to demonize the women’s movement, they often end up demonizing this issue along with the rest of us. This is not an issue we can allow them to play with like political football. This has nothing to do with religion or faith in America. It is about the safety and security of half of the population of this country<sup>30</sup>—more than half when we add in the children.<sup>31</sup>

Last, but certainly not least, we need to push the Governor of New York to look more closely at the numbers of women still in

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rant if the officer has probable cause to believe that a misdemeanor or felony involving domestic violence . . . has been committed”). See also Donna M. Welch, *Mandatory Arrest of Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?* 43 DEPAUL L. REV. 1133, 1153 (1994) (discussing the effect of mandatory arrests laws on domestic violence).

30. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, USA STATISTICS IN BRIEF 4 (2000) (indicating that women make up 50.1% of the population in the United States), available at <http://www.census.gov/statab/www/part1.html> (last modified Apr. 12, 2001).

31. *Id.* (indicating that women and children under eighteen make up approximately fifty-six percent of the population of the United States).

prison because they were victims of domestic violence who struck back.<sup>32</sup> We end up making the victim pay twice and that is wrong.

We can make a difference if we choose to. I think the bottom line for me is always this: I know that, as a woman, every day, my life is prescribed by violence—not because the violence is happening to me, but because we have a society in which violence against women is all too common.<sup>33</sup>

Like every one of you, I know the precautions to take. When I get into an elevator and am the only one there, and a man gets in the elevator on the next stop, I move closer to the buttons. When I walk down the street, and the street is semi-deserted, and I hear footsteps behind me and recognize the footsteps are men's, I walk faster or I cross the street. I always keep my keys where I can reach them. In the evening, I try to find the most well-lit part of the parking lot, and if I cannot, then I go to my car with caution and trepidation. When I walk through Central Park, I am constantly aware of who is around me at all times, where I am, the fact this particular path may look inviting, but is a little too isolated and deserted for my taste.

When I am in a relationship, I constantly test the person to see if can we have disagreements and move on. I ask myself: Is he too controlling? Am I acquiescing to things I never would if not in this relationship? Who am I? Who is he? How are we behaving with each other?

I am a woman in this society, and being female has become almost synonymous with being a victim, and that is unacceptable. I am very angry, because I should be able to take a walk in the evening through a park. I should be able to go anywhere I want to, dressed anyway I wish and be safe. I should know when I put my key in my front door, that when I walk inside, my home is a peaceful place. I should know that if I am a victim of domestic violence, I am not going to be victimized twice by the society at large.

We have work to do.

Now, we have had great victories. We have a name for something that had no name.<sup>34</sup> We have facilities to take and shelter us

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32. Philip M. Genty, *Re-Victimizing the Victims: Domestic Violence and the Incarceration of Women*, N.Y. L.J., Mar. 10, 1997, at 2.

33. AM. PSYCHOLOGICAL ASS'N, *VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* 10 (1996).

34. See Domestic Violence Prevention and Services Act of 1980, H.R. 1977, 96th Cong. (1980) (exemplifying an early use of the term "domestic violence").

when we need shelter.<sup>35</sup> We have lawyers and other advocates who understand the problem, who will take our side.<sup>36</sup> We have created circles of support from one end of this country to the other.<sup>37</sup>

Yet, the problem still persists. As long as there is a woman crying, a woman with black eyes, a woman with broken bones, we will be always charged—not simply to be vigilant, but to keep moving the discussion forward.

Before I leave, I want to sing the praises of one woman. She was one of my heroes. I always believe we should celebrate people we think have made major changes in the world. That woman's name was Fannie Lou Hamer.<sup>38</sup> While I think she should be a household name—in fact, I think there should have been a statue put up in Washington, D.C. for her—there is not a statute and she is not a household name. The late, great Fannie Lou Hamer from the Mississippi Delta.

Mrs. Hamer was one of the first people to become involved in the civil rights movement in Mississippi. She had worked as a sharecropper with her husband for years and, because of her involvement with the Civil Rights movement, she and her husband were kicked off the land they had worked.<sup>39</sup> She organized people and tried to get them to vote.<sup>40</sup> One evening, her car was side-swiped by a group of men, who pulled her out and beat her almost to death. She walked with a major limp for the rest of her life.

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35. See, e.g., NEW YORK COMP. CODES R. & REGS, tit. 18, § 408.3 (2001) (providing that “A social services district must offer and provide temporary shelter and emergency services and care at a residential program . . . to victims of domestic violence . . .”).

36. *National Legal Aid Defender Association, LSC Grantees Combat Domestic Violence* (1997) (explaining nationally funded legal defense activities of the Legal Services Corporation including handling 250,000 cases involving domestic violence), at <http://www.nlada.org/g-fact2.htm> (last accessed Oct. 30, 2001).

37. SUSAN KAKAR, DOMESTIC ABUSE: PUBLIC POLICY/CRIMINAL JUSTICE APPROACHES TOWARD CHILD, SPOUSAL, AND ELDERLY ABUSE 435-36 (1998) (listing nationwide support services for battered women).

38. Fannie Lou Hamer was a principal organizer of both the Freedom Summer voter registration project and the Mississippi Freedom Democratic Party (“MFDP”). See KAY MILLS, THIS LITTLE LIGHT OF MINE: THE LIFE OF FANNIE LOU HAMER 97, 108 (1993). The MFDP challenged the credentials of the all-white Mississippi delegation at the 1964 Democratic National Convention. See *id.* at 131-32. The daughter of a Mississippi sharecropper, Hamer’s transformation from victim to activist is one of the most compelling stories of the movement. *Id.*

39. Interview with Fannie Lou Hamer, Mississippi Oral History Program, University of Southern Mississippi (Apr. 14, 1972).

40. See MILLS, *supra* note 38, at 97.

At the infamous Democratic Convention in Chicago in the 1960s,<sup>41</sup> Mrs. Hamer led a delegation of poor black people from the state of Mississippi to challenge the way delegates had been selected to the Democratic Party.<sup>42</sup> Because of that challenge, she helped reform that party's whole system.

When the women's movement came along, Mrs. Hamer once said to me: "You know, baby, I don't think I can spell that word feminism, but I sure know what it means." Mrs. Hamer talked about it in terms of justice for women, the bodies of which were constantly being fished out of lake near where she lived. Women had been battered and beaten and left broken and dead and then thrown into this lake to float up days or weeks later, women whose killers were never identified.

Mrs. Hamer understood feminism meant not just choices for women, but laws that work for women and keep them safe.

"Mrs. Hamer," I once said to her, "how do you keep going?" Because most of the issues she struggled with were still on her plate when she was dying. She said to me, "You know, darlin', I have a story to tell you and maybe it will help."

I am going to tell you the story because I know doing this work is not easy. I know there are many times you feel you have a mountain that seems to loom larger, instead of smaller, every day.

The story she shared was this. There was an old woman who was blind and very wise. People from miles around would come to her for advice. Invariably, the advice she gave was so good that her reputation grew. One day, two kids decided to play a joke on her. They said, "You know what we will do? We will catch a bird and we are going to bring this bird in our hands to her and we are going to ask this blind woman, 'Is this thing in our hands living or is it dead?' If she says it is alive, we are going to smother the bird. If she says it is dead, we will let the bird fly free." A sick joke.

They caught the bird. They brought the bird in their hands, closed tight so it could not make any noise. They said to this old woman sitting in her rocking chair, "We have a question for you. We have something in our hands and we want to ask you is it living or dead?" The old woman sat and rocked awhile, and finally she said, "You know, I do not know. All I know is it is in your hands."

Mrs. Hamer believed we all have birds in our hands. Birds for the issues we believe in, the struggles we engage in, the things we

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41. *See id.* at 131-32 (discussing the MFDP challenge to the credentials of the all-white Mississippi delegation at the 1964 Democratic National Convention).

42. *Id.*



hold dear to our hearts. Every day we make a decision whether those birds are going to live or die.

You are making a decision by trying to come at this issue with new thinking, new solutions, and more sensitivity to the fact that there are many, many reasons why we are still silent, and men still lift their fists in rage. But together, day by day, if we tend the bird, we will find a way to make this an issue of which our children's children will say, "You know, once upon a time, in a place called America, there used to be something called domestic violence."

Thank you.

**Aurora Salamone**<sup>43</sup>

*Director*

*Elderly Crime Victims Resource Center  
New York City Department of Aging*<sup>44</sup>

MS. SALAMONE: I am here to speak about elder abuse.

Domestic violence is usually conceptualized as the battering of young women. Victims of family violence, however, are not always young.<sup>45</sup> Spouses who batter do not stop at age sixty, and they often teach their sons and daughters to emulate their behavior. These sons and daughters sometimes grow up to abuse their elders.

Over the past twenty years, policymakers, social service providers, and law enforcement personnel have grappled with domestic violence. Elder abuse is part of the domestic violence agenda and separate from it. It is part of the domestic violence agenda because it includes family mistreatment. It is separate because it has its own dynamics and often encompasses non-family relationships. Social services for elderly victims of abuse have developed very distinct networks from social services for victims of domestic violence.<sup>46</sup>

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43. Aurora Salamone is the Director of the Elderly Crime Victims Resource Center at the New York City Department for the Aging.

44. The Elderly Crime Victims Resource Center provides direct services to elderly victims. *See, e.g.,* Michael T. Kaufman, *Reports of Elder Abuse Flow in a Tragic Stream*, N.Y. TIMES, Nov. 6, 1993, at 27 (describing the Elderly Crime Victims Resource Center as an organization dealing with complaints of elder abuse involving physical violence as well as psychological and financial pressures).

45. U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING PROGRAM, NATIONAL INCIDENT-BASED REPORTING SYSTEM 281 (indicating that 80.1% of the victims of family violence were eighteen years of age and older).

46. BRIAN K. PAYNE, CRIME AND ELDER ABUSE: AN INTEGRATED PERSPECTIVE 121-23 (2000).

Elder abuse services were initially developed to address a problem seen as resulting from the stress of caring for frail relatives.<sup>47</sup> Since seniors were seen as frail dependents, professional services were framed on the child abuse model.<sup>48</sup> Older victims were seen as incompetent and unable to make decisions for themselves. Services were developed to help protect these vulnerable victims.

Domestic violence services, epitomized by battered women's shelters, emerged from the feminist movement of the early 1980s.<sup>49</sup> Domestic violence services rest on the premise of empowerment and self-determination. Rather than relying on professionals, battered women themselves were seen as the experts.

Since elder abuse and women battering have been conceptualized in different ways, the responses to these forms of abuse by policymakers, the medical and legal establishment, and service providers have taken divergent paths.

In the United States, an estimated two million older persons are abused, neglected, and financially exploited each year.<sup>50</sup> Most experts believe this number may only be the tip of the iceberg, since many victims cannot report their abuse and have no one to report it for them.<sup>51</sup>

An American Academy of Family Physicians report states: "We are losing our elders to an epidemic rarely talked about or even acknowledged, an epidemic that leaves some ashamed, some afraid, and too many dead."<sup>52</sup>

Studies indicate only one of every fourteen cases of elder abuse is reported.<sup>53</sup> In the next twenty-five years, there will be unprece-

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47. KAKAR, *supra* note 37, at 362.

48. PAYNE, *supra* note 46, at 121-23.

49. E.g., Susan A. Lentz, *Revisiting the Rule of Thumb: An Overview of the History of Wife Abuse*, in *WOMEN AND DOMESTIC VIOLENCE: AN INTERDISCIPLINARY APPROACH* 23 (1999) (finding that "[b]y the 1960s, a new women's movement and a new feminism challenged old stereotypes and attitudes . . . . It is the protection of these [battered] women that was the concern in the many grass roots movements to provide shelter and services that began in the 1970s.").

50. The National Center for Elder Abuse provides technical assistance to State Units on Aging in the prevention of elder abuse, neglect, and exploitation. See, e.g., *Testimony of Fernando M. Torres-Gil, Assistant Secretary for Aging, Department of Health and Human Services Hearing Before the S. Spec. Comm. on Aging*, 103rd Cong. (1994), reprinted in *Federal News Service* (Apr. 12, 1994).

51. KAKAR, *supra* note 37, at 357.

52. American Academy of Family Physicians News Release: *Talk to Your Family Physician About Elder Abuse*, Oct. 18, 1999, available at <http://www.aafp.org/news/991018nr.html>.

53. PAYNE, *supra* note 46 at 37 (citing C.H. Bruce, *Elder Abuse*, 7 J. OF AMER. ACAD. OF PHYSICIAN ASSISTANTS 164, 170-74 (1994)).

dented growth in the number of older citizens.<sup>54</sup> By the year 2030, twenty percent of our population will be over age sixty-five.<sup>55</sup>

I would like to share with you a case we handled in my office. Mary lived with her forty-six-year-old mentally ill son Richard. He had been in and out of psychiatric hospitals since he was ten years old. Richard had never held a job for more than six months at a time. He had been on and off his medication. When he felt good, he stopped taking his medication. He spent his days sleeping and watching TV. In the evening he went to bars and clubs to pick up women. He demanded his mother give him money; she usually complied. Mary was seventy-nine years old and continued to work to support herself and Richard. The police were called to Mary's house on numerous occasions, but Mary never pressed charges.

On the way home from work, Mary saw an elder abuse poster on the subway. She contacted the Department for the Aging and started seeing a social worker for counseling. Mary's primary concern was for her son's well-being, never for herself.

After many months of counseling, Mary informed us that she had her son arrested. He had raised a chair over her head and threatened to kill her.

Mary had a stipulation in her will that if her son killed her, he would be disinherited. He knew that.

Richard was taken to a hospital psychiatric ward. Mary filed for an order of protection in both family court and criminal court.<sup>56</sup> Richard contacted her repeatedly and threatened to kill her when released from the hospital.

After six weeks, Mary received a call from the hospital psychiatrist, insisting Richard was no longer violent, that he was now stable and could come home. Mary wanted Richard to be placed in a different residential setting. She told the hospital she would not take him back. The discharge planner contacted Mary again and told her if she did not take Richard back, Richard would go to a homeless shelter.

Mary called the domestic violence officer in her police precinct for help. The officer was informed she had an order of protection

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54. *Id.* at 21 (citing J. Treas, *Older Americans in the 1990's and Beyond*, 56 POPULATION BULL. 246 (1995)).

55. KAKAR, *supra* note 37, at 364.

56. N.Y. FAM. CT. ACT §153-c (McKinney 1981) (prescribing a procedure for obtaining a temporary order of protection at the family court); N.Y. CRIM. PROC. LAW § 530.12 - 530.13 (McKinney 1999) (establishing procedures for protecting victims of family offenses).

and that Richard threatened her throughout his stay at the hospital, and the hospital was about to discharge him.

Richard was arrested upon discharge for violating the order of protection. Richard spent a year and a half on Rikers Island awaiting trial. He was offered a plea bargain and reduction of charges, in return for his agreement to accept residential treatment. He refused. The district attorney's office made this offer numerous times because they knew Richard's mother did not want him arrested. But Richard continued to refuse. He was convicted of larceny and aggravated harassment and will spend four years in an upstate prison.

Mary passed away last year, but for the last year and a half of her life she was abuse-free. Mary never wanted Richard punished; she wanted him to get help, but he refused.

I would like to describe to you a survey we took looking at 600 cases. We looked at domestic violence victims requesting assistance from the Department of Aging's Elderly Crime Victims Resource Center.<sup>57</sup> We wanted to develop a profile of elder abuse involving perpetrators who are mentally ill, substance abusers, suffering from dementia, or having no identified pathologies or impairment. We wanted to examine the relationship between abusers' pathology and their forensic histories. We wanted to see if elder abuse victims of impaired abusers were different from victims of abusers with no identified pathology.

Thirty percent of the abusers had no mental health issues.<sup>58</sup> Seventy percent of the abusers had more than one indicator or diagnosed mental health issue.<sup>59</sup> Mental health issues include alcohol abuse, drug abuse, mental illness, and chemically addicted dementia and confusion.<sup>60</sup>

In the case of elder abuse, victims are both men and women, but in this study we found they are overwhelmingly women, having an average age of seventy-seven, and usually living with their abuser.<sup>61</sup>

The victims whose perpetrator had a mental health issue were not willing to accept services unless we provided services to the

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57. Pat Brownell et al., *Mental Health and Criminal Justice Issues Among Perpetrators of Elder Abuse*, 11 *J. OF ELDER ABUSE & NEGLECT* 81-94 (1999) (describing a survey conducted by the Elderly Crime Victims Resource Center that suggested that the pathology or impairment of the abuser may be a stronger predictor of elder abuse than characteristics of the victim).

58. *Id.* at 81.

59. *Id.*

60. *Id.*

61. *Id.*

abuser. Victims whose abusers had no impairments by contrast, would proceed with getting help for themselves and pressing charges against their abuser.<sup>62</sup> These results forced us to no longer see the victim as our only client, but the abuser as our client as well, because we could not help the client unless we found alternatives to assist that abuser.

### Questions and Answers

QUESTION: Could you address some of the legal barriers elderly victims of abuse face, in terms of the legal remedies available, how they may be under-used, and how to improve legal access to the courts?

MS. SALAMONE: There is a recently enacted piece of legislation called Kendra's Law.<sup>63</sup> It requires hospitals designated as having ACT teams—teams of social workers, psychiatrists, and case workers—to go out and supervise people with mental illness, who have had two hospitalizations in the last thirty-six months and are deemed dangerous to themselves and to others.<sup>64</sup> Victims can petition to have the court mandate that abusers become part of this program, and they can also petition abusers be required to take medication forcibly.<sup>65</sup> You can find out more information through the New York City Department of Mental Health Alcoholism Office.

QUESTION: There are apparently forty-two states that enacted mandatory reporting requirements of elder abuse by certain professionals.<sup>66</sup> New York is not one of them. I believe such a requirement has been debated in the past but never enacted. Could you comment on the pros and cons of such legislation? Would it create a barrier or help elderly victims overcome barriers?

MS. SALAMONE: When elder abuse first came to light, it was a professional-defined problem, and the thrust was to resolve the

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62. *Id.*

63. N.Y. MENTAL HYG. LAW § 9.60 (McKinney 1999) (providing for involuntary outpatient commitment for mentally ill individuals).

64. *Id.* § 9.60(b)(4) (prescribing criteria for outpatient treatment).

65. *Id.* § 9.60(e)(1) (setting up categories of petitioners allowed to petition courts for an order authorizing assisted treatment).

66. Melinda Young, *Recognizing the Signs of Elder Abuse*, PATIENT CARE, Oct. 2000, at 62 (noting that forty-two states have mandatory elder abuse reporting laws, with health care professionals most likely to be identified as mandatory reporters). Eight states (Colorado, Illinois, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wisconsin) make elder abuse reporting voluntary. ADMIN. ON AGING, U.S. DEP'T OF HEALTH, NATIONAL ELDER ABUSE INCIDENT STUDY; FINAL REPORT 1-2 (1998), available at <http://www.aoa.dhhs.gov/abuse/report/main-pdf.htm>.

problem as quickly as possible. One way to do that was to model it after child abuse laws. Most mandatory reporting laws around the country are modeled on child abuse law.<sup>67</sup> Recent studies have indicated that mandatory reporting requirements are not effective because they are just a reporting mechanism<sup>68</sup> without a built-in enforcement component.

You could set up an 800 number and require people to call and report to generate numbers, but, in reality, adults can refuse to accept services. So you can have social workers going out to people's homes and that client can technically refuse to allow you to come into their home.

Studies have found that mandatory reporting limits the victim's access to services. If victims know that if they go to the hospital and a doctor sees a black eye, the doctor is mandated to report this, they will not go for treatment, because the abuser, who usually is a family member or a child, is going to be arrested.<sup>69</sup>

Several studies have found that mandatory reporting laws are not really effective.<sup>70</sup> They are only effective to generate numbers.<sup>71</sup> It makes much more sense to educate older people that they do not have to be in an abusive situation, and that agencies can provide service to them if they want.

QUESTION: There seems to be great emphasis placed on identifying the causes of elder abuse. It is often attributed to caregiver stress. Do you feel this emphasis on caregiver stress creates a barrier?

MS. SALAMONE: Historically, definitions for elder abuse were formed by professionals. They focused on impaired clients and lumped impaired clients with non-impaired clients, and came up with caregiver stress<sup>72</sup> as the root of elder abuse. Research has proven caregiver stress does not cause elder abuse. The pathology of the abuser causes elder abuse.<sup>73</sup>

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67. Rosalie Wolf, *Understanding Elder Abuse & Neglect*, *AGING*, Mar. 1996, at 4.

68. *Id.*

69. Dean Schillinger, *In Opposition of Mandatory Reporting*, *WEST. J. OF MED.*, Aug. 1999, at 123.

70. M. Rodriguez et al., *Patient Attitudes About Mandatory Reporting of Domestic Violence—Implications for Health Care Professionals*, *WEST. J. OF MED.*, Dec. 1998, at 337.

71. *Id.*

72. See, e.g., Bonnie Brandl & Tess Meuer, *Domestic Abuse In Later Life*, 8 *ELDER L.J.* 297, 305 (2000) (discussing the relationship between caregiver stress and elder abuse).

73. *Id.* (indicating that research has demonstrated that in most cases elder abuse was caused by factors other than caregiver stress) (citing RISA S. BRECKMAN & RON-

QUESTION: I have a question on elders with Alzheimer's disease. It seems they often perceive they are being abused when in fact they are not. How do you screen out people making claims not based on true facts?

MS. SALAMONE: An astute social worker would be able to determine whether the client has an organic disorder. However, people with organic disorders can still be victims of abuse. It is very hard to determine whether these people are actually abused. A good case worker can do that and then ferry the case out to a mobile geriatrics team or PSA.

QUESTION: Could you just say what PSA stands for?

MS. SALAMONE: PSA recently changed their name. They are now called Adult Protective Services.<sup>74</sup> This is a legislatively mandated agency charged with providing services to anybody over age eighteen who has either physical or mental impairment, is unable to take care of themselves with nobody willing or able to assist them, and is a danger to themselves or to others.<sup>75</sup> It could be anybody over the age of eighteen that meets that criteria. The agency determines on a case-by-case basis whether to pursue legal intervention, petition for guardianship, or pursue other means.<sup>76</sup>

The agency does not have the power, though, to remove a client from an abusive situation.<sup>77</sup> They cannot go in there and just take them out and put them in an institution.<sup>78</sup> Even if they meet all of those criteria, clients can still refuse services unless Adult Protective Services proceeds with a guardianship case.<sup>79</sup>

QUESTION: What remedies are available to elder victims of abuse when shelters turn them away?

MS. SALAMONE: The majority of seniors own their own homes or apartments in their name in which they have lived for many years.<sup>80</sup> It is difficult to even bring up the topic of moving or

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ALD D. ADELMAN, STRATEGIES FOR HELPING VICTIMS OF ELDER MISTREATMENT 28-29 (1988)).

74. Erika Kinetz, *For the City's Elderly and Mentally Ill, Adult Protective Services Is Often the Last Stop Before The Street*, N.Y. TIMES, Sept. 9, 2001, at 12 (describing Adult Protective Services as an agency mandated to provide a range of services for the elderly and mentally ill, including helping people get access to medical care, financial assistance, get in touch with relatives, and, when eviction threatens, new homes).

75. *Id.*

76. *Id.*

77. *Id.*

78. *See id.* *See also* Darice Bailer, *Program Helps Elderly Receive At-Home Care*, N.Y. TIMES, Dec. 31, 1995, at 15.

79. *See* Kinetz, *supra* note 74, at 12.

80. *See, e.g.,* W. MICHAEL WHEELER, ELDERLY RESIDENTIAL EXPERIENCE: THE EVOLUTION OF PLACES AS RESIDENCE 3-4 (1996); Leonard F. Heumann, *The Role of*

temporarily finding an alternative place for them to live. When they do agree to it, we cannot get them into domestic violence shelters because most domestic violence shelters cater to women with children and cannot deal with older women who have some form of disability.<sup>81</sup>

Shelters provide self-help groups and support groups.<sup>82</sup> The issues that come up are different for younger women than for older women. Hopefully, with new shelters being built for seniors, our dilemma will be eased when it comes to older people.<sup>83</sup>

**Kimberly A. Madden<sup>84</sup>**

*Legal/Social Work Elder Assistance Program  
Jewish Association for Services for the Aged*

MS. MADDEN: Domestic violence is usually portrayed as intimate partner violence or child abuse—elder abuse is different. Some things are the same. The cycle of power and control is exactly the same. What is different is how that power is exerted and how someone can get out of the situation.

One way elders are situated differently from other victims is that they are often afraid of being isolated. Often, the abusers are their adult children.<sup>85</sup> Usually the adult children are financially dependent on the elder; but sometimes the seniors are dependent on their adult children for services, like driving them to doctors' appointments, buying food, and the like. Sometimes seniors are very dependent on their adult children and are afraid if they take some kind of action, they will have no one left to help them with those services or will end up in a nursing home or some other institutional setting.

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*the Built Environment in Holistic Delivery of Home- and Community-Based Care Services to Frail Elderly Persons*, in LEONARD HEUMANN ET. AL., *EMPOWERING FRAIL ELDERLY PEOPLE: OPPORTUNITIES AND IMPEDIMENTS IN HOUSING, HEALTH, AND SUPPORT SERVICE DELIVERY* 121-22 (Praeger ed., 2001).

81. Patrick Markey, *Alone and Abused: Safe Heaven for Victims is Sought*, *NEWSDAY*, June 18, 1997, at A03.

82. *Id.*

83. *Id.*

84. Kim Madden is an attorney specializing in elder abuse law who works with an innovative new project, the Legal/Social Elder Abuse Prevention Project (LEAP), which pairs attorneys with social workers to address problems faced by the elderly community.

85. *See, e.g.*, Brandl & Meuer, *supra* note 72, at 303 (indicating that many abusers are adult children living at home and relying on the financial support of their adult parents).



That is something abusers sometimes use. They threaten the elder, “You are going to be left all alone”; “You are crazy, nobody will believe you”; “I will just put you in a nursing home.” These threats are different from those raised in intimate partner or child abuse. The power dynamic is a little different.

Elderly people are also ill-equipped to deal with the system. Family court is not the most user-friendly place, even for a younger person. There are usually no seats, and one has to wait for long periods of time.

Luckily, the Safe Horizons<sup>86</sup> offices are usually available for our clients to go sit down, but they are often not on the same floor as the court where our clients are going to be appearing. In Queens, for example, the courts are located at the end of a long hallway. While a young person might not experience any difficulty with such a hallway, our senior clients sometimes take ten minutes to get from Safe Horizons to the court. When you have to go back to court over and over, the physical inconveniences make it less likely someone will want to follow through. Court officers try to be accommodating, but, even so, family court is not the best place for someone suffering from different kinds of disabilities.

Elder abuse is not a commonly recognized form of domestic violence. It is still somewhat hidden in comparison with other forms of domestic violence.<sup>87</sup> For example, police, who have been well trained to look at intimate partner violence, sometimes still dismiss elder abuse in ways reminiscent of what used to happen more often in partner violence situations.<sup>88</sup> For example, in a situation where there has been violence, where the police should really be arresting a perpetrator, they will try to talk a senior out of pressing charges, will try to separate the senior from the adult child by saying, “Come on, this is your kid.” A lot of times, obviously, seniors are reluctant to press charges. It is hard enough to get them to go to family court.

Another issue is that elder victims of abuse are concerned about their children first and foremost. The court system is not suited to

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86. Sorah Shapiro, *The New New Yorker: Countering Violence: Center Offers Free Aid to Domestic-Abuse Victims*, NEWSDAY, Jan. 24, 2001, at A29 (discussing Safe Horizon as “a nonprofit victim assistance, advocacy and violence prevention organization . . . . The organization serves more than 200,000 people each year at seventy-five city-wide locations.”).

87. See Patric Markey, *Alone and Abused: Safe Haven for Victims is Sought*, NEWSDAY, June 18, 1997, at A03.

88. See, e.g., BRYAN BYERS & JAMES E. HENDRICKS, *ADULT PROTECTIVE SERVICES: RESEARCH AND PRACTICE* (1993).

provide help for abusers. For example, most of our clients' abusers are mentally ill, dependent on drugs, or both.<sup>89</sup> It is hard to get these abusers treatment that will actually be followed through with, and seniors generally do not want to take action unless they know their abusers will be put in some kind of treatment facility or get help.

Another issue that makes it hard for seniors to get help is a lack of shelters. When we have victims in particularly bad situations and they need to leave their house, a lot of times they are unable to.

There is supposed to be a shelter for seniors opening this spring, but I am not sure if it will. The shelter is sponsored by Father Costello of Walk the Walk.<sup>90</sup> It is supposed to have about twenty beds. My organization succeeded in providing short-term solutions, but there really is no shelter available for seniors. Most of the shelters are geared towards women with children actually, not even single women.<sup>91</sup> Finally, the court system is not very understanding of people with powers of attorney.<sup>92</sup> Seniors often give a power of attorney to another child to go to court. It is very difficult to get an order of protection on that basis,<sup>93</sup> which makes it difficult for people who are homebound or who really cannot go to court, possibly because it is too dangerous. It is very difficult for them to get any help.

### Questions & Answers

**QUESTION:** Could you address some of the legal barriers elder victims of abuse face, in terms of what legal remedies are currently available, how they may be under-used, and what suggestions you have to improve legal access to the courts?

**MS. MADDEN:** My experience is with family court, as opposed to criminal court. In family court, the respondent is often required

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89. LAWRENCE A. FROLICK & RICHARD L. KAPLAN, *ELDER LAW IN A NUTSHELL* 402 (2d ed. 1999).

90. Peter Duffy, *New Group to Open Shelter For Elderly Victims of Abuse*, N.Y. TIMES, March 26, 2000, at 9 (reporting that Father Coleman Costello is executive director of Walk the Walk, a Long Island City-based organization that provides counseling, legal assistance, and treatment for drug and alcohol abuse to some of the 50,000 elderly New Yorkers abused each year.)

91. See Markey *supra* note 81.

92. See Lori A. Stiegel, *What Can Courts Do About Elder Abuse*, 35 JUDGES J. 38, 48 (1996).

93. *Id.*

to go to some kind of treatment.<sup>94</sup> One problem is trying to get these orders enforced. The court can order drug treatment or mental health services,<sup>95</sup> but these orders are difficult to enforce.

Besides the physical barriers of getting to court and waiting for long hours, another difficulty is that sometimes my clients have early-stage Alzheimer's or some kind of dementia and have memory problems and can get scattered. They do not always make the best witnesses when questioned by the police or in court. Although they can pretty clearly tell you what happened, they get nervous in court when appearing and often forget.

QUESTION: There seems to be an emphasis on identifying the causes of elder abuse. Elder abuse is often attributed to caregiver stress.<sup>96</sup> Although that is not too common in some of the research I see on domestic violence, there is overemphasis on caregiver stress. Do you feel this creates a barrier?

MS. MADDEN: I see it as a barrier and as a strong sign that elder abuse is still not recognized for what it is, or is still something society does not want to look at. The caregiver stress model,<sup>97</sup> which you see in a lot of literature about elder abuse,<sup>98</sup> is really a way of blaming the victim. Some of my clients are very afraid of seeking services because they are dependent on their abuser. I do not think abusers victimize their parents because of caregiver stress. To attribute abuse to caregiver stress is just a way to blame the victim and not really look at what is going on; the caregiver stress model hinders people from getting help.

QUESTION: What are some strategies or techniques advocates and attorneys could use to help elderly victims when they have to testify?

MS. MADDEN: Seniors will benefit from practice—from having an opportunity to get used to the questions. Another technique is encourage other family members or a social worker to accompany seniors. Some judges allow other people to testify in order to get a

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94. Gloria Danzigor & Jeffrey A. Kuhn, *Drug Treatment Courts: Evolution, Evaluation, and Future Directions*, 3 J. HEALTH CARE L. & POL'Y 166, 176 (1999).

95. *Id.*

96. Brandl & Meuer, *supra* note 72, at 304.

97. *Id.*

98. See, e.g., *id.* (citing RISA S. BRECKMAN & RONALD D. ADELMAN, STRATEGIES FOR HELPING VICTIMS OF ELDER MISTREATMENT 28-29 (1988); Sara Harris, *For Better or For Worse: Spouse Abuse Grown Old*, 8 J. ELDER ABUSE & NEGLECT 2, 2 (1996); Karl Pillemer & David Finkelhor, *The Prevalence of Elder Abuse: A Random Sample Survey*, 28 GERONTOLOGIST 51, 186 (1988); Elizabeth Podnieks, *National Survey on Abuse of the Elderly in Canada*, 4 J. ELDER ABUSE & NEGLECT 51, 58 (1992); Rosalie Wolf, *Elder Abuse in Domestic Settings*, PMA, Nov.-Dec. 1998, at 9.).

better grasp on the facts. Often my clients talk about the abuse, but when questioned about specific dates, they cannot remember. They may not be able to tell you their own birthday, let alone what happened, even if it was only a few months ago. They can tell you what happened, but when it happened is something that is just not going to come out.

We often use either domestic incident reports<sup>99</sup> or social workers testifying about the facts, or try to establish the time line of the abuse through other, more creative ways.

QUESTION: Around forty-two states have enacted mandatory reporting requirements of elder abuse by certain professionals.<sup>100</sup> What are the pros and cons of enacting such legislation, and does it create a barrier or help elderly victims?

MS. MADDEN: It is somewhat similar to the situation with ACS,<sup>101</sup> when a woman seeks help but is afraid ACS will get involved. I think seniors are often very afraid that APSPSA<sup>102</sup> would get involved. Seniors are afraid of losing independence, of being institutionalized, or being seen as the "crazy older person." I think mandatory reporting, which would probably result in a APSPSA investigation, could actually discourage people from coming forward.

QUESTION: I have a question on elders with Alzheimer's. Often it seems they perceive they are being abused when in fact they are not. How are you able to screen out seniors making claims not really based on facts?

MS. MADDEN: My project is a legal/social work project, so sometimes we go out as a team and make an evaluation. I have not seen false allegations to be a big problem. If somebody is at the stage where they are really not competent, I cannot represent them anyway. The people you describe are in this stage. More commonly, the problem is not with determining whether abuse is taking place, but with having victims testify about it.

QUESTION: Are there provisions in the guardianship statutes providing for the provision of an order of protection? In family court, we have had circumstances where there has been a request

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99. Symposium, *Women, Children and Domestic Violence: Current Tensions and Emerging Issues*, 27 *FORDHAM URB. L.J.* 565, 644 (2000) (discussing the role of domestic incident reports in New York State's strategy for preventing domestic violence).

100. Brandl & Meuer, *supra* note 72, at 304; Young, *supra* note 66, at 62.

101. For a description of the functions of the Administration's for Children Services see *NEW YORK CITY, N.Y., ADMINISTRATIVE CODE* § 21-120.1 (2001).

102. Kinetz, *supra* note 74.

for an order of protection that clearly conflicts with someone's authority under a guardianship order. I was wondering if there was a way for those to be referred back to surrogates court?

MS. MADDEN: Technically, when someone is appointed guardian, they can step into the shoes of their ward and take action on the ward's behalf.<sup>103</sup> However, decisions over an order of protection or institutionalization are very personal ones, which often would be referred back to surrogate's court.<sup>104</sup> It is more of a practical problem, because surrogate's court often does not want to deal with these issues. It is something that would have to be worked out between the two courts.

Actually, I guess it would be referred to supreme court, not surrogates court, for Article 81 guardianships.<sup>105</sup> They could do an order of protection, but my experience is they tend not to want to act outside of just providing the guardianship. It comes up in a lot of foreclosure-type cases, where in Article 81 in supreme court, even though they could undo these contracts that were signed fraudulently, they would rather send it to another area of the court.

There is room for more collaboration on these types of issues. I do not know if the initiative in the Bronx<sup>106</sup>—where the supreme court is going to be working with family court and criminal court more<sup>107</sup>—will address that.

QUESTION: What remedies are available to elder victims of abuse who are being turned away from shelters?

MS. MADDEN: We have had some success with Section 8<sup>108</sup> being slightly more amenable to granting vouchers or finding apartments for people more quickly, although for seniors it is still very bleak. One of the most depressing things, is that clients sometimes benefit from ending up in the hospital, either because of abuse or because of some other health problem. Sometimes we can work

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103. *E.g.*, *Guier v. Guier*, 918 S.W.2d 940, 950 (Mo. Ct. App. 1996) (noting that "duty of guardian ad litem is to protect best interests of child, and to stand in shoes of child and weigh factors as child would weigh them if his judgment were mature and he was not of tender years").

104. *See., e.g.*, *In re Catherine "P,"* 702 N.Y.S.2d 722 (App. Div. 2000).

105. N.Y. MENTAL HYG. LAW § 81.21 (McKinney 2001).

106. FAMILY JUSTICE PROGRAM, N.Y. UNIFIED COURT SYS, UNIFIED COURT SYSTEM REPORT ¶ 3 (1998) (discussing initiative contemplating the assignment of Judicial Hearing Officers to hear foster care review proceedings in the Bronx County Family Court and adding referees by the family court to review and determine adoptions on consent of the parties), available at <http://www8.law.com/ny/links/famreorg.html>.

107. *Id.*

108. 24 U.S.C. § 1437 (2001) (proclaiming that the policy behind Section 8 subsidies is to help states remedy acute shortage of low-income housing).

with a hospital social worker to let them know of the abuse and keep the victims safe in the hospital. Obviously, that is not a good solution.

**Louisa Gilbert**<sup>109</sup>

*Co-Director*  
*Social Intervention Group*  
*Columbia University School of Social Work*

MS. GILBERT: My presentation will focus on three issues. First, I will give a brief overview of the current research on partner violence among drug-involved women. Second, I will describe how women's drug-related activities and drug use contribute to different types of abuse. Finally, I will talk about some individual, interpersonal, and structural barriers drug-involved women confront when seeking help.

Growing evidence suggests drug-involved women are at high risk of experiencing intimate partner violence.<sup>110</sup> Lifetime rates of partner violence experienced by women in substance abuse treatment programs range from sixty-eight to seventy-five percent.<sup>111</sup> These rates are about two to three times higher than those found in national surveys of general populations of women.<sup>112</sup>

Existing research on the relationship between substance abuse and partner violence suggests this relationship is complex and varies according to the type of drugs used, the severity of drug use, and whether both victim and perpetrator are drug-involved.<sup>113</sup>

Numerous studies have found that alcohol use and crack cocaine use significantly increase a man's risk of perpetrating violence against an intimate partner and a woman's risk of experiencing partner abuse.<sup>114</sup> Findings on the effect of heroin, marijuana, barbiturates, and other types of drugs have been less conclusive.<sup>115</sup>

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109. Louisa Gilbert is the co-director of the Social Intervention Group at the Columbia University School of Social Work, where she is currently a co-investigator on several studies addressing the overlapping problems between intimate partner violence and substance abuse.

110. See Nabila El-Bassel et al., *Drug Abuse and Partner Violence Among Women in Methadone Treatment*, 15 J. OF FAM. VIOLENCE 209, 209 (2000).

111. *Id.*

112. *Id.* at 210.

113. See *id.* at 210-11.

114. NEIL WEBSDALE, *UNDERSTANDING DOMESTIC HOMICIDE* 23 (1999) (discussing the relationship between alcohol, drug use, domestic violence, and homicide).

115. *Id.*

A number of studies have found the severity of substance abuse strongly correlates with the severity of partner abuse.<sup>116</sup>

Research has yet to determine the nature of the linkage between substance abuse and the victimization of women. Does a woman's involvement in drug-related activities increase her risk of experiencing abuse? Alternatively, do women take drugs after violent events to cope with the emotional aftermath and physical pain? Our qualitative research suggests evidence for both theories.

Over the last five years, the Social Intervention Group<sup>117</sup> has addressed the relationship between partner violence and drug use. In 1997, we received a grant from the National Institute of Drug Abuse ("NIDA")<sup>118</sup> to explore various contexts in which drug-related activities and partner violence co-occur among women on methadone.<sup>119</sup> For this study, we also conducted a longitudinal survey of a random sample of 417 women we interviewed at baseline, six months, and twelve months, to examine the relationships between partner violence and different types of drugs over time.<sup>120</sup>

In 1999, we received another grant from NIDA<sup>121</sup> to study the same issues among men on methadone, focusing on the relationship between perpetrating intimate violence and using drugs.

Let me highlight how drug-related activities interact with different types of abuse. In terms of psychological abuse, both men and women clearly suggested that drug-involved women are considered to be low-status girlfriends or wives, largely because of their alleged sexual promiscuity.<sup>122</sup>

The general feeling among men was that drug-using women, particularly crack cocaine-using women, support their addiction through trading sex for money or drugs.<sup>123</sup>

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116. El-Bassel et al., *supra* note 110, at 210-11.

117. The Social Intervention Group, affiliated with Columbia University, conducts research to develop interventions addressing HIV/AIDS, substance abuse, intimate partner violence, mental health, and social problems in low-income urban communities. For information, contact the Social Intervention Group, at School of Social Work, Columbia University, McVickar Hall, 622 West 113th St., New York, New York 10025 or see the group's website at <http://www.columbia.edu/cu/ssw/sig>.

118. The National Institute of Drug Abuse is part of the National Institute of Health.

119. El-Bassel et al., *supra* note 110, at 210-11.

120. *Id.*

121. Nabila El-Bassel et al., *Social Support Among Women in Methadone Treatment Who Experience Partner Violence—Isolation and Male Controlling Behavior*, VIOLENCE AGAINST WOMEN, Mar. 2001, at 246, 246. [hereinafter *Social Support Among Women*]

122. *Id.* at 250.

123. *Id.*

Women talked at length of how their partners focus name-calling and verbal abuse on the women's drug use, making comments like "You'll never be anything more than a junkie or a crackhead." For many of these women, this constant verbal abuse had long-term devastating effects on their self-esteem and ability to seek help.<sup>124</sup>

A big issue for the women in our focus groups and interviews was controlling behavior.<sup>125</sup> For many of these women, drugs were the proverbial "carrot" their partners used to manipulate and control them.<sup>126</sup> A number of women indicated their partners would threaten to disclose their drug use to their families and the police if they did not yield to their partners' demands.<sup>127</sup>

Both women and men talked about how men use their network of drug-using buddies and dealers on the streets to monitor their women's whereabouts through cell phones and beepers.<sup>128</sup>

Men and women also talked at length of how drug-involved men sometimes actively oppose a woman's efforts to stop using drugs or get treatment.<sup>129</sup> For several men, women's attempts to stop using drugs not only threatens the whole context of intimacy and sex in the relationships, but also jeopardizes their access to drugs, as women are often responsible for procuring drugs.<sup>130</sup>

Economic abuse was pervasive among the women in our study.<sup>131</sup> Stories of being robbed of everything in their home and household were fairly common.<sup>132</sup>

Women also talked about having to painfully decide whether to spend their last dollars on food for their kids or on drugs to avoid their partners going through withdrawal and, hopefully, avoid potential violence, because withdrawal is always sort of a powder keg for violence.<sup>133</sup>

One of the more insidious forms of abuse mentioned is the pressuring or coercing of women into selling sex for money or drugs to support men's drug habits when they spiraled out of control.<sup>134</sup>

The stories of physical violence reported by the women measured high on the Richter Scale because guns and other weapons

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124. *Id.* at 255.

125. *Id.* at 254.

126. *Id.* at 249.

127. *Id.*

128. *Id.*

129. *Social Support Among Women*, *supra* note 121, at 248-49, 254-58.

130. *Id.* at 249, 259, 268-69.

131. *Id.* at 259.

132. *Id.*

133. *Id.* at 269.

134. *Id.* at 249.



were often invoked.<sup>135</sup> In fact, a recent survey of a random sample of 417 women on methadone found that twenty-five percent of the women reported severe physical abuse on the Conflict Tactic Scale<sup>136</sup> in the past year.<sup>137</sup> By any measure, this rate is very high and alarming.

For men and women involved in drug trading, physical violence is commonplace; consequently, physical abuse of women is more accepted.<sup>138</sup>

Both men and women in the focus groups talked at length of how their conflicts over splitting and procuring drugs, particularly during withdrawal, served as a powder keg for severe physical violence.<sup>139</sup> It is very interesting that, when they talked about splitting drugs, the women would always say they would want to split it half and half, and their partners always felt entitled to have seventy-five or eighty percent of the drugs because they were men, even if the women had brought the drugs.<sup>140</sup> This is where a lot of the drug-related fights would escalate into violence.<sup>141</sup>

Finally, the risk of sexual abuse is heightened with drug use.<sup>142</sup> Both men and women acknowledged when a man provides women with drugs, sex is often expected or demanded in return.<sup>143</sup> Men under the influence of drugs, particularly crack and alcohol, are more likely to initiate rough sex and less likely to take no for an answer.<sup>144</sup>

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135. Stephen T. Chermack et al., *Gender Differences in Development of Substance-Related Problems: The Impact of Family History of Alcoholism, Family History of Violence and Childhood Conduct Problems*, 61 J. OF STUD. ON ALCOHOL, 845, 852 (2000).

136. MURRAY A. STRAUS & RICHARD J. GELLES, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATION TO VIOLENCE IN 8,145 FAMILIES passim* (1990).

137. ROBIN FITZGERALD, *FAMILY VIOLENCE IN CANADA: A STATISTICAL PROFILE* 12 (1999).

138. James R. Brown, Note, *Drug Diversion Courts: Are They Needed and Will They Succeed in Breaking the Cycle of Drug-Related Crime?* 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 63, 74 (1997).

139. See El Bassel et al., *supra* note 121, at 269.

140. David C. Brody & Heidee McMillin, *Combating Fetal Substance Abuse and Governmental Foolhardiness Through Collaborative Linkages, Therapeutic Jurisprudence and Common Sense: Helping Women Help Themselves*, 12 HASTINGS WOMEN'S L.J. 243, 258 n.95 (2001).

141. Brown, *supra* note 138, at 63.

142. Brody & McMillin, *supra* note 140, at 258.

143. See, e.g., Adam Chrzan, *21-Year-Old Faces Multiple Rape, Drug Charges*, PRESS J., June 10, 1999, at A6.

144. Sec'y of Health and Human Servs., *Making the Link: Sex Under the Influence of Alcohol and other Drugs* (1993), at <http://www.health.org/govpubs/ml005>.

Several women recounted stories of experiencing forced sex when incapacitated or passed out from drug use.<sup>145</sup> These cases, of course, are very hard to press charges with. A number of women also indicated partners would take advantage of them sexually when the women were going through withdrawal by asking them to perform sexual favors in return for drugs.

Myriad individual and structural barriers make it difficult for drug-involved women to obtain legal, medical, and social services for problems related to partner violence. The fear of ACS involvement kept many women from disclosing violence to the police, doctors, or social services. Many women in our groups had open cases with ACS, so the possibility of losing their kids because of disclosing drug use or partner violence was very real.

For many women, the biggest motivating factors in wanting to get help was their children.

A number of women did not even consider calling the police, even when in danger, for fear of their incarceration or their partner's incarceration due to drug-related involvement.

Moreover, many women did not seek services for partner violence because they were convinced no one would take their problem seriously, or they would be blamed for the violence. Many of them recounted stories of going for help and being turned down.

At an interpersonal level, most women are cut off from non-drug-using friends and family largely because of their partners' persistent efforts to isolate them. Research suggests this informal help from family and friends plays an important role in enabling women to leave abusive partners.

Drug-involved men often actively oppose women's efforts to stop using drugs or to get into treatment. It is important to emphasize that when an abused woman enters drug treatment, her risk for violence will often increase.

Numerous structural barriers make it difficult, if not impossible, for drug-involved women to receive services for partner violence.

Negative attitudes toward drug-involved women are commonplace among service providers, police, and court officials. I would like to read you an account of a woman's interaction with a police officer that exemplifies this attitude:

"The officer was interested, ready to help me get that man and everything, but drugs came in it and his whole attitude changed. 'Did you participate with him in getting high?'"

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145. Chrzan, *supra* note 143.

'Yeah, but that ain't got nothin' to do with it.'

Well, the whole thing changed afterwards—his voice, his manner, everything. He still wrote everything down, but he wasn't as concerned as he was in the beginning."

Underlying these negative attitudes is the belief that drug-involved women lie and cannot be trusted, and that drug-involved women are to blame for the violence.

The lack of credibility of drug-involved women as witnesses often presents a serious challenge in pressing physical and sexual assault charges against their abusers. As part of the in-depth interviews, we asked these women to recount a recent event of partner violence. About fifty percent of the women said they had used drugs during that recent event, so their credibility is likely to be challenged. These women were in drug treatment, so you can imagine that for women not in drug treatment credibility issues are even more of a problem.

The final structural barrier I would like to talk about is that domestic violence and substance abuse programs are vastly ill equipped to address drug-involved abused women. I do not know of one domestic violence shelter in New York City that serves women who report current drug use.

Clearly, it is problematic for shelters to mix active drug-using women with non-drug-using women and children. Separate residential programs with detox facilities are needed for drug-involved abused women.

Diverging treatment philosophies and separate funding streams for substance abuse and domestic violence services continue to impede the delivery of services for drug-involved abused women.

Finally, there has been a lot of progress in the last ten years in creating public discussion, in research on partner violence and drug use, and trying to come up with better forms of treatment. There are exciting things going on in terms of pilot programs within domestic violence shelters and substance abuse programs.<sup>146</sup> But we need to create joint funding streams for integrated services for this population.

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146. Press Release, Office of the Mayor of the City of New York, Mayor Giuliani Announces Three New Domestic Violence Prevention Programs (Feb. 8, 2000) (announcing the expansion of the NYPD's "Combatting Domestic Violence Program" to thirty-two police precincts, a new citywide public education campaign focusing on domestic violence among young people, and the designation of over \$800,000 for the expansion of the City's Domestic Violence Hotline), available at <http://www.ci.nyc.ny.us/html/om/html/2000a/pr044-00.html>.

### Questions & Answers

QUESTION: Could you speak about the underlying philosophies behind substance abuse treatment programs and domestic violence programs and the barriers you face when trying to merge the two systems?

MS. GILBERT: Domestic violence programs were largely founded by women for women based on notions of empowerment. Substance abuse programs, on the other hand, were designed for men based on the idea that substance abuse is an individual disease that needs to be treated. So these programs come from very different perspectives.

In terms of how traditional substance abuse treatment programs deal with domestic violence, their attitude is abstinence comes first; domestic violence is a symptom of substance abuse. Their attitude is the substance abuse problem must be addressed first.

QUESTION: Would you be able to give some specific examples where treatment centers successfully collaborated with domestic violence service providers?

MS. GILBERT: I can think of one program in the Bronx called Neighborhood Youth and Family Services.<sup>147</sup> They have a program for young mothers and children and do a whole intensive intake for domestic violence. They have a whole staff trained in domestic violence and substance abuse. They take care of the participants' children.

The associate director of that program, Nancy Mamis-King, has put together a consortium of substance abuse and domestic violence workers and ACS representatives to try to explore different models of collaboration. Basically, she has outlined four models of collaboration.

One is that you develop service agreements between domestic violence and substance abuse treatment programs, which I know some domestic violence programs are doing now.

The other is to have expertise within each type of program, to have designated substance abuse specialists within the domestic violence program; and a domestic violence specialist in substance-abuse programs. Safety planning is a huge issue for drug-involved women. Because of all the drug-related violence, there are a lot of factors that must be considered.

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147. See David Gonzalez, *About New York; Bidding Wars Make Agency Defend Its Turf*, N.Y. TIMES, July 1, 1998, at B1 (indicating that Neighborhood Youth and Family Services is a nonprofit child welfare agency located in the Bronx).

Third is to just have a whole domestic violence program with a subcomponent of a substance abuse program. And the same thing with the substance abuse programs.

The fourth model is to just have a total program devoted to integrated residential/nonresidential programs for drug-involved abused women.

Those are four levels she has outlined. But we need funding. We need that joint funding stream, and that means we need to bring in people from Oasis and people who are funding the domestic violence programs in the city and the state to provide that funding.

QUESTION: What remedies are available to victims of abuse who are also substance abusers when turned away from shelters?

MS. GILBERT: Really, none. I had a Latina woman running away from a violent situation and she was very distraught. She was actually coming off of heroin at the time. I was like, "Oh no, where do I put this woman?" The methadone program had told us "If you bring up any issues of domestic violence, you just deal with them."

I first considered city shelters. Forget it. I mean, they were all filled anyway. This woman really needed something more because of the heroin. It also turned out she had AIDS, and I was able to get her into a facility because of that. But had she not had that co-occurring problem, I would not have been able to place her. It would have been very hard.

With hospitals with detox facilities, sometimes if you are lucky enough, you can get someone in there for a short time until another alternative can be put in place.

But the issue for many of these women is that a lot of them have kids. Shelters do not help women who have kids and who do not want to come forward if it means losing their kids at the same time.

**Holly Devine**<sup>148</sup>

*Domestic Violence Program Director  
Barrier Free Living Domestic Violence Program*

MS. DEVINE: Barrier Free Living is a nonprofit organization that works with people with disabilities.<sup>149</sup> We operate a transi-

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148. Holly Devine is director of Barrier Free Living's Domestic Violence Program, where she has worked for the past four years. It is a program that specializes in working with disabled victims of domestic violence and their children.

149. See, e.g., George Watson, *Neighborhood Report: East Harlem; A Race Against Time for a Shelter To Save Deeply Troubled Lives*, N.Y. TIMES, Jan. 21, 2001, at 8

tional shelter for disabled men and women who have become homeless.<sup>150</sup>

In 1986, we started to address domestic violence in our shelter, because we found most women living in our shelter were victims of domestic violence, and there were no other options for accessible shelter for them.<sup>151</sup>

We had not addressed the abuse of women with disabilities. It is really not on people's radar screens. We were horrified when we heard it was such a big problem. The magnitude of it prompted us to create our own non-residential domestic violence program for battered disabled women.<sup>152</sup> The program began in 1997. We work with victims with mental and physical disabilities. We are the only city-wide program addressing this issue. There is about a handful of other programs addressing this issue across the country.<sup>153</sup>

We work with anyone with a disability who falls under the Americans With Disabilities Act.<sup>154</sup>

In researching the issues, we discovered a number of alarming facts.

The City's own needs survey found approximately 223,000 potential disabled victims in New York City alone.<sup>155</sup> Disabled people are isolated for a number of reasons, one of which is that many systems in the city are not accessible to them. These people do not even know they have options, much less if they can physically access them.

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(discussing the organization's efforts to assist people with disabilities who are victims of domestic violence).

150. *Id.* (discussing difficulties that disabled female victims of domestic violence face in finding shelter).

151. *Id.* (reporting that counselors at an independent-living center for the severely disabled located in East Village in New York City have discovered that most female clients had been sexually or physically abused); Holly A. Devine, *Domestic Violence and Disabled Women*, at [http://www.barrierfreeliving.org/domestic\\_violence\\_and\\_disabled\\_w.htm](http://www.barrierfreeliving.org/domestic_violence_and_disabled_w.htm) (last accessed Sept. 16, 2001).

152. *Id.*

153. *E.g.*, Deaf Women Against Violence, at <http://www.dwav.org> (last accessed Oct. 19, 2001); Abused Deaf Women's Advocacy Services, at <http://adwas.org/about/about.htm> (last accessed Oct. 19, 2001).

154. 42 U.S.C. §§ 12101-12213 (1995) (prohibiting private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment).

155. Devine, *supra* note 151, at ¶2.

People with developmental disabilities are at a greater risk of abuse. More than ninety percent of people with developmental disabilities will experience sexual abuse,<sup>156</sup> and ninety-seven to ninety-nine percent of abusers are known and trusted by their victims.<sup>157</sup>

People who have mental retardation or a developmental disability are very trusting. If they are on a bus with someone and that person says "hi" to them, they think that is their best friend. They are really vulnerable that way and different than those that are able bodied.

According to the National Resource Center,<sup>158</sup> for obvious reasons children with disabilities are at much greater the risk of abuse than non-disabled children.<sup>159</sup> Children with disabilities are often quite a burden on parents, and that can lead to abuse.

Most of the time when people think of physical disabilities, they think of a wheelchair, they think about someone who has had a stroke, they think about something you can see. They discount invisible disabilities, of which there are many.

I will highlight a few of them: severe asthma, legal blindness, mental retardation, developmental disabilities, emotional or mental disorders, seizure disorders, and traumatic brain injury.

Many of these disabilities affect women who are abused. This feeds into our whole attitudinal inaccessibility of people with disabilities. We do not look beyond our own views of what a disability is, our own stereotypes about what a disability is.

People with disabilities sometimes bring up a lot of fear in others, including social service providers. Providers get afraid they are not going to be able to do the right thing. They ask themselves, "What is the politically correct thing to do? How do I communicate with someone with a disability?" People with disabilities pick

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156. Marc Duom, *Serving Women with Developmental Disabilities: Strategies for the Justice System*, IMPACT, at <http://ici.umn.edu/products/impact/is3/over7.html>.

157. Dick Sobsey, *Faces of Violence Against Women with Developmental Disabilities*, IMPACT, at <http://ici.umn.edu/products/impact/is3/over2/html>.

158. The mission of the National Resource Center for Health and Safety in Child Care is to promote health and safety in out-of-home child care setting throughout the nation, at <http://nrc.uchsc.edu> (last accessed Oct. 16, 2001).

159. Comm. on Child Abuse and Neglect and Comm. on Children With Disabilities, *Assessment of Maltreatment of Children With Disabilities*, PEDIATRICS, Aug. 2001, at 508, 510 [hereinafter Comm. on Child Abuse] (discussing research finding indicating that children with disabilities are 1.8 times more likely to be neglected, 1.6 times more likely to be physically abused, and 2.2 times more likely to be sexually abused than children without disabilities).

up on that, so they are more fearful of disclosing their abuse or looking for help.

Domestic violence also leads to disabilities. The incidence of disabilities caused by maltreatment is 141 per 1000 maltreated children.<sup>160</sup> Maltreatment-related injuries contributed or led to disabilities for 62% of sexually abused children,<sup>161</sup> 48% of emotionally abused children,<sup>162</sup> and 55% percent of children experiencing neglect,<sup>163</sup> according to the National Resource Center. So there are some really high rates here.

Many times people with disabilities, if born with a disability, come from over-protective homes where their caregivers may assume they cannot learn to do basic things, and the caregivers may not want them to learn. People with disabilities often grow up never learning how to balance their money, how to travel on a bus, how to manage their time or cook or shop or do things we take for granted.

These people grow up and often find partners who are controlling, who take advantage of them in many ways. According to the statistics, it can start in childhood.<sup>164</sup>

We work with people who were born disabled or became disabled as the result of abuse. One woman I work with is a twenty-six-year-old woman with three children under the age of six who was beaten so severely by her husband that she is now legally blind. When I attempted to get her into a hospital that works with people with disabilities, the medical director would not accept her because of her legal blindness, as they did not think she would be able to get around. This is the medical director of a hospital.

Disabled women are dependent upon their abusers for everything, and their abusers in most cases are their caregivers. Because they have never learned to do basic things on their own, disabled women are really dependent on their caregiver to do stuff for them.

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160. Comm. on Child Abuse, *supra* note 159, at 510 (indicating that according to the data collected from thirty-five child protective services agencies across the country, 14.1% of children whose maltreatment was substantiated by child protective services agencies workers had one or more disabilities).

161. WESTAT INC., NAT'L CTR. ON CHILD ABUSE AND NEGLECT, *A REPORT ON THE MALTREATMENT OF CHILDREN WITH DISABILITIES* (1994).

162. *Id.*

163. *Id.*

164. Dave Paulk, *Recognizing Child Abuse, Child Abusers, and Individuals Who Are Likely to Abuse*, PHYSICIAN ASSISTANT, May 1, 1999, at 38, 43.



Many of the women we work with, have SSI<sup>165</sup> because of their disability. They come to us never having seen their checks because they didn't even know they got money every month.

Their abusers or caregivers may restrict their access to transportation. Caregivers may withhold wheelchairs and medications, refuse to assist with personal needs, leave their partners in bed all day and not get them up to go to the bathroom, resist access to friends, those sorts of neglectful type activities.

So here is a disabled person who is dependent upon their abuser. If they report the abuse, they lose the person who gets them out of bed every day. They may lose their children as well, because if they go to a shelter, if there is one accessible for them, their children will have to go into foster care or some other place.

For all these reasons, on top of their isolation, women with disabilities really do not have a lot of options and are often fearful of reporting the abuse, which is why they stay in dangerous situations significantly longer than non-disabled women. A disabled woman will stay in an abusive situation 8.3 years<sup>166</sup> versus 4.1 years for a non-disabled woman<sup>167</sup> in situations of sexual abuse; and 11.3 years<sup>168</sup> versus 7.1 years<sup>169</sup> in situations of physical abuse. So they stay in abusive situations because, they have no other options, and they are fearful of all these things I have discussed.

I want to talk about attitudinal and physical barriers to service. Attitudinal barriers are more about assumptions: We make assumptions that people with disabilities are asexual so they are not victims of sexual assault.

There is a lack of knowledge on the part of people with disabilities as to what constitutes abuse. They might not even be aware that what happens to them is abusive because that is all they have ever known.

We also assume that caregivers have the best interests of the disabled person at heart. We would like to think that is true, and in many cases it is, but in many cases it is not. Some people seek out people who are more vulnerable in order to have some control, and that feeds into the whole cycle of power and control.

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165. For a general discussion of the Supplemental Security Income program (SSI) see Kathleen McGarry, *Factors Determining Participation of the Elderly in Supplemental Security Income*, J. HUM. RESOURCES, Mar. 22, 1996, at 331, 335.

166. Holly A. Devine, *Domestic Violence and Disabled Women*, at [http://www.barrierfreeliving.org/domestic\\_violence\\_and\\_disabled\\_w.htm](http://www.barrierfreeliving.org/domestic_violence_and_disabled_w.htm).

167. *Id.*

168. *Id.*

169. *Id.*

Valuing compliance is a positive attribute of a person with a disability. This is especially true for people who are mentally retarded. They have had to be compliant their whole life. Many of them are on a behavior modification system, a point system, where if they do this, this, and this, they will get some kind of a reward. This sets up the victimization.

We also should not define empowerment only in terms of what professionals think is best. This is something many systems struggle with. It is your agenda versus theirs. It is very easy for us to sit here and say, "This woman needs to leave; I can't believe this; why isn't she doing this, this, and this"—without understanding that the person with the disability is an expert on her disability and knows what is going to work for her and what is not. We can revictimize them; it is really disempowering.

Some assume women with disabilities are not fit parents. I cannot tell you how many times we have gone to court with clients—specifically deaf clients—where the woman is not having her children removed due to her failure to protect them, because judges assume that a deaf parent cannot be a good parent. They make that assumption, "They're deaf, so how are they able to parent their children?" Again, these attitudinal assumptions set up huge barriers.

Reasonable accommodations must be made for victims with physical disabilities, as stated in the Americans With Disabilities Act. Physical access to all public and private entities and communication access including access to interpreters.<sup>170</sup> The client should not be charged for an interpreter when she goes to court, that is the court's responsibility, and clients should have access to TTY machines<sup>171</sup> for their own communication when needed.

Accommodations are also required for all physical and visual aids.<sup>172</sup> We work with some women who are blind, one who has a seeing eye dog. We attempted to get her into a shelter, and they

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170. 42 U.S.C. § 12111(9) (1993); 42 U.S.C. §12132 (1993); Ann C. Hodges, *Dispute Resolution Under the Americans with Disabilities Act: A Report to the Administrative Conference of the United States*, 9 ADMIN. L.J. AM. U. 1007, 1012-15 (1996) (discussing the importance of providing accommodations and access for the disabled); *see also* 163 A.L.R. Fed. 637 (2000); *Santiago v. Garcia*, 70 F.Supp. 2d 84, 89-90 (D.P.R. 1999); *People v. Caldwell*, 603 N.Y.S.2d 713 (N.Y.C. Crim. Ct. 1993).

171. *E.g.*, John Drake, *Cops Defy Mandate to Improve Discourse with the Deaf*, WASH. TIMES, Feb. 22, 2001, at C1 (describing TTY as telecommunication devices that allow the deaf to make and receive phone calls).

172. 42 U.S.C. § 12132 (1994) (prohibiting a denial of services to and discrimination of individuals with disabilities).

accepted her until they found out she had a dog, and then they said they could not take her in. Where is this woman supposed to go?

There is an agency in Seattle, called ADWAS, which stands for Abused Deaf Women's Advocacy Services.<sup>173</sup> They did a research study and found that most 911 operators hang up on TTY calls.<sup>174</sup> They are supposedly trained, but, for whatever reason, they do not use the TTY machines. So if a deaf victim tries to get through on 911, the operator probably will not take the call.

If they actually do get through, the police will come to their home and see the woman is deaf. Many times she may have a hearing partner; she is signing all over the place; she is obviously very upset. The police know they do not have an interpreter; it is going to take two weeks for them to get an interpreter, so they look at the hearing man and ask, "What happened?"

We do a lot of training at the police academy, and they struggle with this too. The lack of American Sign Language interpreters is a problem that goes beyond accessibility. More interpreters are needed, and the good ones are in much demand.

Another thing that happens when police come to a home—when, for instance, a woman is a victim of a stroke, she may not speak very clearly. Rather than take the time to understand what the woman says, the police turn to her husband for an explanation. There is a lack of attitudinal access there, they are not looking the woman in the face, they are not saying, "Okay, this is what I think you said; nod your head and let me know if this is right or wrong." That is a way to show attitudinal accessibility.

If police officers come into a home and there is a deaf victim, we tell them, "If there is not an interpreter available, attempt to write. They may not understand written English, but if you make that attempt, you are showing you have an open attitude toward them and they are going to be more likely to trust and, maybe eventually, disclose some things."

In the criminal justice system there is a need for corroborating witnesses for mentally disabled victims. There is a reluctance to put a victim on the stand due to her disability. We see this often in the criminal justice system.

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173. E.g., Peter Berliner, *Ending Abuse Starts with Dedication to Prevention*, SEATTLE-POST INTELLIGENCER, July 16, 1995, at E1 (describing Abused Deaf Women's Advocacy Services as crisis services and advocacy for abused deaf and deaf-blind women, men, and children).

174. On file with author.

In the social service system, the National Organization for Victims Assistance<sup>175</sup> did a study of 150 victims agencies and found only six were even interested in disability access.<sup>176</sup>

We do information fairs all over the city. We have our banner with a wheelchair on it and we have all these wonderful materials, and nobody comes to pick them up. People do not want to look at this. But we need to keep getting the message out because the statistics are fairly alarming.

Over eighty percent of the calls we get on our hotline are requesting shelter,<sup>177</sup> and seventy percent of the women in our singles residence are there due to domestic violence.<sup>178</sup> Our singles residence is not a domestic violence shelter. It is fully accessible because it works with people with disabilities.

It is not a perfect system. It is not safe because it is not confidential, there are men in the shelter, but this is an option for them. We work hard with our shelter staff to train them on understanding the issues, but it is not a perfect system.

We work with many deaf women who have tried to get into a shelter. The shelter will say there is a bed available. The minute they find out the woman is deaf, the bed is closed and they are full.

Just some brief hotline statistics. Beginning in 1999, 371 disabled victims called in need of shelter and 110 family members called where either the parent or child was disabled and in need of shelter.<sup>179</sup> Where are we supposed to tell them to go? There are very few fully accessible beds in the shelter system in New York City.<sup>180</sup> Although these shelters are partially accessible and we are working with some of them on making them more accessible, there is a lack of understanding of what “fully accessible”<sup>181</sup> means—that the elevator cannot be this big, it has to be able to fit a wheelchair; that the hallways have to be wide enough for two wheelchairs to pass

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175. The National Organization for Victim Assistance is a private, non-profit, 501(c)(3) organization of victim and witness assistance programs and practitioners, criminal justice and mental health professionals, researchers, former victims and survivors, and others working in the sphere of victim rights and services, at <http://www.try-nova.org> (last visited Sept. 17, 2001).

176. Watson, *supra* note 149.

177. *Id.*

178. *Id.*

179. *Id.*

180. See Cherie Song, *Shelter Skelter*, VILLAGE VOICE, May 9, 2000, at 28.

181. 42 U.S.C. § 12183(a)(1) (1990) (prescribing alterations of public and commercial facilities in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities).

one another; that there needs to be emergency egress. This is an expensive proposition.

We currently have community board support in East Harlem to develop a fully accessible shelter for families. We are also working with the Giuliani administration and other officials, as well as the state, to obtain the approvals needed to build a shelter, so we are really hopeful that can happen.

### Questions & Answers

QUESTION: You discussed a type of outreach your agency has been doing now, a model program with the district attorney's office. I was wondering if you could educate us on it, because many people are probably not aware of these programs.

MS. DEVINE: We have a joint-funded grant through VAWA<sup>182</sup> with Kings County District Attorney's Office and with South Brooklyn Legal Services. That grant basically provides enhanced access to the criminal justice system for people with disabilities. It also provides education and training for assistant district attorneys and family judges.

We have developed an advisory council to that program that meets on a bi-monthly basis. The advisory council is made up of disability advocates, disability organizations, and domestic violence organizations, as well as police officers. It is a really wonderful, coordinated community response.

We have received much support from the Kings County District Attorney's Office, and they are really passionate about working with people with disabilities. A social worker at my organization pairs with one of the assistant district attorneys following a disability case and the two of them do mock trials at the district attorney's office for clients. For clients who may have seizure disorders or other disabilities that make it difficult for them to sit on the stand, we have been working on helping the legal system respond more effectively attitudinally. So we are really happy about that.

The other legal response we have is our recent VAWA-funded grant with the Legal Aid Society.<sup>183</sup> That is also a really exciting program. They have partnered with us and a number of other do-

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182. Violence Against Women Act of 1994, 18 U.S.C. § 13981 (1994).

183. See, e.g., *Prepared Statement of Juley Fulcher, Esq., Public Policy Director, National Coalition Against Domestic Violence, Before the House Judiciary Committee, Crime Subcommittee*, 106th Cong. (1999), reprinted in *FED. NEWS SERVICE*, Sept. 29, 1999 (discussing federal grants distributed through the Violence Against Women Act to various organizations including National Organization for Victim Assistance).

mestic violence programs to provide legal services and assistance specifically to marginalized populations like ours.

QUESTION: What remedies are available to disabled victims of abuse when they are turned away from shelters?

MS. DEVINE: We obviously have our shelter, which is not a domestic violence shelter, but which is fully accessible. There are home attendants on staff, there are nurses and a doctor.

We try to work with individual shelters, develop relationships with them, help them feel passionate about working with people with disabilities, so that even if they cannot provide full physical access, they recognize the issue and are working on it. We really have to educate people to think out of the box, because it is not on their radar screen unless you hammer it in there, which is why my agency does an enormous amount of outreach and education. I really think that does make a difference, because when you start to make individual relationships with other shelters and other systems, you start to see changes.

QUESTION: If you have a client and you are an attorney and you have a call and you use the TTY as a relay system, do you jeopardize the attorney-client privilege? What about an independent interpreter who comes into your office for intake?

MS. DEVINE: Relay is basically a person with a TTY machine, which looks like a little typewriter but it has a screen. A relay can type in a conversation with somebody else who has a TTY machine, and the conversation is recorded. Sometimes there is a little printer on it so you can print out the conversation for a deaf person.

If a deaf person has one of those devices and needs to get in touch with a lawyer and they use the relay service, the relay operator is the person who translates the conversation in English to the hearing attorney.

My understanding is that relay interpreters have certain confidentiality requirements they have to follow.<sup>184</sup> I do not know specifically what those are, but I know that they are strict.

It is a matter of comfort for the person who is deaf or for the people having the exchange. Most people who are deaf who use TTYs are more comfortable with TTYs and are more comfortable talking to people who have TTYs. I have a TTY in my office so it is easier for me to communicate with deaf clients.

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184. Registry of Interpreters for the Deaf, Inc., Code of Ethics para. 1 (establishing the duty of confidentiality), <http://www.rid.org/code.html> (last accessed Nov. 6, 2001).

I think some people feel relay is intrusive. I personally feel that way. I think it interrupts the flow of a conversation. And I still feel like somebody is listening in. So I think it really depends on your own preference.

QUESTION: Are you aware of any case law where that has been a problem as far as the attorney-client privilege?

MS. DEVINE: One of my colleagues, Kathleen Taylor who is an interpreter herself, might also be able to answer that.

KATHLEEN TAYLOR: Hi. I am a certified sign language interpreter, also in mental health therapy. Interpreters abide by the Code of Ethics,<sup>185</sup> so as long as it is between an attorney and a client, by law the interpreter must remain silent.<sup>186</sup>

However, if you happen to be in an area—say, for example, you come out of the courtroom, you happen to be in the corridor, and another person is coming by, the confidentiality aspect is no longer there because there is a third person around that area. So the interpreters often can be subpoenaed to testify about the conversation.

I ask lawyers to take steps to preserve the confidentiality of the conversation. That is one reason a lot of interpreters are not interested in doing legal interpreting, because of the fear of being subpoenaed. They do not want to get involved with that.

However, if a consumer or a victim is speaking with a police officer, the interpreter is not bound by the Code of Ethics.<sup>187</sup> They will do their best to try to get up on the stand to tell us what is going on because it is not counselor-client.

MS. DEVINE: Interpreters are bound by a Code of Ethics, and for the most part they follow it. There are times when interpreters, because of their own issues or lack of support or understanding of the issues, break the Code of Ethics. I need to make sure you are aware of this. We see it a lot with our clients.

The problem with that is that a lot of deaf victims are so happy to see somebody else who can communicate with them in American Sign Language—they are mandated to ACS. I mean, they are mandated to all these services primarily because they are deaf, which nobody wants to really admit, so they become really attached to anybody. They also sometimes think very concretely, especially if they were born deaf, because the culture is very different, and so they will think that interpreter is also the coun-

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185. *Id.*

186. *Id.*

187. *Id.*

selor or is their teacher or is their friend or can be like a family member—because sometimes they have their family members interpret for them—and the interpreter starts to feel a lot of pressure, and I think it is hard for them to contain.

Some are better than others. But I have seen interpreters come to my agency and completely violate the Code of Ethics they are bound to. So I have to point that out.

QUESTION: Have you ever seen any cases under the Americans With Disabilities Act where women victims of domestic violence have filed suits because they have been denied access to any legal services?

MS. DEVINE: We have not had any in our agency do that. However, there are many victims who have filed lawsuits under the Americans with Disabilities Act and have won. I know that because I am a member of the National Organization for Victim Assistance<sup>188</sup> and I went to a conference in Florida where they had a disability track, and they had a whole huge training piece just on the ADA. You know, they can win, because it is a law, period.

QUESTION: Have you seen research or done research on the physical issue that has come to you the most? Is it the hearing-impaired, the vision-impaired, or the people with physical disabilities?

MS. DEVINE: We have not done any kind of formalized research yet; we are still working on that, but a large number of our clients have traumatic brain injury due to domestic violence, to the point where they have to receive SSI and cannot work.

We see a large number of deaf victims, and there are many deaf victims who do not know we exist, unfortunately, so they are not making it here.

Large numbers of our clients suffer from multiple sclerosis. Increasing numbers of our clients suffer from mental illness, to the point where they are on SSI and cannot work, and the numbers increase. Also, victims often suffer from severe Post Traumatic Stress Disorder.<sup>189</sup>

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188. National Organization for Victim Assistance, *supra* note 183.

189. Post-traumatic Stress Disorder (PTSD) is a psychiatric disorder that can occur following the experience or witnessing of life-threatening events such as military combat, natural disasters, terrorist incidents, serious accidents, or violent personal assaults including rape. Andrew L. Hyams, *Expert Psychiatric Evidence in Sexual Misconduct Cases Before State Medical Boards*, 18 AM. J. L. & MED. 171, 182 n.74 (1992).



QUESTION: You mentioned that women can sue under the ADA. I mean, we are all here today gathering data. Can we start class actions? That is the next step.

MS. DEVINE: The New York Lawyers for the Public Interest,<sup>190</sup> I believe, has done some work toward a class action suit. Certainly we need more people interested in advocating in that way.

**Jenny Rivera**<sup>191</sup>

*Professor  
CUNY School of Law*

Over the past ten years, there has been tremendous progress developing programs addressing survivors of intimate partner violence. At the state and federal level, advocates have succeeded in securing funding and political support for survivors.<sup>192</sup> As a result of their efforts, there has been an increase in protective services, and laws have been passed providing criminal and civil remedies for targets of violence.<sup>193</sup>

In addition, the public is increasingly aware of intimate partner violence. Several politicians and private institutions have demonstrated a commitment to change society's response to battered women.

Despite this progress, current legal remedies and institutional services do not fully respond to the needs of all women. In particular, women who are otherwise marginalized within society remain on the outside with respect to these services and remedies.

As members of outsider communities, women of color, immigrant women, disabled women, and poor women continue to face

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190. New York Lawyers for the Public Interest is a non-profit law firm, founded in 1976, that focuses on the problems facing disadvantaged and underrepresented people throughout the five boroughs of New York City, <http://www.nylpi.org/disability.html> (last accessed Nov. 6, 2001).

191. Jenny Rivera is an associate professor of law at CUNY Law School. Prior to teaching, Ms. Rivera sat as an administrative law judge for the New York State Division of Human Rights, and then clerked for Judge Sonia Sotomayor. Her talk addresses barriers faced by immigrant communities and the research she has conducted on Latina women.

192. Center for Disease Control, Fact Book for the Year 2000 (discussing National Center for Injury Prevention sponsorship of research projects and prevention programs for domestic violence), at <http://www.cdc.gov/ncipc/pub-res/FactBook/partner.htm> (last accessed Nov. 6, 2001).

193. See, e.g., 18 U.S.C. § 2261 (1994) (prohibiting interstate domestic violence); New York State Office for the Prevention of Domestic Violence, at <http://www.opdv.state.ny.us/legislation/index.html> (last accessed Oct. 21, 2001).

tremendous obstacles accessing services and particularly legal strategies.

This conference is timely because the preliminary Census 2000 figures show a tremendous growth in the non-white population in New York City, New York State, and probably the country.<sup>194</sup>

In Queens, the number of Latinos has risen over half a million and is now nearly a quarter of the Queens population.<sup>195</sup> In Brooklyn, one in every five residents is Latino.<sup>196</sup> In the Bronx, the Latino population has grown to nearly half the borough's population.<sup>197</sup> Even in Staten Island, Latinos are now twelve percent of population.<sup>198</sup>

Statewide, the Latino population grew by more than twenty percent in the last decade,<sup>199</sup> and there are apparently new clusters in upstate cities, and even in Albany, the capital of the great State of New York.<sup>200</sup>

We now have better figures as to what many people in New York City have known for a long time, which is that the city is more and more becoming a city that is not dominated, at least in population, by whites alone.<sup>201</sup>

That is really what makes the work I and others do in this area important for us to focus on—that increase and presence in the city and how our government and community responds to that increase.

I am going to focus on the Latino community in general and Latinas specifically. Over the last seven years, I have written several articles discussing the opportunity for Latinas to access intimate partner violence services, and developing statistics demonstrating

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194. U.S. Census Bureau, *Quick Tables*, at <http://www.census.gov> (last accessed Nov. 6, 2001).

195. See *N.Y. City Dep't of City Planning, Demographic Profile - New York City 13 (2000)* (noting Hispanic population in Queens for 1999-2000 to be 25%), available at <http://www.nyc.gov/html/dcp/pdf/demonyc.pdf>.

196. *Id.* at 7 (noting Hispanic population in Brooklyn for 1999-2000 to be 19.8%).

197. *Id.* at 4 (noting Hispanic population in Bronx for 1999-2000 to be 48.4%).

198. *Id.* at 16 (noting Hispanic population in Staten Island for 1999-2000 to be 12.1%).

199. See U.S. Census Bureau, *Quick Tables* tbl. 4, *Difference in Population by Race and Hispanic or Latino Origin, for New York: 1999 to 2000* (noting change in Latino population from 1990 to 2000 to be 29.5%), at [http://www.census.gov/Press-Release/www/2001/tables/ny\\_tab\\_4.pdf](http://www.census.gov/Press-Release/www/2001/tables/ny_tab_4.pdf) (last accessed Nov 6, 2001).

200. See Albany County Immigration Factsheet (noting that the Hispanic Population in Albany County increased 70.9% between 1990 and 2000), at <http://www.fairus.org/html/msas/042nyalb.htm>.

201. See *Demographic Profile—New York City 1*, at <http://www.nyc.gov/html/dcp/pdf/demonyc.pdf> (last accessed Nov. 6, 2001).

the tremendous demand within the Latino community for both residential and nonresidential services, as well as the obstacles to accessing those services.<sup>202</sup>

I am going to focus on three areas: legal assistance, service provision, and criminalization.

The main threads connecting these three areas, and the primary obstacle to Latinas' ability to fully benefit from current legal remedies are poverty and lack of political power—with poverty being the over-arching obstacle. Unless anti-intimate partner violence strategies respond to economic and social inequalities, any strategy will perpetuate and exacerbate those inequalities.

To see the impact of poverty, you need only look at the numbers. In 1990, twenty-five percent of Latino families fell below the poverty line.<sup>203</sup> That line is quite low. The median income for Latinas in 1991 was \$10,100<sup>204</sup>—some people spend more than that on coffee each year. Half of all Latinas in 1991 earned less than \$10,000.<sup>205</sup>

The lack of bilingual legal assistance providers often proves an insurmountable obstacle for many Spanish-language-dominant or bilingual Latinas. There are simply not enough people in the legal field who speak Spanish competently to provide legal assistance to these women.<sup>206</sup>

In addition, monolingual English and monolingual Spanish speakers, as well as bilingual Latinas, share another common obstacle to securing legal assistance, and that is the critical shortage of bicultural bilingual lawyers available to represent Latino women.

The shortage of legal personnel who handle these cases is legendary. That shortage has a particularly devastating impact on Latina

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202. Jenny Rivera, *Intimate Partner Violence Strategies: Models for Community Participation*, 50 ME. L. REV. 283 (1998); Jenny Rivera, *Preliminary Report: Availability of Domestic Violence Services for Latina Survivors in New York State*, 16 BUFF. PUB. INT. L.J. 1 (1997).

203. U.S. Census Bureau, U. S. Dep't of Commerce, *Poverty*, at <http://www.census.gov/hhes/www/poverty.html>.

204. MARGARET VILLANUEVA ET AL., JULIAN SAMORA RESEARCH INST., *WORLD CITY/REGIONAL CITY: LATINOS AND AFRICAN AMERICANS IN CHICAGO AND ST. LOUIS*, JSRI WORKING PAPERS #46 (2000) (discussing the median income for Latina-headed households in Chicago to be \$12,000), at <http://www.jsri.msu.edu/Rands/research/wps/wp46.pdf>.

205. Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin and Gender Differences*, 14 B.C. THIRD WORLD L. J. 231, 238 (1994).

206. *Id.* at 250.

survivors, who need legal professionals versed in Latino culture and familiar with the Latino community.

Just as we recognize that survivors often respond best to female advocates, many Latinas respond more positively to women who have a Latino cultural perspective.

One response is to promote Latinas within the legal profession and hire Latinas in intimate partner violence programs. Where that is not physically or financially possible, we encourage domestic violence organizations to work with Latino community organizations as full partners, not as marginalized partners, in providing services. That is, let them join you in making decisions, as opposed to telling them how to do their job.

There is a range of residential and nonresidential services mandated by both federal and state statutes. These services are critical for survivors.

Four years ago, I did an investigation, which included a provider survey, to assess the availability of domestic violence services for Latinas in New York State. The report issued is published in Volume sixteen of the *Buffalo Journal of Public Interest Law*.<sup>207</sup> I am currently in the process, along with other colleagues and students at CUNY Law School, in updating that report. The preliminary information suggests, however, that circumstances have changed only slightly since 1997.

In that report, I concluded that Spanish monolingual and Spanish-dominant Latinas are particularly at risk of not finding shelter and other services because of the statewide lack of sufficient bilingual and bicultural services.<sup>208</sup>

The consequences of the shortage were borne predominantly by Latino and Latina providers, who themselves were insufficiently resourced to meet the demand.<sup>209</sup> The report concluded that, without these Latina providers, Latina survivors of domestic violence in New York State would be in an even more desperate situation.<sup>210</sup> The Latina- and Latino-run providers and community-based organizations that provide services, however, are insufficient to meet

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207. Jenny Rivera, *Preliminary Report: Availability of Domestic Violence Services for Latina Survivors in New York State*, 16 *BUFF. PUB. INT. L. J.* 1 (1997).

208. *Id.* at 27.

209. *Id.* at 28.

210. *Id.*

the demand. Principles of distributive justice<sup>211</sup> demand we reconsider and reevaluate the current service provision system.

Of the survey respondents, a mere nine percent were bilingual service providers in New York State at that time.<sup>212</sup> A full twenty-four percent had no bilingual staff.<sup>213</sup> Another fourteen percent relied on bilingual volunteers<sup>214</sup> and forty-eight percent on some bilingual staff.<sup>215</sup>

Yet, at the same time, New York documented a very high demand for residential services, resulting in thousands of persons being denied shelter in emergency residential programs.<sup>216</sup> At the same time, the number of Latinas seeking assistance through domestic hotlines increased in the 1990s.<sup>217</sup>

Latina survivors and advocates repeated stories to us of great difficulty in accessing services, not only because there were not enough services, and not enough Latina-run services, but also because available services often perpetuate the inequalities and prejudices of the larger society.<sup>218</sup>

For example, survivors experienced isolation and alienation in some shelters and in the communities in which those shelters were located, because staff members, shelter residents, and community residents expressed racial and cultural intolerance towards them or Latinos generally.<sup>219</sup>

Another example of this replication of the marginalization in society is the practice of refusing particular populations access to shelter. In this case, it was the practice of refusing to accept women into shelters when women did not speak English, because the shelter said, "We just cannot provide the services to that particular population."<sup>220</sup>

Now, while choices may appear to be motivated solely by financial or non-racialized concerns, they can nevertheless be experienced by Latina survivors and advocates as insensitivity or a relegation of the issues of that community to a lower priority.

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211. Principles of distributive justice ask whether there is a "morally proper distribution of social benefits and burdens among society's members." IRIS M. YOUNG, *JUSTICE AND THE POLITICS OF DEFERENCE* 5 (1990).

212. Rivera, *supra* note 207, at 29.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.* at 30.

217. *Id.* at 21.

218. Rivera, *supra* note 207, at 21-24.

219. *Id.* at 17.

220. *Id.* at 16.

Some of this can be set off by hiring Latinas in these programs at all staff levels and seeking to partner with Latino community organizations, giving them full partnership rather than a marginal role.

The last area I will address is criminalization. Federal and state criminalization of intimate partner violence has been both innovative and controversial. However, as is the case with service provision, much of the criminalization response has replicated the inequalities of the larger society. This is particularly troubling since the consequences can be fatal.

I agree that intimate partner violence is morally wrong and a legal violation of an individual's right to be protected from violence by another individual. However, criminalization must be assessed in its application. There is sufficient information to suggest that mandatory arrest policies and other criminalization attempts have had spotty, and on occasion, unfavorable or troubling results.<sup>221</sup>

Latinos in the United States have a long, acrimonious history with local police, marked by abuse and violence by the police.<sup>222</sup> This history continues to affect the relationship of police in domestic violence cases and incidents involving Latinas and Latinos.

There continues to be a language barrier that promotes the subordinate status of Latinas in law enforcement interactions. There continue to be racialized notions that form and guide law enforcement policies, in particular, the perpetuation of the stereotype of men of color as inherently criminal and violent and women of color as uneducated and helpless. These stereotypes perpetuate the inability to have a true dialogue as to how law enforcement could be helpful to the population that needs the service.

Police training, as many of you know, has been of limited value in responding to this problem. In fact, many police officers resist any and all kinds of training. But, nevertheless, what we need to do is change the culture of the police force—to change the makeup of that institution, so we can see some real change, as well as to transform other institutions that address the needs of our population.

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221. See Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463, 503-07 (1996) (detailing the problems of the VAWA's mandatory arrest policy for communities of color).

222. See David Olson, *Bellevue's Latinos Shaken out of Silence, into Action; Police Shooting Spurs Protest from Growing Minority*, SEATTLE TIMES, Aug. 17, 2001, at A1 (discussing the violence and conflict of the police and Latinos in one locality).

My main suggestion, of course, has always been hiring more Latinos. As you see, the Census numbers<sup>223</sup> make it easy for us now to move in that direction. But it is also about viewing what we do as something that is not centralized in a world that is not predominantly white, but centralized in a world that has really diverse linguistic and cultural needs.

### Questions & Answers

QUESTION: Could you address the issue of what remedies are available to Latinas when they are turned away from shelters?

MS. RIVERA: There are no remedies. That is the current status. There are things people can do to change the current status, and I am optimistic because VAWA was reauthorized<sup>224</sup> and there have been more appropriations and so forth.

Just because there are not enough beds now, or some of the programs are unable to properly accommodate various communities, does not mean there cannot be more beds and better service provision.

VAWA has money to provide programs and projects and it can develop programs with existing community-based organizations.<sup>225</sup> In fact, various sections of the Violence Against Women Act<sup>226</sup> state that state grantees must show how they will serve underserved populations, including racial, ethnic, and language minority populations.<sup>227</sup> Everyone that gets VAWA money has to serve these populations and explain how they will do so.<sup>228</sup> So you could try to find money through that process, participate in the grant-making, the RFP process,<sup>229</sup> and see if we can get some money to do this.

There are tremendous obstacles to this approach. First, it is very easy for me to say “go write a grant proposal,” but it is not that

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223. See U.S. CENSUS BUREAU, U.S. DEPT OF COMMERCE, CENSUS 2000 BRIEF, HISPANIC POPULATION 2 (2001) (citing statistics that the Hispanic population increased by 57.9% from 22.3 million in 1990 to 35.3 million in 2000 compared to a 13.2% growth in overall U.S. Population), available at <http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf>.

224. See 42 U.S.C. § 3796gg (2001) (authorizing \$200,000 for fiscal year 2001). The Violence Against Women Act was passed as Pub. L. No. 103-322, Title IV, 108 Stat. 1902, as part of the Violent Crime Control and Law Enforcement Act of 1994, known as the 1994 Crime Bill and now codified in various parts of 8, 18, and 42 U.S.C.

225. 42 U.S.C. § 3796gg (2001).

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

easy to do. There may be organizations in your community that provide wonderful services, but have never done anything on intimate partner violence. You may have some real resistance with them taking on this issue, based on perhaps preconceptions and stereotypes that may be replicated in that model.

Nevertheless, it is worth looking at various communities to see where there might be an existing organization or a set of advocates who are interested and could use this money and do something. We should not shy away from VAWA money.

To the extent that there are shelters who turn, at least Spanish monolingual/dominant Latinas away—the state itself has regulations that say: If you are a service provider and you get our money, you are supposed to have a plan for how you will address the needs of the communities you serve, including underserved communities.<sup>230</sup>

Each of those providers is supposed to have a plan about how they are going to serve their community. If part of their community is women who are not English language dominant or who do not speak English, then they should come up with a way to respond to those women. Perhaps they do not have staff currently on-line, but the next time a staff position opens and you work in that organization, you should find out why they are not hiring someone who is bilingual/bicultural. I have given you the Census numbers.<sup>231</sup> There are people out there. Don't tell me they are not qualified. They are out there.

Second, if right now you do not have an opening and there is not money right now, that does not mean we cannot try to find an organization, again, that does service provision work and see how you might couple with them in a full and fair partnership, for them to provide perhaps translation services or some other services or some nonresidential services—we can't have the beds; okay, then let's get some nonresidential services. You do not respond by saying, "I cannot provide those services because I do not have the skills in-house." You have to say: "Okay, how can we get those skills and how can we make people safe and how can we make it happen?"

QUESTION: I know there are a number of immigrants in the community. To what extent do you believe women do not reach out to the police because they think it might bring them to the attention of immigration authorities who might deport them, or to

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230. Rivera, *supra* note 207.

231. *See supra* note 223.



what extent do they fear that their intimate partners may be brought to the attention of the immigration authorities?

MS. RIVERA: The problem exists whenever you have an abuser who figures out a vulnerability. Not being documented is a vulnerability and something powerful to use over someone else. There is fear of the Immigration and Naturalization Service.<sup>232</sup> There is also fear of the police. There is always fear of law enforcement. Even if at one point New York City took the position “we are not going to report anyone,” that does not mean everyone in the immigrant community knows that, in terms of not being afraid or being fearful when an abuser says, “*Voy alla mi amiga.*”<sup>233</sup> I mean, you know, they are just going to do it and the chips will fall where they may. How can we help eliminate that weapon in the abuser’s arsenal? Better education programs and finding ways to efficiently and rapidly move people move from an undocumented vulnerable position to one in which this is no longer a weapon over their heads.

QUESTION: I hear a couple of things. One, the state is not immersing their workers in the Spanish language, because they can’t provide beds if they don’t have providers who have the language skills, and something has to be done immediately. If you wait for a job opening for someone to come in, you are not going to have enough job openings. So the bottom line becomes immersion of the providers’ staff in the home language of the individuals. The other thing I would say is that women are automatically vulnerable if they do not speak English, and so, somehow or other, we need to immerse the clientele in the English language also, because not being able to speak the language of the policeman, or any person in authority, seems to put them into a very vulnerable position.

MS. RIVERA: I think that is right. Language immersion could be very useful. I just hope it doesn’t end up being like computer immersion. Even that is something that takes a great deal of time, and it is difficult to become competent to the level of providing services. It is one thing to do a language immersion, the Berlitz kind of approach,<sup>234</sup> to learn basically how to maneuver in a lan-

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232. E.g., Melanie Lefkowitz, *Helping the Victim; Focusing on cultural factors in domestic violence cases*, NEWSDAY, Mar. 5, 2001, at A05 (discussing the concept that fear of deportation by the Immigration and Naturalization Service prevents victims of domestic violence from seeking help from authorities).

233. I’ll go there my friend.

234. Berlitz is a service company that specializes in teaching foreign languages with emphasis on foreign language immersion rather than translation. For more information on the Berlitz method see [http://www.berlitz.com/berlitz\\_corporate/corporate\\_information.html](http://www.berlitz.com/berlitz_corporate/corporate_information.html).

guage. It is another thing, for instance, to be able to provide any kind of legal advice. You have to be really immersed in the language of that profession, the culture of that profession, as well as the culture of the individual in front of you. It takes more than just pure language skills.

We all know the difficulty for various populations to even use translators on very sensitive issues. There are times when you really need the person providing the service to be able to have the one-on-one. Translation is often just not good enough. Many providers try desperately to deal with this and use their own staff for certain parts of this. But, you know, a counselor or a lawyer is not really going to want to engage with a translator in a communication with someone because of the delicate nature of the issues that come up.

The flip side you raise about bringing the community being serviced up to speed in the English language, I agree. In fact, there are waiting lists for English language training. People desperately want the service and the language training. The problem is, when you are in crisis, you cannot be concerned about learning English.

I want to raise one other side thing. In addition to the language barrier, there are nevertheless fully bilingual Latinas who still have an access problem. It is not just a language problem, but a cultural problem, the problem of dealing with a system that is not responsive to you or has a history of violence to your community. That is the problem you have to deal with, which addressing the language barriers alone unfortunately does not get to.

There is also the problem of how you see those providing services to your entire community. Do you see the people you have to go to as outsiders, if so, how do you respond to them? I am not suggesting that someone who is trying to get away from someone trying to kill them is going to worry about—"Let me see, is the person who is helping me named Rivera or Smith or Smythe?" Not at that moment, no.

We are talking though, about a larger picture and how you respond to a community's needs at any particular time. I know that people advocates feel very burnt out and burdened by constantly being the members of the community who have to respond to the tremendous demands of the community.

QUESTION: Are you aware of any case law where the use of translator has been a problem as far as the attorney-client privilege?

MS. RIVERA: No. Use of translators does not violate attorney-client privilege.<sup>235</sup>

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235. Charles M. Grabau & Llewellyn Joseph Gibbons, *Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation*, 30 NEW ENG. L. REV. 227, 232 (1996).