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Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color

Donna Coker *

LatCrit Theory invites scholarship that centers the experiences of Latinas/os while tying those experiences to the project of social justice for all.[1] This Essay treats as central the experiences of Latinas and other women of color who are battered by intimate partners and suggests a test for evaluating anti-domestic violence measures that builds on those experiences. I argue that every domestic violence intervention strategy should be subjected to a *material resources test.* This means that in every area of anti-domestic violence law and policy, whether it be determining funding priorities, analyzing appropriate criminal law or arrest policies, developing city ordinances or drafting administrative rules, priority should be given to those laws and policies which improve women's access to material resources.[2] Further, because women's circumstances differ in ways that dramatically affect their access to material resources, the standard for determining the impact on material resources should be the situation of women in the greatest need who are most dramatically affected by inequalities of gender, race, and class.[3] In other words, poor women and, in most circumstances,

* Associate Professor, University of Miami School of Law. I am grateful for the comments of my friends and colleagues Mary Coombs, Wes Daniels, Stacey Dougan, Angela Harris, Don Jones, Marnie Mahoney, Linda Mills, Linda Osmondson, Bernie Oxman, Rob Rosen, Frank Valdes, and Kate Waits. I am grateful for e-mail correspondence with Eve Buzawa, Jeffrey Fagan, and JoAnn Miller who helped me sort through research findings. Of course, I am solely responsible for any mistakes in this Essay.

[1] *See* Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory,* 85 CAL. L. REV. 1087, 1094 (1997), 10 LA RAZA L.J. 1, 8 (1998).

[2] In this way, I hope to meet Sumi Cho's challenge that all critical race theory work should be subjected to "a kind of political impact determination test." Sumi K. Cho, *Essential Politics,* 2 HARV. LATINO L. REV. 433, 434 (1997).

[3] The meaning of this will vary from region to region, but I do not mean to imply that a single analysis will answer the question with regard to *all* poor women of color. Regional differences, as well as differences among poor women of color, will determine the outcomes in different locales. *See* Elizabeth M. Iglesias & Francisco Valdes, *Afterword: Religion, Gender,*

poor women of color should provide the standard of measurement.

My proposal will not radically reshape structures of racism, sexism, heterosexism, and economic inequality that increase women's vulnerability and limit their responses to violence. Battered women can make few positive claims for material resources because there are few positive claims available for poor people, generally.[4] Rather, in a negative rights world[5] with inadequate and often punitive social services[6] and dramatic inequalities, this proposal is a lim-

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Sexuality, Race and Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas, 19 CHICANO-LATINO L. REV. 503, 557 (1998) (urging use of LatCrit feminist methodology that identifies and analyzes "particular instances of subordination"); *see also* Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 531 (1992) ("[I]n practice battered women are not all similarly situated. The variety of pressures shaping the battered woman's experience are often linked to the specific dynamics of the community in which the abuse occurs. Thus, efforts to aid battered women must be tailored to meet their differing needs.").

[4] *See, e.g.*, Lindsey v. Normet, 405 U.S. 56 (1972) (finding that Oregon law prohibiting habitability defense to action for failure to pay rent does not violate due process of law where renters have other avenues of redress: "[w]e are unable to perceive [in the Constitution] any constitutional guarantee of access to dwellings of a particular quality. . . ."); Dandridge v. Williams, 397 U.S. 471 (1969) (finding no violation of equal protection under mere rationality test for state to provide less AFDC benefits per child for those in households with more children than for those in households with fewer children); C.K. v. New Jersey Dep't of Health & Human Servs., 92 F.3d 171 (3d Cir. 1996) (upholding family cap on welfare benefits which denies benefits to later born children). Plaintiffs have received some relief under state constitutions. *See, e.g.*, Childree v. Health Care Auth., 548 So.2d 419 (Ala. 1989) (noting that where indigent patients in custody of Department of Mental Health are unable to pay for their care, Alabama Constitution requires that counties be responsible for costs); Butte Community Union v. Lewis, 745 P.2d 1128 (Mont. 1987) (finding violation of equal protection guarantee under state constitution for state to eliminate benefits for general relief assistance after two months).

[5] Martha Mahoney describes the way in which law shaped feminist strategies for improving women's status towards a focus on negative rights. *See* Martha R. Mahoney, *Victimization or Oppression? Women's Lives, Violence, and Agency*, *in* THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE 59, 67 (1994) (stating that feminists came to focus on negative rights strategies when legal battles for positive rights failed while privacy (abortion rights) and antidiscrimination (employment, education) strategies were somewhat successful). Of course, people do have statutory rights to wealth enhancing benefits. Many of these benefits disproportionately benefit the middle and upper class. *See, e.g.*, Regina Austin, *Nest Eggs and Stormy Weather: Law, Culture, and Black Women's Lack of Wealth*, 65 U. CIN. L. REV. 767 (1997) ("[B]lack women are not substantial beneficiaries of the principal forms of government-subsidized asset accumulation . . . that facilitate wealth accumulations."); Dorothy A. Brown, *The Marriage Bonus/Penalty in Black and White*, 65 U. CIN. L. REV. 787 (1997) (noting that black taxpayers are more likely to pay marriage penalty while white taxpayers are more likely to receive marriage bonus).

[6] *See, e.g.*, Martha Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL'Y REV. 89, 91 (1998) (stating that some government subsidies, such as tax breaks for employed families, receive no stigma, while other subsidies, such as welfare receipt, are highly stigmatized).

ited countermeasure designed to increase wherever possible the chances of strengthening women's autonomy. The test is remedial, not revolutionary, but it provides a way to distinguish between different strategies in a manner that accounts for the different material and social conditions that face battered women.

Domestic violence laws and policies may directly provide women with material resources such as housing, food, clothing, or money, or they may increase resources indirectly through the availability of services such as job training, childcare, and transportation. The material resources test requires first that priority be given to those programs, laws, or policies that provide women with direct aid.[7] Second, even when the primary goal of an intervention strategy is not the allocation of material resources, we should prefer methods of implementation that are likely to, directly or indirectly, improve women's access to material resources.[8] Further, we should usually prefer *local* assessment of the impact of law and policy on women's material resources over universal assessments because the impact of a policy will always be mediated by the particular conditions facing women in a given locale.[9] We should *always* prefer assessment that is informed by the circumstances of those women who are in the greatest need. In most circumstances this will be poor women of color who are sandwiched by their heightened vulnerability to battering, on the one hand, and their heightened vulnerability to intrusive state control, on the other. Strategies that increase material resources for poor women of color are likely to benefit — or at least not harm — other battered women in the same locale.

In Part I of this Essay, I develop the meaning of a material resources test. In Part I.A., I argue that a focus on material resources is likely to empower more women because it addresses four problems of current domestic violence discourse and policy. The first is

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[7] Robert Schroeder, Executive Director for SafeSpace, one of the largest shelters for battered women in the United States, notes that there is little funding available for direct aid to women. *See* Interview with Robert Schroeder in Miami, Fla. (on file with author).

[8] *See infra* pp. 30-33 (discussing ways in which police officers sometimes improve women's material resources through providing referrals and encouragement).

[9] *See* Telephone Interview with Leslie Landis, Director, Mayor's Office on Domestic Violence, in Chicago, Illinois (Sept. 9, 1999) (on file with author). Landis and other women's advocates opposed domestic violence mandatory arrest in Chicago because they believed that, given the police/community relations at the time, it would have had a negative impact on women and men of color. *See id.*; *see also* E-mail Correspondence with Linda Osmondson, Director of CASA, in St. Petersburg, Florida (Sept. 18, 1999) (on file with author) (stating her opposition to mandatory arrest because of problems with police mistreating people of color).

the tendency to undervalue the importance of race and ethnicity in shaping women's experiences of battering and the institutional responses they receive. The second is the tendency to ignore the way in which poverty makes women more vulnerable to domestic violence. The third is the development of increasingly punitive sanctions against batterers without evidence of increased benefits for battered women. The fourth is the pervasive and incorrect presumption that separation from the abuser equates with safety. Part I.B. describes the importance of the adequacy of women's material resources in their vulnerability to battering. Part I.C. explains the importance of having poor women of color provide the standard for analyzing the effect on material resources of any domestic violence law or policy.

In Part II, I apply a material resources test to domestic violence mandatory and pro-arrest policies. I examine the impact of these policies on material resources for poor women of color along two measures: deterrence related effects and nondeterrence related effects. In Part II.A. I review the data on arrest and recidivism for batterers of poor women of color. If arrest frequently deters batterers of poor women of color from committing future abuse, then mandatory and pro-arrest policies are likely to be resource enhancing because the result is to diminish the ways in which batterers sabotage women's economic well being. I conclude that while arrest deters some batterers, it may be less likely to deter batterers of poor women of color and may actually increase the risk of abuse for some poor women of color.

In Part II.B., I examine the possibility that arrest encouraging policies may be resource enhancing in nondeterrence dependent ways. I conclude that for some poor women of color mandatory and pro-arrest policies result in increased material resources because the police provide victims with information about and referrals to community services and other legal avenues of redress. This information, in turn, assists women in gaining access to increased material resources. The conclusions for poor women of color are uncertain, however, because research often fails to examine the particular experiences of women of color and, when race and ethnicity of victims are considered, only the experiences of African American women and white women are studied. In Part II.C., I examine the costs of mandatory and pro-arrest policies for some women of color to determine if the negative consequences of these

polices out weigh the potential benefits. I identify a number of potential costs to women, but focus my attention on three severe costs: the possibility that the battered woman and her partner may suffer police mistreatment; the possibility that the victim will be arrested; the possibility that noncitizen battered women will be deported. Part II.D. concludes that priority should be given to laws and policies that mandate that police provide assistance and referrals to battered women. These requirements should be expanded to include other assistance such as emergency transportation. With regard to arrest, the gains of *mandatory arrest* policies are frequently offset by the costs for poor women of color. The risks of victim arrest appear to be particularly acute in jurisdictions that have adopted a *mandatory* arrest policy. Therefore, states should adopt policies that allow communities to determine the most appropriate arrest policy for their locale. I outline a method of assessment for local advocacy groups in making a determination of the policies that are likely to increase material resources for poor women of color in their locale. I also suggest changes in police practice that have the potential to further enhance battered women's access to material resources. The Conclusion examines the general impact of a focus on women's material resources on federal funding decisions, legislation, and services for battered women.

Throughout this Essay, I examine the particular circumstances for Latinas who are battered. I do this to underscore two related points. First, the use of women of color as the standard by which to apply a materials resource test could operate to create an essential[10] "women of color" category that masks important differences that affect the material resources analysis. The literature on battered Latinas illustrates the importance of such differences as immigration status, migration experiences, language, and culture in understanding battered women's experiences. Second, a focus on Latinas also highlights the serious inattention given the study of battered women of color, in general, and Latinas in specific.[11]

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[10] *See* Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590-605 (1990) (criticizing reliance of feminist legal theorists on gender essentialism that requires that women presume undifferentiated single identity: woman).

[11] *See* JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 25 (1999) (noting that "[m]ost of the [domestic violence] research that addresses race focuses on differences between white and black women").

I. MATERIAL RESOURCES, DOMESTIC VIOLENCE, AND POOR WOMEN OF COLOR

A. *Class, Race, Ethnicity, and Safety in Anti-Domestic Violence Discourse and Law*

The material resources test provides a means of operationalizing the feminist goal of empowering battered women[12] through addressing four problems of current domestic violence intervention strategies. The first problem is the tendency to ignore or undervalue the significance of race or ethnicity in shaping the efficacy of universal intervention strategies.[13] A focus on material resources forces an assessment of the impact of intersections[14] of class, immigrant status, race, ethnicity, and gender because these factors will

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[12] *See* Linda Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 555 n.24 (1999) (defining empowerment to mean "a clinical policy and programmatic posture that assumes that battered women are in the best position to decide how to respond to the violence in their lives, unless they are otherwise found incompetent."). Of course, a focus on material resources will not, alone, provide a solution to battering in the lives of poor battered women. *See, e.g.*, FEMINISTS NEGOTIATE THE STATE: THE POLITICS OF DOMESTIC VIOLENCE 34 (Cynthia R. Daniels et al. eds., 1997) (stating that feminists negotiations with state must have two bottom lines: women's physical safety and women's economic well being). It is important to create interventions that target the social and familial networks of batterers that support their abusive behavior. *See* Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 42-50 (1999) (stating that peacemaking works to disrupt familial networks that collude with batterer's sense of victimization and privilege).

[13] For example, policies mandating that police arrest whenever they find probable cause that a crime of domestic violence has occurred may benefit some women whose abusers are deterred from future violence, but arrest may escalate the violence experienced by women married to unemployed men. *See* LAWRENCE W. SHERMAN ET AL., POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 261 (1992). James Ptacek notes that little domestic violence research examines race and class. Ptacek's search of SocioFILE, a computer database containing abstracts from over 2000 social sciences journals found only 4% of articles on domestic violence or battered women mentioned class, and only 4.7% mentioned race. *See* PTACEK, *supra* note 11, at 29; *see also* SocioFILE (visited Apr. 15, 2000) <http://ublib.buffalo.edu/libraries/units/lml/e-resources/sociofile.htm> (on file with author). The numbers in PsycLIT, a database of psychology abstracts, provided even fewer: only 1.9% of articles on domestic violence or battered women mention class, and only 2.8% mention race. *See* PTACEK, *supra* note 11, at 29. The corollary analysis is equally important: any law, program or policy designed to assist poor women must take into account the prevalence of violence in the lives of poor women. *See, e.g.*, Angela Browne & Shari S. Bassuk, *Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Diverse Sample*, 67 AM. J. ORTHOPSYCHIATRY 261, 271 (1997) (noting that studies of poor women find they have histories of extraordinarily high rates of violent victimization).

[14] *See* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and the Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991) (noting "race and gender intersect in shaping structural, political, and representational aspects of violence against women of color").

determine the degree to which a policy or law is likely to increase material resources for the women effected.

The second problem with many current domestic violence laws and services is the tendency to ignore the importance of women's economic subordination in their vulnerability to battering.[15] An unstated norm for battered women — those that are white and nonpoor — is created when a policy or law ignores the relationship of poverty to violence[16] and fails to account for racial differences in battered women's experiences. Influenced by the range of services that state and federal funders would pay for, it is this normative client image that is instrumental in constructing battered women's need as primarily psychological, rather than material.[17] Kimberlé Crenshaw's story of the Latina, refused shelter because she was a monolingual Spanish speaker and could not participate in the shelter's English-only support groups, is an extreme example of the devastating effects of this psychological focus.[18]

The third problem a focus on material resources counters is the trend to develop increasingly punitive criminal measures against batterers without evidence that these measures improve the well

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[15] *See, e.g.*, PTACEK, *supra* note 11, at 29.

[16] This normative battered woman is also heterosexual. *See* Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse on Intimate Violence*, 36 GEO. WASH. L. REV. 582 (1996) (noting that lesbian battered women may not be recognized as such because "recognized discourse for discussing intimate violence has emerged from the problem of male violence inflicted on female intimates"). Legal actors may also stereotype women based on class assumptions. *See* Judith Wittner, *Reconceptualizing Agency in Domestic Violence Court*, *in* COMMUNITY ACTIVISM & FEMINIST POLITICS: ORGANIZING ACROSS RACE, CLASS, AND GENDER 81, 89 (Nancy A. Naples ed., 1998) [hereinafter COMMUNITY ACTIVISM] (finding that court personnel in domestic violence court believed that women who dropped restraining orders were immersed in culture of violence and, as one state attorney explained, "just don't know any better").

[17] *See, e.g.*, Karen Kendrick, *Producing the Battered Woman: Shelter Politics and the Power of the Feminist Voice*, *in* COMMUNITY ACTIVISM, *supra* note 16, at 159 (concluding from interviews with shelter workers that "[t]he material conditions of women's lives are often treated as if they are only potential barriers to leaving an abusive relationship. The real hurdles that women need to overcome, according to the shelter workers I interviewed, are false beliefs about their circumstances."). Similarly, Kimberlé Crenshaw wrote that "counselors in minority communities report spending hours locating resources and contacts to meet the housing and other immediate needs of [battered] women . . . . Yet this work is only considered 'information and referral' by funding agencies and, as such, is typically underfunded . . . ." Crenshaw, *supra* note 14, at 1251.

[18] *See* Crenshaw, *supra* note 14, at 1265 ("The problem is not simply that women who dominate the antiviolence movement are different from women of color, but that they frequently have power to determine, either through material or rhetorical resources, whether the intersectional differences of women of color will be incorporated at all into the basic formulation of policy.").

being of victims.[19] This uncritical resort to increasing criminal sanctions serves to hide the social and political conditions that foster battering.[20] For example, the County Commission in Miami-Dade, Florida enacted an ordinance in 1999 that, among other provisions, requires the clerk of the court to notify the employer of anyone convicted of a domestic violence offense.[21] The sponsors of the legislation argued that "it sends a message," but regardless of the intended message, the result was direct and predictable harm for poor women of color. Professional men are not likely to lose their jobs if their boss is notified of a misdemeanor conviction, but men working in low skill jobs, where men of color are disproportionately represented, are likely to be fired. The ordinance takes money directly from poor women and their children by diminishing their possibility for receiving child support. The ordinance probably increases women's danger, as well, since unemployed men may be more likely to engage in repeat violence.[22]

Miami-Dade County is hardly unique in enacting legislation that increases penalties for batterers in ways that provide no benefit — and sometimes positively harm — battered women. Had the County Commission assessed the question of the ordinance's impact on battered women's material resources, and had the Com-

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[19] *See* Christopher D. Maxwell et al., The Specific Deterrent Effects of Arrest on Aggression Against Intimates 42 (National Institute of Justice) (unpublished manuscript, on file with author) ("Several experimental and non-experimental evaluations of policies intended to increase the punitiveness of the criminal justice system's response to domestic violence, such as mandatory prosecution policies or restraining orders, have yet to find many tangible gains for victims of domestic violence.").

[20] *See, e.g.*, Coker, *supra* note 12, at 25-26 (describing multiple ways in which oppressive structures of racism and socioeconomic status may be related to man's decision to batter his intimate partner). Many scholars have noted the increasing resort to punitive sanctions to govern in postindustrial societies. *See, e.g.*, Jonathan Simon, *Governing Through Crime*, *in* THE CRIME CONUNDRUM: ESSAYS ON CRIMINAL JUSTICE 171 (1997) (arguing that increasing reliance on punitive methods of control is result, in part, of lack of faith in other governing institutions, such as community and work).

[21] *See* Miami-Dade County, Fla., Ordinance 99-5 (Jan. 21, 1999). The primary provisions of the ordinance require certain employers to offer battered women unpaid leave time. When pressed as to the rationale for the notification provision, the sponsoring commissioner's staff was adamant that it was not punitive, but in somewhat contradictory language argued that an employer "had a right to know that he has a batterer on his staff, because it might make a difference in assigning jobs and in other decisions." *See* Telephone Interview with Staff Member, Office of Commissioner Natacha Millan (notes on file with author).

[22] *See* Lawrence W. Sherman et al., *Crime, Punishment, and Stake in Conformity: Legal and Informal Control of Domestic Violence*, 57 AM. SOC. REV. 680, 686 (1992) (noting that among married and employed batterers, arrest reduced subsequent violence, but among unmarried and unemployed batterers, arrest was associated with 53.5% increase in subsequent violence).

mission investigated the position of poor women of color in the county, the ordinance never would have been enacted.

The fourth problem with anti-domestic violence discourse and law is the pervasive presumption that women *should* leave battering partners and that doing so will increase their safety.[23] This presumption that separation equals safety is dangerous for women, and particularly so for poor women of color. First, the safety that presumptively flows from separation is largely fictive for poor women. Women with sufficient money to remove themselves some distance from the batterer may increase their safety from all but the most homicidal batterers.[24] Poor women, however, are often simply unable to hide.[25] Further, separation may create catastrophic results for poor women. Separation threatens women's tenuous hold on economic viability, for without the batterer's income or his assistance with childcare, for example, women may lose jobs,

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[23] *See, e.g.*, Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 26 (1991) (stating that battered women's "failure" to leave is seen as evidence that she is crazy or that she is lying); Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISPANIC J. BEHAV. SCI. 107, 113 (1999) (noting that "[a] failure to leave the [battering] relationship is seen by many mainstream agencies and court systems as a woman's failure to do something for herself and her family. Agency is directly equated with leaving, and staying is perceived as victimization. This simplistic way of viewing the intricate and complex process in each battered woman's life belies the myriad ways she may be actively working on her own and her children's behalf."). Stereotypes of Latinas as submissive may make it particularly likely that their efforts to resist their partner's control will be rendered invisible. *See* Donna Coker, A Narrow Strand on Which to Stand (unpublished manuscript, on file with author) (stating that social workers described Latina mother as "enmeshed" with her batterer who was accused of child molestation, despite mother's extensive efforts to comply with Child Protective Services treatment plan; her children were not returned to her as result).

[24] Batterers do not respond uniformly to criminal sanctions or to treatment. *See generally* Daniel G. Saunders, *Husbands Who Assault: Multiple Profiles Requiring Multiple Responses*, *in* LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION 9 (N. Zoe Hilton ed., 1993). Further, some abusive men are considerably more dangerous than are others. *See* Saunders, *supra*, at 9. While advocates have developed measures for judging the lethality of individual batterers, this variability between abusers thwarts claims that a universal strategy will protect all battered women. *See* Barbara Hart, *Battered Women and the Criminal Justice System*, *in* DO ARRESTS AND RESTRAINING ORDERS WORK? 98, 107 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (stating that creating methods to judge batterer lethality is critical to safety of battered women).

[25] *See* Cynthia Grant Bowman, *The Arrest Experiments: A Feminist Critique*, 83 J. CRIM. L. & CRIMINOLOGY 201, 205 (1992) ("If [poor women] . . . have managed to find low-cost or public housing in the inner city and to patch together support systems or social services which allow them to care for their children, they have no alternative but to remain there as sitting ducks for the abuser when he returns."). *See generally* Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375, 517 (1996) (criticizing legal system's "active indifference to the equality of women's lives, poor or otherwise, as they manage the often incompatible demands of raising children, earning income, and pursuing individual skills and interests").

housing, and even their children.[26] It is a cruel trap when the state's legal interventions rest on the presumption that women who are "serious" about ending domestic violence will leave their partner while, at the same time, reducing dramatically the availability of public assistance that makes leaving somewhat possible.[27] Thus, failure to acknowledge the manner in which women's access to material resources frames the separation/safety question is the first problem with the focus on separation.

The second problem with equating separation with safety is that legal actors frequently believe a corollary presumption: women's use and full cooperation with legal remedies increases their safety.[28] Women may be less sure than are lawyers and judges that legal orders and safety are equivalent, however. Interviews with battered women demonstrate that women sometimes drop protection orders or refuse to cooperate with prosecution because they were *successful* in using the threat of legal intervention to gain concessions from their abuser.[29]

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[26] Separation enacts other costs as well. For example, "for many immigrant women who leave their network of family and friends behind when they emigrate, the prospect of being single in a foreign land is extremely daunting." Meeta Mehrota, *The Social Construction of Wife Abuse: Experiences of Asian Indian Women in the United States*, 5 VIOLENCE AGAINST WOMEN 619, 626 (1999).

[27] *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, codified at U.S.C.A. §§ 601-614 (West 1996) (imposing five year time limit for welfare receipt).

[28] *See* Hart, *supra* note 24, at 100 ("Criminal justice system personnel too often believe that battered women will be safer and less exposed to life-jeopardizing violence once they are separated from the offenders and once prosecution has commenced."); *see also* Coker, *supra* note 12, at 69 (stating that belief of legal professionals that victimization and agency are opposed categories and that legal remedies and separation will increase women's safety results in "a simple calculus: separation is 'good', staying is 'bad'"). As one researcher described legal actors in a newly dedicated domestic violence court:

> So convinced were they that adherence to court procedures offered the only route to safety and protection, they seldom entertained the notion that certain complainants had other, more fruitful agendas in involving the law. So committed were they to a legal timetable, that they viewed a woman's repeated use of the court as proof that her failure to follow through to the end of a case doomed her to continued victimization.

Wittner, *supra* note 16, at 89. As a result of this focus, courts may punish women who reunite with their abusive partners. *See* Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 427 (1995) (stating that one woman interviewed explained that: "[The judge] put a big guilt trip on me that if I had kept the last one he gave me, I wouldn't have got hurt this time, and on and on. And he really just tore me up when I went back.").

[29] *See* David A. Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*, 25 L. & SOC'Y REV. 313, 314 (1991) (noting that women may

The third problem with equating separation with safety is that frequently the laws and services based on a separation premise devalue women's connections with their partner and their investment in building family.[30] The application of specialized legal remedies for battered women almost always presupposes separation. For example, though courts may order that respondents to restraining orders refrain from harassment and abuse without ordering the "stay-away" provisions, courts sympathetic to battered women are likely to see this accommodation as counter productive.[31] But some marriages are worth saving. Sometimes women are successful at getting their partner to stop the violence.[32] Making safety a pri-

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desire to use prosecution as power resource to negotiate more safety and more control in their lives); Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims, in* DO ARRESTS AND RESTRAINING ORDERS WORK?, *supra* note 24, at 241 (discussing women's use of restraining orders to gain concessions from batterers).

[30] *See* Coker, *supra* note 12, at 72-73 (discussing how women whose batterers are subordinated by racist, colonizing, or economic oppression may experience conflicts that "may be understood in political terms — you do not turn over a brother to occupying authorities — or in deeply individual terms — the instinct that further mistreatment at the hands of the criminal justice system will not engender compassion or empathy in a man who has been horribly mistreated by his father."); Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 52 ("What would legal doctrine and practice look like if it took seriously a mandate to make women safer in relationships, instead of offering separation as the only remedy for violence against women?"); Mills, *supra* note 12, at 585 (stating that legal actors fail to understand women's emotional connection with their abusive partner).

[31] Of course, the opposite problem still exists: courts refuse to order the stay-away provisions, even though the petitioner requests the remedy and the court implicitly rules that she met her burden of proof. *See* Interview with Stacey Dougan, Attorney and Director, Greenburg, Traurig/Florida Coalition Against Domestic Violence Clearinghouse Lawyers Project (describing case in which court refused to order stay-away provision of domestic violence protection order, while granting other provisions, because judge wanted parties to reconcile).

[32] *See* LEE BOWKER, BEATING WIFE-BEATING (1983) (providing interviews with women that solved their domestic violence problems, including some that reunited with former batterer); JoAnn L. Miller & Amy C. Krull, *Controlling Domestic Violence: Victim Resources and Police Intervention, in* OUT OF THE DARKNESS: CONTEMPORARY PERSPECTIVES ON FAMILY VIOLENCE 235, 249 (Glenda K. Kantor & Jana L. Jasinski eds., 1997) [hereinafter OUT OF THE DARKNESS] (finding that victims interviewed in study of arrest effects in Colorado Springs reported that women that continued to cohabit with their abusive partner following his arrest experienced less violence than did women that separated). In contrast, other research finds that women are safest when they separate. *See, e.g.*, David A. Ford & Mary J. Regoli, *The Preventive Impacts of Policies for Prosecuting Wife Batterers, in* DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 181, 182-84 (Eve S. Buzawa & Carl G. Buzawa eds., 1992) [hereinafter DOMESTIC VIOLENCE] (stating that, in study of effects of prosecution policies, women that cohabitated with their partner during six month follow up period were more likely to be battered again than were women that separated). Of course, we do not know whether these statistics reflect true rates of reabuse or merely the greater willingness of women to report abuse in certain circumstances.

mary way of assessing intervention strategies frequently results in policies that undermine women's abilities to evaluate various strategies for themselves[33] because it invites law and policymakers to determine what women *should* do to be safe.

The material resources test does not require the state to make judgments about what choices are in battered women's best interest. It operates on only one important presumption: inadequate material resources render women's choices more coerced than would otherwise be the case.[34] Thus resources should be made available to women so that, with assistance, they can make a determination about the best course of action based on their own set of circumstances.

B. Material Resources and Domestic Violence

Inadequate material resources render women more vulnerable to battering.[35] Inadequate resources increase the batterers' access to women who separate, and inadequate resources are a primary

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[33] *See* Mills, *supra* note 12, at 585 (stating that state actors, feeling overwhelmed and helpless to protect battered women, react by developing feelings of omnipotence, thus intervening in battered women's lives as "omnipotent saviors" and acting to "usurp the battered woman's decision-making"). Mills also argues that "state actors stereotype battered women's fragility as non-cooperative in part because of their own 'guilt' at leading a more comfortable lifestyle"; their frustration with battered women for not leaving the abuser is the result of negative counter-transference. *Id.* at 584. Safety and autonomy are sometimes in tension. Many batterers become more violent when women leave or otherwise defy their authority. *See generally* Donna Coker, *Heat of Passion and Wife-Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71 (1992) (describing motivations of men that kill their wives).

[34] For research that supports both the importance of material resources and the importance of allowing women to determine their own needs, see Sullivan, *infra* note 45 and accompanying text.

[35] *See generally* PTACEK, *supra* note 11, at 22-24 (reviewing data from various studies and finding that domestic violence is more prevalent and more severe in low-income families); Browne & Bassuk, *supra* note 13, at 263 (citing National Family Violence Survey finding that husband's unemployment significantly predicted prevalence of husband-to-wife violence); Richard J. Gelles, *Through a Sociological Lens: Social Structure and Family Violence*, *in* CURRENT CONTROVERSIES ON FAMILY VIOLENCE 31, 33 (Richard J. Gelles & Domileen R. Loseke eds., 1993) (stating that domestic violence occurs in all social and economic groups, but risk is greatest for those that are poor, that are married to men that are unemployed or that hold low prestige jobs); Angela M. Moore, *Intimate Violence: Does Socioeconomic Status Matter?*, *in* VIOLENCE BETWEEN INTIMATE PARTNERS: PATTERNS, CAUSES, AND EFFECTS 90, 96 (Albert P. Cardarelli ed., 1997) (reviewing data regarding correlation of low socio-economic status and domestic violence and concluding that "[w]omen on the lower end of the economic scale are at greater risk of victimization than their counterparts at the higher levels."). This research does not support the view that domestic violence is a problem only for low-income families. *See* PTACEK, *supra* note 11, at 20-21 (describing "class myth" that domestic violence is confined to poor or working class families).

reason why women do not attempt to separate.[36] Some battering men appear to seek out women that are economically vulnerable,[37] but even were this not so, the batterer's behavior often has a devastating economic impact on the victim's life. Abusive men cause women to lose jobs, educational opportunities,[38] careers, homes, and savings.[39] Battering renders some women permanently disabled and puts others at greater risk for HIV infection.[40] Women become homeless as a result of battering,[41] their homelessness is made more difficult to remedy because they are battered,[42] and they are more vulnerable to further battering because they are

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[36] *See* Richard Gelles, *Abused Wives: Why Do They Stay?*, 38 J. MARRIAGE & FAMILY 659, 661-63 (1976) (concluding that fewer resources wives had and less power they had, more likely they were to stay with violent husbands).

[37] *See* NEIL S. JACOBSON & JOHN M. GOTTMAN, WHEN MEN BATTER WOMEN 85-86 (1998) (describing "cobra" types of batterers that "engage every relationship as one in which they must dominate" and providing example of batterer who was attracted to his wife, in part, because she was new in town and had no financial means of support).

[38] *See* Jody Raphael, *Domestic Violence and Welfare Receipt: The Unexplored Barrier to Employment*, 3 GEO. J. FIGHTING POVERTY 29, 30-31 (1995) [hereinafter Raphael, *Employment*] (stating that abusive men sabotage efforts of women receiving welfare to obtain work and job training); Jody Raphael, *Domestic Violence and Welfare Receipt: Toward a New Feminist Theory of Welfare Dependency*,. 19 HARV. WOMEN'S L.J. 201, 208 (1996) [hereinafter Raphael, *Welfare Dependency*] (writing that "welfare reform proposals, and the debate surrounding them, are, however, fatally flawed due to their failure to recognize domestic violence as a roadblock to girls and women on welfare who want to become economically independent"); Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, NAT'L CLEARINGHOUSE REV. 421, 427 (1991) (Special Issue) (stating that battering is significant cause of homelessness among women). For a discussion of appropriate legal services approaches to the representation of poor battered women, see Peter Margulies, *Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection, and Voice*, 63 GEO. WASH. L. REV. 1071 (1995), and Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, J.L. & POL'Y, Apr. 1997, at 205, 215.

[39] I speak from my personal experience as a social worker and attorney working for and with battered women since 1978. This work includes shelter staff, coordinator of the women's portion of a community based domestic violence program, professional trainer, and counselor for battered women and for men court ordered to batterer groups.

[40] *See* Seth C. Kalichman et al., *Sexual Coercion, Domestic Violence, and Negotiating Condom Use Among Low-Income African American Women*, 7 J. WOMEN'S HEALTH 371, 373 (1998) (finding in study of low income African American women in housing project that constellation of factors increased their risk for HIV infection: women who experienced sexual coercion and physical violence from partner(s) were also more likely to have used illicit drugs in their last sexual encounter and were more likely to report that they were afraid to ask their male partner(s) to use condoms because they feared he would hit them).

[41] *See* Zorza, *supra* note 38, at 422-23.

[42] *See* Lisa R. Green, *Homeless and Battered: Women Abandoned by a Feminist Institution*, 1 UCLA WOMEN'S L.J. 169, 171-73 (1991) (stating that battered women's shelters employ essentialist understandings of battered woman to refuse assistance to homeless women who are battered).

homeless.[43] They frequently become estranged from family and friends who might otherwise provide them with material aid.[44]

Cris Sullivan's research suggests that victims' resources have a relationship to experiencing renewed violence and to increased victim well being.[45] Sullivan compared two sets of women leaving a battered women's shelter. The groups were matched in terms of demographics including race, age, employment status, and severity of violence. Each group contained roughly the same number of women cohabitating with their abuser and women separated from their abuser.[46] The experimental group members were provided with an advocate who met with them twice weekly for ten weeks[47] to assess their needs and set priorities.[48] Advocates assisted women in gaining access to educational resources, legal assistance, employment, services for their children, housing, child care, transportation, financial assistance, health care, and social supports.[49] Participants in the experimental group were compared with the control group on a number of measures at different intervals over the course of two years. The women in the experimental group reported significantly less psychological abuse and depression and significantly higher improvement in quality of life and level of so-

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[43] *See id.*

[44] *See id.* For some poor women, family and friends do not have the means to assist them. *See, e.g.*, Jean Calterone Williams, *Domestic Violence and Poverty: The Narratives of Homeless Women, in* FRONTIERS: A JOURNAL OF WOMEN STUDIES 145 (1998) (asserting that many homeless women were homeless as result of persistent poverty, domestic violence and low-rent housing shortages, and although their families and friends were not homeless, they lacked resources to help their homeless relative).

[45] *See* Cris M. Sullivan & Deborah I. Bybee, *Reducing Violence Using Community-Based Advocacy for Women with Abusive Partners*, 67 J. CONSULTING & CLINICAL PSYCHOL. 43, 48 (1999).

[46] *See id.* at 46. Forty-five percent of the experimental group were African American women, 42% were Euro-American women, 7% were Latina, 2% were Asian American or American Indian. *See* Cris M. Sullivan et al., *After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 VIOLENCE & VICTIMS 267, 269 (1992) (reporting on same population). Two women who did not speak English were excluded, thus demonstrating another way in which the experiences of some women are not represented in domestic violence research. *See id.*

[47] *See* Sullivan & Bybee, *supra* note 45, at 45. The advocate worked with the women for an average of 6.4 hours a week. *See id.* The advocates were trained undergraduate students who received school credit for their work. They were supervised weekly. *See id.*

[48] *See id.* at 51.

[49] *See id.* at 45. Of this list, only "services for children" and "social supports" arguably do not fit the definition of "material resources" for purposes of the material resources test. Ninety eight percent of the women receiving assistance reported they were somewhat or very satisfied with the project and 87% reported they were very satisfied. *See id.*

cial supports than did those in the control group.[50] Most impressive were the differences in the physical abuse measures: one out of four women in the experimental group experienced no abuse during the twenty four month follow up, while this was true for only one out of ten women in the control group.[51] Sullivan believes that what made the advocacy program succeed was that participants, not advocates, guided the direction of the intervention, and the "activities were designed to make the community more responsive to the woman's needs, not to change the survivor's thinking or belief system."[52] Thus, connection to material resources in areas that the women identified as necessary made significant differences both in terms of their ability to improve their lives and in reducing their victimization.

JoAnn Miller and Amy Krull examined victim interview data gathered in three studies of police response[53] to determine the relationship between the victim's employment status and batterer recidivism. They found that unemployed victims in one study were the victims of significantly more recidivistic violence than were employed victims.[54] While this unemployment effect was not borne out in the other two studies, the length of time the victim was unemployed correlated with recidivism in all three studies: the longer the victim was unemployed, the higher the level of recidivism.[55]

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[50] *See id.* Only the difference in psychological abuse scores did not reach statistical significance. *See id.* at 48. Both groups of women reported that their quality of life and their social support networks had improved and that the abuse had decreased. However, the experimental group reported significantly higher outcomes. *See id.* The interviews to determine improvement were conducted by trained interviewers who were not the advocates, thus decreasing the likelihood that interviewees exaggerated their positive responses so as to please the advocates. Of course, this is still a danger with this kind of research.

[51] *See id.* at 51.

[52] *See id.* The project was based on the assumption that "survivors were competent adults capable of making sound decisions for themselves." *Id.*

[53] The studies were conducted in Omaha, Colorado Springs, and Milwaukee. They were part of a series of six replication studies, funded by the National Institute of Justice, to test the findings of the Minneapolis study: arresting batterers created greater specific deterrence than did police mediation or separation. *See* J. David Hirschel & Ira W. Hutchison, *Realities & Implications of the Charlotte Spousal Abuse Experiment*, *in* DO ARRESTS AND RESTRAINING ORDERS WORK?, *supra* note 24, at 79. Victim interviews were conducted primarily in order to measure recidivism, but other data was collected and is now the subject of analysis. *See id.*

[54] This effect was found in Omaha. *See* Miller & Krull, *supra* note 32, at 246. In Colorado Springs, unemployed victims also experienced higher levels of recidivistic violence than did employed victims, but the relationship did not achieve statistical significance at the .05 level. *See id.*

[55] *See id.* It does not appear that the researchers controlled for those unemployed women whose partners were also unemployed.

Initial inquiries regarding the importance of battered women's material resources focused on the relative economic position of women vis-à-vis their battering partner and found that economic dependency on the partner was a significant predictor of severe violence[56] and a primary reason women gave for re-uniting with their abusive partner.[57] These studies of relative economic power may inadvertently rest on a middle-class norm in which nuclear family households are understood to be autonomous economic units[58] and the dynamic between the couple is the focus of inquiry. Absolute rates of poverty are likely to be equally critical, if not more so, for many battered women. The ability to relocate or hide, for example, is related as much to absolute rates of poverty as it is to women's relative economic resources compared to that of their abuser. The importance of familial and neighborhood networks for economic survival — networks which are likely to be heavily geographically dependent — are critical in determining a woman's ability to relocate.[59]

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[56] *See* Debra S. Kalmus & Murray A. Strauss, *Wife's Marital Dependency and Wife Abuse*, 44 J. MARRIAGE & FAM. 277, 280 (1982) (finding that *subjective* marital dependency was correlated with minor but not severe violence, while *objective* dependency, as measured by wives' unemployment, presence in home of children under five years of age, and whether husband earned 75% or more of couple's income, was correlated with severe abuse).

[57] *See* Gelles, *supra* note 35, at 33-35 (stating that wives with fewer resources and less power were more likely to stay with violent husbands).

[58] The isolation of the nuclear family may be less severe in African American and Latina/o households. *See, e.g.*, Noel A. Cazenave & Murray A. Straus, *Race, Class, Network Embeddedness, and Family Violence: A Search for Potent Support Systems*, *in* MURRAY A. STRAUS ET AL., PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE 321, 331 (1995) [hereinafter PHYSICAL VIOLENCE IN AMERICAN FAMILIES]. Cazenave and Straus found in their study of family violence that African American respondents were more likely to have relatives who lived within an hour's drive away, to have five or more children in the home, to have a non-nuclear family adult in the home, and to have neighborhood stability. *See id.* at 331. The number of years lived in the neighborhood and the number of children in a family, are related to lower rates of minor spousal violence among African Americans studied; households with five or more children experienced *less* violence. *See id.* at 333. They conclude that African American respondents "appeared to be more involved in family-kin networks than whites and those networks appear to reduce family violence as compared with whites at similar socioeconomic levels." *Id.* at 337-38.

[59] *See* PTACEK, *supra* note 11, at 3 (describing way in which racism reflected in opportunities for housing, employment, and services limits ability of poor African American battered women in urban areas). In addition, for women whose economic situation is marginal, economic dependency on the batterer may result even if his economic contributions are relatively minor. For example, research related to women in welfare-to-work programs finds that many women's efforts at economic viability are thwarted by abusive partners who sabotage their job and educational efforts. *See* Raphael, *Employment*, *supra* note 38, at 31-34. The economic dependency on men is made more difficult because of the inadequate nature of public assistance.

Despite the vulnerability of poor women to domestic violence,[60] programs for battered women sometimes fail to address the needs of the very poor,[61] particularly those that are perceived as "deviant."[62] For example, some battered women's shelters refuse admission to "homeless" women because they are believed to be too manipulative, "street-wise," or anti-social.[63] Women with substance addictions may find it particularly difficult to obtain shelter that is safe and that treats addiction. Thus, women's poverty renders them more vulnerable to battering, battering deepens their poverty, and extreme poverty may place a woman outside the scope of services designed to assist battered women.

C. *Poor Women of Color as the Standard*

Domestic violence intervention strategies frequently fail to appreciate the ways in which race, ethnicity, immigration status, culture and language structure the responses women are likely to encounter from helping institutions,[64] the manner in which battering

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[60] *See generally* PTACEK, *supra* note 11; Gelles, *supra* note 35; Moore, *supra* note 35.

[61] *See, e.g.*, Green, *supra* note 42, at 171-74 (reporting that shelters refuse to house battered women who are perceived as "homeless"); Williams, *supra* note 44, at 147 (stating that battered women's shelters may deny shelter to homeless battered women because they are identified as "street-wise", and homeless shelters may deny them entrance because they are not "homeless"). *See generally* DOMILEEN R. LOSEKE, THE BATTERED WOMAN AND SHELTERS: THE SOCIAL CONSTRUCTION OF WIFE ABUSE (1992) (describing manner in which battered women's shelter workers construct *real* "battered women"). Concepts of deviance are informed by class, race, and gender stereotypes. *See, e.g.*, Regina Austin, *Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877, 879 (1992) ("If the assessment [of the law breaker or norm violater] is negative when the wrongdoer is male, it is likely to be more so if the wrongdoer is female . . . . [B]lack women who break the rules are judged in accordance with the biases of both white supremacy and male domination."); Dorothy Roberts, *The Only Good Poor Woman: Unconstitutional Conditions and Welfare*, 72 DENV. U. L. REV. 931, 933 (1995) (describing perception of "procreation by the poor as costly and pathological").

[62] *See generally* Green, *supra* note 42 (discussing how house rules may be pretextual basis for excluding women that are different than prototypical battered women).

[63] *See generally* Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. GENDER & L. 65, 68 (1993) (stating that some shelters will not take women that are prostitutes); Green, *supra* note 42 (discussing exclusion of women from homeless shelters based on manipulative or deviant patterns of communication); Michelle S. Jacobs, *Prostitutes, Drug Users, and Thieves: The Invisible Women in the Campaign to End Violence Against Women*, 8 TEMPLE POL. & CIV. RTS. L. REV. 459 (1999) (criticizing domestic violence services and scholarship for inattention to violence in understanding women's criminal behavior); Williams, *supra* note 44 (describing differences in how women in battered women's shelters understood their situation and themselves, and the way in which women in homeless shelters, who were also battered women, understood their circumstances).

[64] *See, e.g.*, Eve S. Buzawa & Carl G. Buzawa, *The Impact of Arrest on Domestic Violence*, 36 AM. BEHAV. SCIENTIST 558, 563 (1993) (reporting that many police officers believe that "violence is a normal part of the lives of the lower class"); Mary Ann Dutton, *Battered Women's*

is understood by those around them,[65] and the manner in which women understand the abuser's behavior.[66] Establishing poor women of color as the standard for assessing the impact on material resources ensures that their needs are no longer marginalized.[67] Poor women of color should be at the center of assessment for a second important reason. The experience of poverty, and hence the manner in which poverty shapes the experience of battering, is further shaped by experiences directly linked to race and ethnicity. For example, the experience of poverty for urban African American women is qualitatively different than the experience of poverty for many white urban women. Poor African American women in urban areas are much more likely to live in neighborhoods in which *overall* poverty rates are high.[68] Thus, even when

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Strategic Response to Violence, in RETHINKING VIOLENCE AGAINST WOMEN 105, 107 (R. Emerson Dobash & Russell P. Dobash eds., 1998) (describing nested ecological model for understanding battered women's experiences, including experiences with racist institutions, family histories, and individual psychology); Kathleen J. Ferraro, *The Legal Response to Woman Battering in the United States, in* WOMEN, POLICING, AND MALE VIOLENCE: INTERNATIONAL PERSPECTIVES 155 (Jalna Hanmer et al. eds., 1989) (stating that police respond differently to "deviants" than to "normals" and often see poor women and intoxicated women as former); Peter G. Jaffe et al., *The Impact of Police Laying Charges, in* LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS & EVALUATION, *supra* note 24, at 99 (stating that police often divide world between "normal and deviant citizens" in order to manage cognitive dissonance caused by daily encounters with individuals whose appearance, demeanor, and surroundings contradict dominant definitions of 'normality'").

[65] *See* Coker, *supra* note 12, at 44 (describing manner in which batterer's parents may blame victim for their son's violence); *id.* at 58-59 (describing use of Navajo creation narratives to define Navajo masculinity in gender egalitarian manner); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 255 (1994) (noting that some members of Latina/o community have resisted addressing domestic violence because it is seen as private and potentially divisive issue).

[66] *See generally* Perilla, *supra* note 23, at 123 (describing varying experiences of Latinas who are battered and manner in which male authority is understood).

[67] For a description of the importance of these intersections in women's lives and the manner in which domestic violence programs fail to meet the needs of women of color, see Crenshaw, *supra* note 14. Crenshaw describes "structural intersectionality" as "the ways in which the location of women of color at the intersection of race and gender makes our actual experience of domestic violence, rape, and remedial reform qualitatively different than that of white women." *Id.* at 1245; *see also* Dutton, *supra* note 64, at 105, 107 (describing nested ecological model for understanding battered women's experiences). Health, disability status, age, sexual orientation, and urbanicity are other factors that shape the experience of battering.

[68] *See* Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203, 1219 (1995) (asserting that hypersegregation and rising black poverty creates neighborhoods with "street orientation," meaning "a social world characterized by high levels of interpersonal hostility and aggression"). For a related but more thorough analysis, see DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID (1993). For a discussion of policies that diminish the ability of African American women to

white women and African American women have similar incomes, their access to social services, police protection, and their exposure to general violence are significantly different.[69] The experience of battering differs, also, because of the failures of helping institutions to meet the needs of battered women of color.[70] Therefore, one cannot assess the likelihood that a given domestic violence intervention strategy will provide material resources for battered women without assessing whether it does so for poor women, who are disproportionately victims of battering, and for women of color, who

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control wealth, see Austin, *supra* note 5, at 771 ("[B]lack women are not substantial beneficiaries of the principal forms of government asset accumulation, nor of other kinds of institutional privileges that facilitate wealth accumulation. . . .").

[69] *See* PTACEK, *supra* note 11, at 31 (citing research by Robert J. Sampson and William Julius Wilson finding that 70% of poor white New Yorkers live in nonpoverty neighborhoods while 70% of black new Yorkers live in poverty neighborhoods); *see also* Robert J. Sampson & William J. Wilson, *Toward a Theory of Race, Crime, and Urban Inequality, in* CRIME AND INEQUALITY 37 (John Hagan & Ruth D. Peterson eds., 1995). Ptacek wrote:

> [W]hen hospitals close in politically marginalized communities, this complicates [battered] women's efforts to seek help. When white racism limits the neighborhoods that people of color can live in, women's options to leave are narrowed. When businesses close and jobs leave poor communities of color, women lose economic opportunities that could help them gain independence. To treat class but not race is to ignore the effects of racial segregation on women's lives.

PTACEK, *supra* note 11, at 31.

[70] *See, e.g.*, Gloria Valencia-Weber & Christine P. Zuni, *Domestic Violence and Tribal Protection of Indigenous Women in the United States*, 69 ST. JOHN'S L. REV. 69, 130 (1995) ("Indian women and other women of color confront the same cultural insensitivity and racism at urban domestic violence shelters as they do elsewhere. These shelters can be unaware of the cultural resources which should be used to assist Indian victims of domestic violence"). *See generally* Crenshaw, *supra* note 14, at 1262-65 (describing way in which shelters for battered women fail to meet needs of women of color); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 11 (1998) (describing manner in which racial and gender based stereotypes interact in stereotypes of women's victimization); Beverly Horsburgh, *Schrdegreesodinger's Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 577 (1996) ("Strategies [against domestic violence] . . . are inclined to reflect the experiences of white women" and "seldom deal with the economic and workplace discrimination issues that best women of color."); Kimberly A. Huisman, *Wife Battering in Asian American Communities*, 2 VIOLENCE AGAINST WOMEN 260, 267 (1996) (noting that services for battered women frequently do not have workers who are linguistically and culturally competent to assist Asian American battered women, particularly recent immigrant women); Rivera, *supra* note 65 (stating that domestic violence policies and laws do not account for Latina battered women's experiences); *id.* at 253 (noting that shelters sometimes refuse admission to monolingual Spanish speakers and few shelters have bilingual and bicultural staff); Susan Girardo Roy, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263, 286 (1995) (observing that "many shelters remain culturally biased toward English-speaking, or American women").

are both disproportionately poor and whose experiences of battering and community responses to battering is shaped by experiences linked to race and ethnicity.

Battered Latinas. The problems that current universal anti-domestic violence policies create for many Latinas illustrate the value of the material resources test. Scholarship by Latina writers describing the experiences of Latinas who are battered by intimate or former intimate partners focuses on Latinas' material conditions, the social networks and varying family structures within which they live, and the antisubordination struggles with which they engage.[71] These antisubordination struggles involve hierarchies of race, gender, class, language, and immigrant status.[72] Battered Latinas may be forced to fight governmental institutions that are historically hostile to Latinas/os,[73] as well as social and legal structures of racism/sexism that limit their opportunities for economic stability.

Little domestic violence research focuses on the experiences of women of color and even less on battered Latinas.[74] Research pur-

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[71] *See generally* Perilla, *supra* note 23; Rivera, *supra* note 65; Jenny Rivera, *Intimate Partner Violence Strategies: Models for Community Participation*, 50 ME. L. REV. 283 (1998) [hereinafter Rivera, *Models for Community Participation*]; 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, 505 (1996) [hereinafter Rivera, *Multiple Consciousness*]; *see also* Celina Romany, *Killing "the Angel in the House": Digging for the Political Vortex of Male Violence Against Women*, *in* THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE 285 (Martha A. Fineman & Roxanne Mykitiuk eds., 1994) (describing struggles against domestic violence in Puerto Rico).

[72] *See* Crenshaw, *supra* note 14; Rivera, *supra* note 65.

[73] *See, e.g.*, CORAMAE RICHEY MANN, UNEQUAL JUSTICE: A QUESTION OF COLOR 137 (1993) (reporting studies finding relationship between size and economic strength of minority population and deployment of criminal justice mechanisms to control population and referring to research on Hispanics as example); Rivera, *supra* note 65, at 245-46 (writing that "Latinos in the United States have had a long, acrimonious history of interaction with local police and federal law enforcement agencies. This history is marked by abuse and violence suffered by the Latino community at the hands of police officers who have indiscriminately used excessive physical force against Latinos.").

[74] *See, e.g.*, Judith McFarlane et al., *Characteristics of Sexual Abuse Against Pregnant Hispanic Women by Their Male Intimates*, 7 J. WOMEN'S HEALTH 739, 740 (1998) (quoting NIH Panel on Research on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences as stating that: "An area of prime concern is the paucity of information on Hispanic, Native American, African American, and Asian involvement in aggressive and violent behavior, either as victims or as agents."). What research exists suggests that domestic violence is a significant problem for Latinas. For example, the results of one random sample study found that seven out of one hundred English speaking Latinas were severely assaulted by their husbands in the year prior to the study. *See* Murray A. Straus & Christine Smith, *Violence in Hispanic Families in the United States: Incidence Rates and Structural Interpretations*, *in* PHYSICAL VIOLENCE IN AMERICAN FAMILIES, *supra* note 58, at 350. Obviously, a study of Eng-

portedly about "battered women" or "domestic violence" frequently rests on data gathered only or mainly about white women.[75] When research purports to study the experiences of "women of color" it often involves only or mainly African American women.[76] Thus the research on battered women suffers from a black/white paradigm problem[77] in which the experiences of white women represent all women,[78] the experiences of African American women

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lish speaking Latinas/os cannot be said to be representative. For a discussion of the limitations of domestic violence research on Latinas/os because of the failure to make distinctions between groups, see *infra* notes 80-82 and accompanying text. A review of crime statistics concludes that Hispanic women were more likely than non-Hispanic women to be victims of violence. *See* DIANE CRAVEN, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SEX DIFFERENCES IN VIOLENT VICTIMIZATION, 1994 (1997) (reporting that 52 per 1000 Hispanic women were victims of violence compared to 43 per 1000 non-Hispanic women).

Because unemployment rates are high for Latinas/os and because many Latinas/os marry young, research that links unemployment and youth with higher incident rates of domestic violence suggests that many Latinas are at increased risk for domestic violence. *See* BUREAU OF LABOR STATISTICS, THE EMPLOYMENT SITUATION: JANUARY 2000, tbl.A-2 (reporting that average unemployment rate for seasonally adjusted months reported for Hispanics is about 6.2% compared to average 3.55% for whites and 8.08% for blacks); Straus & Smith, *supra* note 74, at 356 (reporting that 16% of unemployed English-speaking Hispanic men committed acts of severe violence against their wife within previous year, compared to 6.5% of employed men in study); Carolyn M. West, *Lifting the 'Political Gag Order': Breaking the Silence Around Partner Violence in Ethnic Minority Families*, *in* PARTNER VIOLENCE: A COMPREHENSIVE REVIEW OF 20 YEARS OF RESEARCH 184, 193 (Jana L. Jasinski & Linda M. Williams eds., 1998) (stating that domestic violence rates are highest for those under 30 years of age.)

[75] *See* Susan B. Sorenson, *Violence Against Women: Examining Ethnic Differences and Commonalities*, 20 EVALUATION REV. 123, 125 ("[R]elatively little empirical community-based research has investigated ethnic differences and similarities in violence against women in U.S. subpopulations. When investigated, groups typically are collapsed into White vs. non-White or Black vs. non-Black.").

[76] *See id.*

[77] *See, e.g.*, Berta Espereanza Hernández-Truyol, *Latina Multidimensionality and LatCrit Possibilities: Culture, Gender and Sex*, 53 U. MIAMI L. REV. 811, 812 (1999) ("From its inception, Lat Crit has broadened and sought to reconstruct the race discourse beyond the normalized binary black/white paradigm — an underinclusive model that effects the erasure of the Latina/o, Native, and Asian experiences as well as the realities of other racial and ethnic groups in this country.").

[78] *See* Richard Hampton et al., *Violence in Communities of Color*, *in* FAMILY VIOLENCE AND MEN OF COLOR: HEALING THE WOUNDED MALE SPIRIT 1, 20 (Ricardo Carillo & Jerry Tello eds., 1998) [hereinafter FAMILY VIOLENCE] (stating that majority of research on violence within families studies white families). As Mary Ann Dutton wrote:

> Results of research including only Anglo American women cannot be assumed to apply to women of color, women living in poverty, or women whose native language is other than English. Research on battering and its effects for disenfranchised women, such as the homeless, the seriously and chronically mentally ill, and immigrants, is necessary to capture the unique contextual influences that define the life circumstances of these groups of battered women.

Dutton, *supra* note 64, at 118-19.

represent "women of color," and differences in experience between African American women and white women represent all racial/ethnic differences.[79]

An additional problem arises in the scholarship that does focus on Latinas/os: the tendency to group Latinas/os together without regard to important differences between groups.[80] For example, the largest random sample study of domestic violence rates among Latinos/as only interviewed those who spoke English.[81] The National Institute of Justice ("NIJ") study of police response in Miami-Dade County, Florida, a locale with significant numbers of immigrants from Caribbean and Latin American countries, grouped offenders into just three categories: "White, Black, and Hispanic."[82] This leaves one uncertain as to which category black Cuban Americans are placed, for example, and unable to identify the importance of potentially significant differences of language, culture, or economics between immigrants from Haiti, Jamaica, or Cuba and African Americans.

Domestic violence research on Latinas also frequently ignores the impact of immigration status. Undocumented women may fear that police intervention will lead to deportation proceedings.[83] Batterers who are themselves legal permanent residents or citizens use the threat of deportation to control women.

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[79] *See* PTACEK, *supra* note 11, at 25 (noting that "[m]ost of the research that addresses race focuses on differences between white and black women").

[80] *See, e.g.*, Lisa Aronson Fontes, *Conducting Ethical Cross-Cultural Research on Family Violence*, *in* OUT OF THE DARKNESS, *supra* note 32, at 300 (noting that cross-cultural researchers on family violence sometimes engage in "ethnic lumping" where "one subgroup is considered representative of a collection of diverse peoples, as when Mexican-Americans are [studied] and labeled 'Hispanics' and their experiences are presumed to be true of Puerto Ricans, Cubans, Dominicans, and other Latinos"); *see also* MARY P. KOSS ET AL., NO SAFE HAVEN: MALE VIOLENCE AGAINST WOMEN AT HOME, AT WORK, AND IN THE COMMUNITY 54 (1994) ("Hispanics in the United States originate from at least 32 countries and . . . there are significant cultural differences.").

[81] *See* Straus & Smith, *supra* note 74, at 341. This is particularly problematic because other research suggests that "acculturation" may have an escalating effect on Latino male battering, thus the study may have skewed the rates upward. *See* Hampton et al., *supra* note 78, at 12. Further, even English speakers may not have understood the forced choice responses required of the study. *See id.* at 20. A different kind of bias may result from the use of phone interviews, which result in the omission of the very poor and the marginally housed.

[82] *See* Metro-Dade County Spouse Abuse Replication Project Draft Final Report 4-21, tbl.4-6 (National Institute of Justice, 1991) (on file with author).

[83] *See, e.g.*, Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U. L. REV. 665, 679-80 (1998) (stating that undocumented women fear they will be deported if they report abuse).

> Having left the relative safety of extended family and social networks in their countries of origin, immigrant Latinas must take the very difficult first steps into totally unknown circumstances. Their vulnerability in terms of language, documentation, education level, knowledge of laws and services, and work skills is often used by their abusers as ammunition in their terrorist practices.[84]

For many undocumented women, deportation means not only economic deprivation, but also separation from children,[85] and the probability of more and even greater violence in their home country.[86] In addition, the experiences of political repression or civil war may affect the responses to battering of some Latina immigrants.[87] These experiences may foster distrust of governmental authority and most especially of the police. Additionally, this kind of multiple trauma may result in post-traumatic stress disorder in some women,[88] further complicating the victim's ability to gain economic stability.

Undocumented women are at greater risk of facing violence or the threat of violence at numerous sites including work and their neighborhood.[89] Unless domestic violence becomes severe, it makes little sense to target for criminal intervention only the violence that is perpetrated by an intimate partner.[90] Additionally,

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[84] Perilla, *supra* note 23, at 125.

[85] For example, Kelly describes an immigrant woman who lost custody of her child to her abusive husband. *See* Kelly, *supra* note 83, at 686 n.109. If that woman were deported, she might not see her children for a long period of time. *See id. See generally* Leslye E. Orloff et al., *With No Place To Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 FAM. L.Q. 313 (1995) (describing difficulties facing battered immigrant women).

[86] *See* Perilla, *supra* note 23.

[87] *See, e.g.*, West, *supra* note 74, at 205 (stating that premigration and postmigration history of immigrants may include experiences such as loss of property, homeland, or even people significant to immigrant's life, as well as loss of status).

[88] *See* Ricardo Carrillo & Rolando Goubaud-Reyna, *Clinical Treatment of Latino Domestic Violence Offenders*, *in* FAMILY VIOLENCE, *supra* note 78, at 64 (noting that many Latinos participating in groups for men that batter migrated because of "[w]ar-torn situations, unbearable poverty, unemployment, or natural catastrophes"). For women, these experiences are often confounded by continuing physical assault in this country. As a result, some women develop post traumatic stress disorder. *See* Dutton, *supra* note 64, at 107; *see also* Raphael, *Employment*, *supra* note 38, at 32 ("In many cases the 'culture of poverty' is nothing more than post-traumatic stress disorder . . . . Past victims have incurred permanent injuries such as damage to joints, partial loss of hearing or vision, as well as emotional injuries which compromise their capacity to become and stay employed.").

[89] *See, e.g.*, CHRIS HOGELAND & KAREN ROSEN, DREAMS LOST DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY 41-76 (1991).

[90] As Berta Hernández-Truyol wrote, "[l]a familia is of sacrosanct importance in the cultura Latina." Hernández-Truyol, *supra* note 77, at 816. Even when there is violence, family may provide an imperfect refuge from the alienation and abuse facing poor women

immigrant Latinas who do not speak English are seriously disadvantaged in the courts, in their encounters with police, and in the offices of social service agencies.[91]

II. APPLICATION OF THE MATERIAL RESOURCES TEST TO ARREST ENCOURAGING POLICIES

A. Deterrence Related Resources.

Battering men frequently sabotage women's attempts at economic self-sufficiency.[92] An arrest policy that deters violence, even if it did not deter psychological abuse and other controlling behavior, would likely have some impact on this diminishment of women's material resources. Therefore, if arrest encouraging policies result in specific deterrence, those policies are likely to be resource enhancing for battered women. This section analyzes the data on the specific deterrence effects of arrest for men who batter poor women of color. Arrest policies in domestic violence cases

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in their work. *See* BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER 124-25 (1984). hooks wrote:

> The vast majority of poor black women in this society find they are continually subjected to abuse in public agencies, stores, etc. . . .They are more inclined to accept abuse in situations where there are some rewards or benefits, where abuse is not the sole characteristic of the interaction. [Therefore,] . . . they may be reluctant . . . to end [battering] . . . relationships. Like other groups of women, they fear the loss of care.

Id.

For a discussion of the failure of white middle class feminists to recognize the importance of family in constructing a female identity for women of color and working class women that has dignity and is not wholly defined by the market place, see Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflict*, 15 HARV. BLACKLETTER L.J. 41, 75 (1999), writing that

> White feminists need to be attuned to the ways that assumptions that embed class and race privilege can alienate potential allies. A tone of respect for family and for domesticity are important in a social context where gender ideals and the denial of family life have been key elements of a system of class and race oppression.

Id.

[91] Advocates for battered women report a limited number of Spanish speaking personnel at every level of legal and service systems. Police officers rely on neighbors or the victim's children for translation at the scene; there are few victim witness advocates, prosecutors, and courtroom personnel who speak Spanish. *See* E-mail Correspondence with Marie de Santis, Director of Women's Justice Center in Sonoma County, California (Nov. 28, 1999) (on file with author) (discussing circumstances of battered Latinas in Sonoma County, California).

[92] *See generally* Raphael, *Employment*, *supra* note 38.

operate in three variants: no specified policy, pro-arrest[93] (modified police discretion), and mandatory arrest (arrest is mandated where police find probable cause to believe domestic violence has occurred).[94] I refer collectively to pro-arrest and mandatory arrest policies as *arrest encouraging policies.*

The biggest problem for poor women of color with regard to police response has been in getting the police to respond *at all.*[95] Police often believe that violence is an unremarkable event in the households of poor people of color and that police intervention is therefore likely to be ineffective or unnecessary.[96] This may be explained, in part, by a police culture that constructs categories of "normal" and "deviant" people, with poor people of color more likely to be placed in the latter category.[97] Thus, battered women's advocates conceived of arrest encouraging policies, and particularly mandatory arrest polices, as a mechanism for diminishing police discretion that frequently operated to deny protection to battered women, especially poor women of color.[98] The results of the now famous Minneapolis arrest study — that arrest deterred repeat violence better than did police mediation or separation of the par-

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[93] Pro-arrest policies are sometimes referred to as presumptive arrest policies.

[94] *See, e.g.*, ALASKA STAT. § 18.65.530 (Michie 1998); COLO. REV. STAT. ANN. § 18-6-803.6 (West 1999).

[95] *See* Eve S. Buzawa et al., *Role of Victim Preference in Determining Police Response to Victims of Domestic Violence, in* DOMESTIC VIOLENCE, *supra* note 32, at 257 (citing research of Black, 1980 and Stanko, 1989) ("[W]hite officers have tended to be less likely to arrest in cases of minority violence.").

[96] *See, e.g.*, Lawrence W. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. CRIM. L. & CRIMINOLOGY 137, 142 (1992) ("one nearly universal finding [in studies of police behavior] is that police attend to the demeanor or overall 'moral worth' of the suspect and victim"); Elizabeth Marie Marciniak, Community Policing of Domestic Violence: Neighborhood Differences in the Effect of Arrest 108 (1994) (unpublished Ph.D. dissertation, University of Maryland) (on file with author) (citing D.A. Smith, *The Neighborhood Context of Police Behavior, in* 8 COMMUNITIES AND CRIME: CRIME AND JUSTICE 313-341 (Albert J. Reiss & Michael Tonry eds., 1986)) (reporting that in study of policing behavior, police were less likely to file reports on victim's request in areas with low average household income); *see also* Ferraro, *supra* note 64, at 168-69 (finding that police respond differently to "deviants" than to "normals" and often see poor women and intoxicated women as the former).

[97] *See* Ferraro, *supra* note 64, at 168-69.

[98] *See* JOAN ZORZA & LAURIE WOODS, ANALYSIS AND POLICY IMPLICATIONS OF THE NEW DOMESTIC VIOLENCE POLICE STUDIES (National Center on Women and Family Law, 1994). The decision to push for mandatory arrest policies rather than pro- or preferred arrest policies was the subject of much debate within the movement. *See id.*

ties — provided tremendous support for the pro-arrest movement.[99]

The National Institute of Justice ("NIJ") commissioned studies in six other cities to determine if the Minneapolis findings could be replicated.[100] Though the findings regarding the relationship between recidivism and police intervention varied across sites in the NIJ studies, some findings were consistent: recidivism rates are high regardless of the form of police response,[101] and much of the recidivism violence goes unreported;[102] police intervention stops the immediate violent episode in most cases but is more likely to do so when there is an arrest;[103] disproportionate numbers of African Americans and somewhat lower but still disproportionately

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[99] *See* Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Violence Assault*, 49 AM. SOC. REV. 261 (1984); Evan Stark, *Mandatory Arrest of Batterers: A Reply to Its Critics*, *in* DO ARRESTS AND RESTRAINING ORDERS WORK?, *supra* note 29, at 126 (noting that "the major importance of the Minneapolis Domestic Violence Experiment was to give women's advocates who already favored arrest a powerful weapon to use with lawmakers"). It also shifted much of the public dialogue on arrest away from other argued benefits and towards a straightforward deterrence argument. This shift in the discourse regarding arrest may have created some unexpected harms, as described in this Essay.

[100] *See* Hirschel & Hutchison, *supra* note 53, at 54-55.

[101] *See* Sherman et al., *supra* note 96, at 166 tbl.9. In the Milwaukee study, the majority of suspects, whether arrested or warned and whether employed or unemployed, committed one act of recidivist violence according to Hotline reports: 66% of employed with full arrest, 72% of employed with short arrest, and 74% of employed who were warned; 64% of unemployed with full arrest, 66% of unemployed with short arrest; and 67% of unemployed who were warned. *See id.* Of course, the studies did not examine recidivism in those cases in which there was no police involvement. A few small research projects have attempted to do so. *See* Jaffe et al., *supra* note 64, at 9 (finding that police intervention and charging resulted in fewer subsequent assaults than police intervention with no charge or no police intervention at all). However, confidence in the results of these studies is compromised by their small sample size and the problems with comparability between "incidents" for the before/after comparison. Comparing past incident or severity rates are subject to problems of subject recall as well.

[102] *See* Hirschel & Hutchinson, *supra* note 53, at 73 tbl.5.2. In every one of the arrest studies, the recidivism rates reported in victim interviews were significantly higher than that recorded in official reporting data. *See id.* (finding in Charlotte study that prevalence rates reported by victims at six month interviews were almost four times greater than those recorded in arrest data); *see also* FRANKLIN DUNFORD ET AL., NAT'L INST. OF JUSTICE, THE OMAHA DOMESTIC VIOLENCE POLICE EXPERIMENT, FINAL REPORT 41 (1989) (stating that "[v]ery little of the violent and abusive behavior associated with domestic violence appears to be captured by official arrest records" because only 4% of cases reported by victims were apparent in arrest statistics).

[103] *See* DUNFORD ET AL., *supra* note 102, at 22. The study reported that 77% of interviewed victims in the mediation group reported that police presence stopped the fight. *See id.* at 24. The study also found that 93% of interviewed victims in the arrest group stated that police presence stopped the violence. *See id.* at 25. Finally, the study found that 87% of interviewed victims in the separation group reported that the presence of the police stopped the fight. *See id.*

high numbers of Latinas/os are the subject of criminal justice intervention in domestic violence cases.[104]

Researchers in only one locale — Miami-Dade, Florida — reported finding the main results of the Minneapolis study across all measures: arrest deterred violence more than did nonarrest.[105] In the remaining sites, researchers concluded that arrest was no better on average at deterring repeat violence than were other police actions studied.[106] More troubling were the conclusions of Law-

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[104] *See* Miller & Krull, *supra* note 32, at 239 tbl.19.4. Miller and Krull's assessment of data from three arrest replication study sites shows that blacks and Hispanics (studies' terms) are overrepresented in the samples relative to their representation in the general population. *See id.* In Milwaukee, blacks are over-represented by a factor of 10.6 and Hispanics by a factor of 1.6. *See id.* In Colorado Springs, blacks are overrepresented by a factor of 6.5 and Hispanics by 3.0. *See id.* In Omaha, blacks are overrepresented by a factor of 9.3 and Hispanics by 1.9. *See id.* The same disproportionate numbers were true of the Minneapolis experiment. *See* Richard A. Berk, *What the Scientific Evidence Shows: On the Average, We Can Do No Better Than Arrest, in* CURRENT CONTROVERSIES ON FAMILY VIOLENCE, *supra* note 35, at 323, 329-30. The same was also true in the Charlotte experiment. *See* J. David Hirschel et al., *The Failure of Arrest to Deter Spouse Abuse*, 29 J. RES. CRIME & DELINQ. 7, 9 (1992) ("Non-White, lower income women (under $7,500) are more than twice as likely to report an incident to the police than are White, higher income (over $15,000) females."). Data from other sources shows similar results. *See, e.g.*, Michael Steinman, *Coordinated Criminal Justice Interventions and Recidivism Among Batterers, in* WOMAN BATTERING: POLICY RESPONSES 221, 224 (Michael Steinman ed., 1991). Steinman's study focused on a county with a 96% white, middle class population. *See id.* The study revealed that before the county adopted a pro-arrest policy for domestic violence cases, 32% of the domestic violence arrests were people of color. *See id.* After the county adopted the pro-arrest policy, 27% of domestic violence arrests were people of color. *See id.*

However, disproportionate numbers in police reports do not necessarily result in disproportionate numbers of arrests when not under experimental conditions. For example, Zorza's examination of mandatory arrest rates for African Americans in Wisconsin found that while African Americans made up about 10% of the domestic violence incident reports, they made up only 3.9% of the arrests reports. Further, the percentage of arrests that were African Americans (1.39%) was smaller than their population percentage (3.9%). *See* Joan Zorza, *Mandatory Arrest for Domestic Violence: Why It May Prove the Best First Step in Curbing Repeat Abuse*, CRIM. JUST., Fall 1995, at 2, 52. Because reporting varies along race and ethnicity lines, it is difficult to know to what degree this evidences a refusal on the part of police to arrest in domestic violence cases involving African Americans and to what extent it represents a willingness on the part of African American women to call the police for incidents that fall short of what police view as probable cause warranting arrest. Of course, it may be some of both. *See* Ira W. Hutchison & J. David Hirschel, *Abused Women: Help-Seeking Strategies and Police Utilization*, VIOLENCE AGAINST WOMEN, Aug. 1998, at 436, 452-53 (reporting that African American low income battered women were more likely to rely on police response than were white low income battered women).

[105] *See* METRO-DADE SPOUSE ABUSE REPLICATION PROJECT, DRAFT FINAL REPORT 6-21 (1991). This was true across different measures of recidivism (victim interviews, hotline reports made by police at the scene, and arrest reports).

[106] *See* DUNFORD ET AL., *supra* note 102, at 34 (finding that both arrest measures and victim interviews found no significant difference in recidivism between offenders who were arrested and those separated or counseled.); J. David Hirschel et al., *The Charlotte Spouse Abuse Study*, 57 POPULAR GOV'T 11, 13 (1991) (reporting no significant difference in recidi-

rence Sherman that arrest had an *escalating* effect on the recidivism of some unemployed batterers.[107]

Research that examines the relationship between community characteristics and batterer recidivism finds similarly disturbing results. A reassessment of the Milwaukee arrest study data found neighborhood characteristics to be more strongly related to recidivism postarrest than were the individual characteristics of the arrestees.[108] Men arrested for domestic violence were more likely to

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vism between three treatment groups). *But see* Maxwell et al., *supra* note 19, at 42 (finding modest deterrent effect for all replication studies across sites).

[107] *See* Sherman et al., *supra* note 22, at 686 (stating that among married and employed batterers, arrest reduced subsequent violence, but among unmarried and unemployed batterers, arrest was associated with 53.5% increase in subsequent violence); Sherman et al., *supra* note 96, at 147. In the Milwaukee study, Sherman found that 19% of unemployed men subjected to full arrest and 18% subjected to short arrest committed three or more subsequent acts of domestic violence within six months as measured by police calls. *See* Sherman et al., *supra* note 99, at 166 tbl.9. These rates are much higher than the 9% rate for unemployed men who were "warned" rather than arrested. *See id.* They are also higher than the outcomes for employed men who were arrested: 13% receiving full arrest and 6% receiving short arrest committed three or more acts of subsequent violence. *See id.*

Sherman's analysis is subject to a number of criticisms. *See* Cynthia Grant Bowman, *The Arrest Experiments: A Feminist Critique*, 83 J. CRIM. L. & CRIMINOLOGY 201, 204 (1992) (stating that unemployment findings fail to account for poor women's lack of resources); Hirschel & Hutchinson, *supra* note 53, at 77-78 (arguing that Sherman's Charlotte study conclusion that arrest escalated violence among unemployed offenders resulted from three analytical errors: (1) he excluded victim interview data, (2) he substituted direction of findings for statistical significance, and (3) he lumped citation with arrest findings, thus exaggerating the arrest versus nonarrest differential, because citation independently had least deterrent effect). Unemployment may mask other important variables. *See* SHERMAN, *supra* note 13, at 261; Richard A. Berk et al., *The Deterrent Effect of Arrest in Incidents of Domestic Violence: A Bayesian Analysis of Four Field Experiments*, 57 AM. SOC. REV. 698, 703, 705 (1992) ("A number of other explanatory variables could have been included, and employment and marital status hardly exhaust the list of social control indicators."). For example, unemployed men may be disproportionately younger. *See* West, *supra* note 74, at 193-95 (stating that younger men have higher rates of domestic violence). In addition, unemployed men may have higher rates of alcohol and/or drug dependence as well as mental illness. *See* Richard J. Gelles, *Alcohol and Other Drugs Are Associated with Violence — They Are Not Its Cause*, *in* CURRENT CONTROVERSIES ON FAMILY VIOLENCE, *supra* note 35, at 182 (noting that significant numbers of batterers have alcohol and drug abuse problems); *see also* Terrie E. Moffitt & Avshalom Caspi, Findings About Partner Violence from the Dunedin Multidisciplinary Health and Development Study 5 (NIJ Research Brief July, 1999 on file with author) (finding that male perpetrators of domestic violence were thirteen times more likely to be mentally ill than were nonperpetrators). Significant numbers of unemployed men may also have prior criminal histories or be currently involved in crimes in addition to the battering. *See* Hirshel & Hutchinson, *supra* note 53, at 70 (finding that strongest predictor for recidivism among offender characteristic was offender's prior criminal history, while race, age, marital status and employment status were not predictive).

[108] *See* Marciniak, *supra* note 96, at 74 (analyzing Milwaukee data, which found that arrestees living in census tracts with high levels of female headed households, families receiving welfare, poverty, high divorce rate, and high unemployment had higher domestic violence recidivism rates postarrest).

recidivate if they lived in neighborhoods characterized by a combination of high rates of the following: unemployment, divorce, single mother headed households, households below the poverty line, and households receiving government assistance then were men who did not live in such neighborhoods.[109]

In conclusion, arrest appears to have, at best, a modest deterrence effect and this effect may be less likely for some of the men who batter poor women, whether these recidivists are understood as unemployed batterers or batterers who reside in particularly unstable neighborhoods.

B. Arrest Encouraging Policies and Nondeterrence-Related Resources

The arrest studies focused narrowly on police response and offender behavior.[110] Battered women's advocates argue that apart from specific deterrence, mandatory, and pro-arrest policies help

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[109] *See id.* I choose to describe the traits, rather than adopt the term used in the literature, "family disorganization", because "family disorganization" implies pathology and fails to capture the numerous structural ways in which poor women with children are systematically disadvantaged and subjected to discrimination. *See* MARTHA FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES 107-08 (1995) (describing how single mothers receiving welfare are "lumped together with drug addicts, criminals, and other socially defined 'degenerates' in the newly coined category of 'underclass'"). A number of scholars have found similar correlations with neighborhood characteristics and violence. *See* Hampton et al., *supra* note 78, at 16 (stating that rates of violent victimization are two to three times higher in communities with high levels of "family disruption" regardless of race). Hampton et al. argued that "[r]esidential mobility or change . . . [is] correlated to [general] violence [rates], especially in the context of poverty, social dislocation, family disruption, and population density" seem also to be true for intra family violence. *Id.*; *see also* Tracey Meares, *It's a Question of Connections*, 31 VAL. U. L. REV. 579, 589 (1997) (arguing that neighborhood social disorganization has relationship to increased criminal behavior in neighborhoods).

These findings do not point to a simplistic equation of poverty with increased domestic violence recidivism. For example, one study of arrest data found that the percentage of families in a neighborhood who live below the federal poverty line did not predict recidivism. *See* Rachel Ryan Rodgers, Accounting for Jurisdictional Variation in Recidivism Rates for Domestic Violence: A Re-Examination of the Domestic Violence Experiments 53 (1996) (unpublished M.S. thesis, Auburn University) (on file with author) (finding neighborhoods' poverty rates were negatively related to recidivism). Further, in the NIJ domestic violence arrest studies, cities with some measure of overall deterrence had higher unemployment rates than did cities where no overall deterrence was found. *See* Berk, *supra* note 104, at 330-31. Thus, domestic violence recidivism postarrest may not be related to neighborhood poverty, per se, or even to prevalent unemployment, but instead may be related to a constellation of factors that create social instability.

[110] *See* Stark, *supra* note 99, at 116 (criticizing Sherman's analysis for presuming that "causality is singular, universal, and unidirectional").

provide victims with other benefits.[111] For example, arrest may result in a woman's immediate safety through cessation of the violence.[112] Arrest may provide support for the victim through police moral solidarity and disapproval of the batterer's behavior.[113] Arrest may assist women in connecting with community resources and other legal remedies and may encourage women to use those resources.[114] As a result of lobbying by battered women's advocates, many police departments that have adopted mandatory or pro-arrest policies have also adopted requirements that officers provide women with information and assistance.[115] These efforts are apparent in the studies of arrest.

Significant numbers of women interviewed in the NIJ studies stated that they were satisfied with the police response.[116] Much of this victim satisfaction relates directly to police practices of provid-

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[111] *See* Bowman, *supra* note 107, at 204; *see also* ZORZA & WOODS, *supra* note 98, at 94 (stating that arrest gives victims opportunities to go to safe place and "conveys to other members of the family and all of society that certain behavior is illegal and will not be tolerated"). In addition to direct benefits to women at the scene, many advocates believe that a mandatory arrest policy may provide a useful baseline for judging police behavior and a standard from which women can agitate for better police response. *See* Stark, *supra* note 99, at 127-28 (arguing that important value of mandatory arrest policies is that baseline is created for judging police behavior).

[112] *See supra* note 103 and accompanying text (noting that police intervention usually results in immediate cessation of violence).

[113] *See, e.g.*, Bowman, *supra* note 107, at 206 ("Arresting and removing the abuser . . . delivers an empowering message to the victim and communicates society's condemnation of the abusive behavior to children or other witnesses.").

[114] *See supra* notes 92-99 and accompanying text.

[115] *See, e.g.*, FL. STAT. ANN. § 741.29 (West 1999) (requiring that officers responding to domestic violence calls assist victims in obtaining medical care, advise victims of services available, and provide victims with information regarding their legal rights). In fact, the difference in police responsiveness to victims may be an important and unexplored difference between the Minneapolis arrest experiment and the NIJ replication studies. In the Minneapolis study, police separated parties for brief periods or made brief efforts to restore order, while in the replication studies police gave information, separation of parties was lengthier, plus mediation varied from threatening parties to more extensive conversations. Thus, the nonarrest alternatives were qualitatively different, and perhaps stronger, in the replication studies than in the Minneapolis study. *See* Berk, *supra* note 104, at 335 n.14.

Where activists work closely with police, oversee training, and are in ongoing contact with and monitoring of police response, the chances of these kinds of transfer of resources is likely much higher. *See* Stark, *supra* note 99, at 121. Police may be less inclined to provide victims with resources where pro-arrest policies are mandated with little police training or monitoring. *See id.*

[116] *See* Miller & Krull, *supra* note 32, at 244-45. Miller and Krull note that 64% of the victims interviewed in the Milwaukee study reported that, as a result of the police action, they would be more willing to call the police again. In addition, 68% believed that the suspect was more afraid of being arrested and jailed. *See id.* Similarly, 82% of victims interviewed in Colorado Springs believed that the police wanted to help and that they were safer as a result of police action. *See id.*

ing women with information regarding community resources and assisting their connection with those resources. For example, the victims in the NIJ study in Milwaukee whose batterers were arrested expressed much higher satisfaction rates with police response than did victims whose batterers were merely warned.[117] The difference appears to be related to the degree to which victims believed officers gave them useful information and the degree to which warning group victims felt that officers did not listen to their side of the story.[118] Two-thirds of victims reported that officers gave them information on their legal rights or how to get assistance and fifty six percent reported that officers recommended that victims pursue legal assistance.[119] Even more impressive are the eighty three percent who reported that officers gave them information on shelters and women's support groups and the sixty-five percent for whom police recommended or assisted in contacting shelters.[120] By comparison, most victims in the warned (nonarrest) group did not recall that officers even told them of their right to press charges.[121]

A number of smaller studies in jurisdictions with arrest encouraging policies show similar results.[122] For example, victims interviewed in a study assessing the coordinated community response in Quincy, Massachusetts where police are subject to a pro-arrest policy reported that police regularly provide referrals for restraining orders and transport victims and children to shelters and medical care.[123] The Quincy study also finds high victim satisfaction with police response, even though significant numbers of victims op-

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[117] *See* LAWRENCE W. SHERMAN ET AL., POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 335 (1992).

[118] *See id.*

[119] *See id.* at 329.

[120] *See id.* Not all advice was "good" advice. Thirty two percent of victims said that police advised them on "how to get along" and 17% referred them to couples counseling, though this was not part of the official police protocol. *See id.* In a minority of cases, police referred victims to victim-witness counselors (twenty four percent of police reports and only 3% of victim reports, but the "bureaucratic wording of the question" may have confused victims). *See id.* Police transportation to shelters or hospitals was rare. *See* Miller & Krull, *supra* note 32, at 243 tbl.19.8 (finding that 3.4% of victims interviewed in Milwaukee and 2.7% Colorado Springs reported that police provided transportation to shelters or hospitals).

[121] *See* SHERMAN ET AL., *supra* note 117, at 334.

[122] *See* Eve Buzawa et al., U.S. Dep't of Justice, Response to Domestic Violence in a Pro-Active Court Setting: Final Report, Executive Summary (National Institute of Justice, 1999, on file with author).

[123] *See id.*

posed arrest.[124] Further, victim satisfaction appears related to whether or not the victim was informed of her rights and given information about restraining orders.[125] In a Canadian study, researchers asked battered women for suggestions to improve police response.[126] The most common response was that police should give victims more information regarding court processes and community services available for women.[127]

In jurisdictions that have adopted mandatory or pro-arrest policies, police are frequently mandated or encouraged to provide women with information regarding community resources and legal remedies, and sometimes with direct assistance in securing resources. Interviews with victims demonstrate that battered women value this aspect of policing and further evidence suggests that the information results in enhancing women's access to resources.[128]

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[124] *See id.* at 18 ("As a group, most victims were highly satisfied with the actions of the system and each of the component organizations. . . . This is true despite the fact that at each stage of the case many victims did not initially want aggressive criminal justice action. In fact, many victims responded consistently that they wanted neither arrest nor prosecution."). Eighty-two percent of the victims interviewed for the study reported satisfaction with the police response. *See id.* at 12.

[125] *See id.* Often, the most important predictor of satisfaction is whether the police acted in accordance with the victim's wishes regarding arrest. *See* Buzawa et al., *supra* note 95, at 264 ("[O]ne aspect of police response [in study] that most satisfied these victims was that the police responded in accordance with their preferences [regarding arrest]."). However, the strongest negative ratings for victim satisfaction with police are often from those women who believed the police should have responded *more* harshly with the offender. *See id.* at 266 (finding that all five victims who expressed dissatisfaction with police response wanted more aggressive response). Furthermore, women who wanted the police to file more serious charges than were filed may be more likely not to call the police for subsequent victimization. *See* Buzawa et al., *supra* note 122, at 16 (reporting that victims who wanted more serious charges filed in initial incident were six times more likely not to report subsequent victimization, while those who believed that criminal justice system decreased their safety were two and half times more likely to not report future incidents). Women whose partners/expartners are particularly chronic offenders also express dissatisfaction with police. *See id.* (stating that women who were abused by offenders with average of 18.9 prior charges were more likely to express dissatisfaction with police).

[126] *See* Jaffe et al., *supra* note 64, at 85-86 (describing positive results of study analyzing effects of crisis intervention services that focused on providing immediate assistance to battered women).

[127] *See id.*

[128] *See, e.g.*, Donald G. Dutton et al., *Arrest and the Reduction of Repeat Wife Assault, in* DOMESTIC VIOLENCE, *supra* note 32, at 121 (reporting that battered women studied told average of 2.2 people about domestic violence prearrest but, after arrest, that number increased to average of 10 people). A study by Karla Fischer and Mary Rose eloquently described the importance of police response in one woman's life:

> [O]ne woman described how a supportive police officer had given her a piece of paper with information about orders of protection months before she decided to

Conclusions regarding these findings are hindered, however, because of the inattention to women of color, particularly non-African American women. Few studies examine Latinas' use of police.[129] Most published accounts of arrest study data fail to examine possible race/ethnicity differences in victim interview responses.[130] Therefore, it is impossible to know how many Latinas initiated the call to police or how many Latinas were satisfied with the police response. A few smaller studies have looked at Latina help-seeking behavior. For example, Gondolf and Fisher reviewed data regarding shelter residents in Texas, comparing Latinas with African American women and white women.[131] The study found similar rates of overall helpseeking and, specifically, similar rates of seeking legal assistance.[132] In a study of fifty women in a Texas shelter, Mexican American women were more likely to recommend contacting the police than were white women.[133] However, another small study of pregnant Spanish speaking Latinas who sought prenatal care in a public clinic and who reported spouse abuse found that only twenty-three percent had called the police.[134]

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seek one. She held onto his paper, underlining relevant sections, and came to view it as reassuring while she struggled to decide how to end the abuse in her life.

Fischer & Rose, *supra* note 28, at 426. Fischer and Rose also reported that many women do not have positive experiences with police. *See id.* at 419.

[129] Those studies that do analyze Latinas' use of police often presume commonalities that may not exist. *See, e.g.*, William H. Wiist & Judith McFarlane, *Utilization of Police by Abused Pregnant Hispanic Women*, 4 VIOLENCE AGAINST WOMEN 677, 679 (1998) (reporting on study of pregnant Latina battered women that did not control for immigration status).

[130] With one exception, I found no reviews of NIJ arrest study data that distinguished victim interview responses by race or ethnicity. *See* Hirschel & Hutchinson, *supra* note 104 (describing differences between African American women, white women, and different socioeconomic classes of women in help-seeking behavior). The small number of Latina respondents in the interviews may account for the lack of research regarding their responses. *See, e.g.*, Miller & Krull, *supra* note 32, at 237-38 (revealing that in Milwaukee, Hispanics represented only 2.8% of victims interviewed; in Colorado Springs, they represented 13.6%; in Omaha, a category labeled "Hispanics/Native Americans" represented 2.9% of victim interviews).

[131] *See* EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS 41 (1988) (studying sample that consisted of 57% white, 15% African American, and 29% Hispanic women).

[132] *See id.* However, Latinas were the least likely to contact a friend, minister or social service agency. *See id.* at 45. They were also more likely to be living below the poverty line. *See id.*

[133] *See id.* at 42.

[134] *See* McFarlane et al., *supra* note 74, at 740. Those who had experienced severe violence were more likely to have called the police. *See id.* Of those who called the police, 72% said the police were effective in helping to reduce the violence and 40% reported that arrest, taking the man away, or legal remedies were the most helpful in stopping the violence.

C. Negative Effects of Arrest Encouraging Policies that May Diminish Their Resource Enhancing Possibilities

For some poor women of color, the risks of arrest encouraging policies may outweigh the potential benefits. For example, the evidence that arrest may escalate violence for certain unemployed batterers or for those who reside in certain neighborhoods suggests that arrest may increase the danger for a group of women who are the least able to relocate.[135] The risks of arrest-encouraging policies go beyond potential escalation effects, however. For many poor women of color, those risks include the risk of police brutality, primarily against the batterer, but also against the victim; the risk that the victim will be arrested; the risk that police intervention will result in increased and ongoing state intrusion in the life of the victim; the risk of financial loss resulting from the batterer's arrest; and the risk of relationship loss. In addition, for some immigrant women, there is the risk that the victim, abuser, or both will be deported. These potential risks of arrest must be examined in determining whether arrest encouraging polices are likely to, on balance, enhance access to material resources for poor women of color. My analysis will focus on three serious risks: the risk of police mistreatment; the risk of victim arrest and/or ongoing police monitoring of the victim; and the risk of deportation.

The Risk of Police Mistreatment. Mandatory arrest policies can hardly be said to empower women of color if the result is that police physically or verbally abuse the victim, her abuser, or both.[136] Therefore, arrest encouraging policies cannot be evaluated without reference to the history of police misconduct towards people of color.[137] For example, "Latinos in the United States have had a long, acrimonious history of interaction with . . . law enforcement

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See id. Another 24% said the services they had tried did not work because, for example, the police did not arrest or he was released within a few hours; shelters, legal aid or jobs were not available. *See id.* Sixty-eight percent said the resources had not made things worse. *See id.* Thirty-seven percent of those who used the police and 22% of those who did not reported that the abuse had ended. For the first group, 29% said that leaving, moving, separating, or the abuser being in jail were helpful in ending the abuse. *See id.*

[135] *See supra* notes 108-09 and accompanying text.

[136] *See* Rivera, *supra* note 65, at 248. Latinos often receive less favorable pretrial release than do white offenders and are arrested in numbers disproportionate to their population. *See* Ed A. Muñoz et al., *Misdemeanor Sentencing Decisions: The Cumulative Disadvantage Effect of "Gringo Justice"*, 20 HISPANIC J. BEHAV. SCI. 298, 302 (1998).

[137] *See generally* Mann, *supra* note 73 (describing history of racist legislation and racist criminal justice practices).

agencies. This history is marked by abuse and violence suffered by the Latino community at the hands of police officers who have indiscriminately used excessive physical force against Latinos."[138] Marie de Santis, an attorney who represents immigrant Latinas in California, provided a compelling example of why a battered Latina may not trust the police:

> In the midst of a difficult struggle to escape her husband's violence . . . Claudia called us one day enraged at what police had done with her teenage son. He and a group of his Latino friends had skipped school early one day and gone to one of their homes . . . . The parents weren't home, and neighbors called the police. Squads of police came and a helicopter, too. Police barged into the house, pushed the kids to the floor, put guns to their heads, and when the kids tried to explain they weren't burglars, police screamed at them to shut up or they would be killed. At the police station, when the homeowners arrived and told the police that, indeed, these kids were all friends of their son and were always welcome in their home, police still did not stop the process, and the DA filed charges. It was only months later when a judge looked at the case that charges against the boys were dropped. Claudia escaped her husband's violence, but she and her children are left with a bitter distrust of police.[139]

De Santis concluded, "women see how some police treat their brothers, sons, husbands, and neighbors, and conclude that police are the last people they'd call for help."[140] Thus, arrest encouraging policies are unlikely to empower poor women of color unless there are strong programs to prevent police mistreatment and well-publicized remedies available for when it occurs.

The Risk of Victim Arrest and Other Forms of State Control. The percentage of women arrested for domestic violence increases sharply when arrest encouraging policies are adopted.[141] Given the man-

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[138] *See* Rivera, *supra* note 65, at 245.

[139] E-mail Correspondence from Marie De Santis, Attorney, Director of Women's Justice Center in Sonoma County, California (Dec. 20, 1999) (on file with author). The Women's Justice Center serves immigrant women in Sonoma County, California. Most of their clients are Latinas who are victims of violent crime.

[140] *See id.*

[141] *See* JOAN ZORZA & LAURIE WOODS, NATIONAL CENTER ON WOMEN & FAMILY LAW, MANDATORY ARREST: PROBLEMS AND POSSIBILITIES 16 (1994) (noting that "advocates report a widespread increase in arrests of women when police departments adopted tougher arrest policies"); L. Kevin Hamberger & Theresa Potente, *Counseling Heterosexual Women Arrested for Domestic Violence: Implications for Theory and Practice*, 9 VICTIMS & VIOLENCE 125, 126 (1994)

date to arrest, officers resort to dual arrests (arresting both parties), trusting the prosecutor and/or the courts to sort it out. Many of the women arrested are battered women whose violence is either in self-defense or is responsive to their partner's repeated violence against them.[142] In addition to dual arrests, sole arrests of women also climb dramatically in these jurisdictions. As Cecelia Espinoza describes, the combination of mandatory arrest laws with no drop prosecution policies has resulted in the prosecution of women for domestic violence charges, even in circumstances where the prosecutor admits that the woman's actions — in the overall dynamics of the relationship — were defensive.[143] Even if the prosecutor declines to prosecute, when victims are arrested the results are devastating. Children may be placed in foster care,[144] women lose their

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(finding that after Wisconsin instituted mandatory arrest, arrests of women increased by twelve-fold compared to two-fold increase in arrests of men).

[142] *See* ZORZA & WOODS, *supra* note 141, at 17 (finding that dual arrest increases in Wisconsin were modest following adoption of mandatory arrest law, but arrests of women climbed from 13% to 23.9% of all domestic violence arrests).

[143] *See* Cecelia M. Espenoza, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 MARQ. L. REV. 163 (1999).

[144] *See id.* at 189. If arrests of women are increased by a mandatory arrest policy, the result is particularly devastating for poor women whose children are more likely to become the subject of abuse and neglect proceedings. *See* Gelles, *supra* note 35, at 34 ("[p]oor and minority children are more likely to be correctly *and incorrectly* reported for child abuse, whereas white and middle- and upper-class families are much less likely to be correctly and incorrectly reported for abuse") (emphasis in original); *see also* Dorothy Roberts, *Is There Justice in Children's Rights?: The Critique of Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 112, 125-26 (1999). Roberts noted:

> The injustice of the American foster care system . . . stems . . . from the large number of children removed from their homes. The class and race dimensions of foster care magnify this problem — virtually all of the parents who lose custody of their children are poor, and a startling percentage are black. . . . Moreover, once black children enter foster care, they remain there longer, are moved more often, and receive less desirable placements than white children.

Id. Some states have begun to aggressively pursue as child abuse cases circumstances where a child witnessed domestic violence. Thus, arrest of either party may trigger a child abuse investigation. For example, as the result of recent legislation, judges in Florida are required to report suspected child abuse. *See* FLA. STAT. § 39.201(1)(g) (1994). Many judges interpret this mandate to include reporting instances where the child *witnessed* abuse. The result is to turn protection order hearings into "mini-dependency" hearings. *See* Interview with Stacey Dougan, Attorney and Director, Greenburg, Traurig/Florida Coalition Against Domestic Violence Clearinghouse Lawyers Project (notes on file with author). In addition, when the abuser physically harms the children, the mother may be blamed and even held criminally liable. *See* V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229 (1996); *see also* de Santis, *supra* note 139. De Santis found that:

jobs, and batterers realize that they can use mandatory arrest policies to punish and intimidate their victim partners.[145]

In response to the problems of inappropriate arrests of women victims, several states have adopted statutes that require officers to avoid dual arrests and to arrest only "primary aggressors."[146] Statutes that define primary aggressor as the party who is not acting in self-defense[147] create problems because women's violence may be reactive without meeting a legal definition of self-defense. For example, Cecelia Espenoza related the story of Paula, a battered immigrant woman from Mexico who received support from Lideras Campensinas.[148] Paula determined not to take her husband's abuse any longer and, with a baseball bat in hand, told him to leave the home.[149] He tried to return three times and each time he left after Paula threatened him with the bat.[150] Espenoza pointed out that under a mandatory arrest policy, Paula's actions would likely result in her arrest.[151] Her actions were not clearly defensive because Paula was in no immediate danger, but her threats were responsive to the domestic violence. Even in jurisdictions that have adopted a

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> [A]nother huge problem [for Latina domestic violence victims in Sonoma County, California] is the frequency of Child Protective Service taking custody from Latina mothers who are victims of d[omestic] v[iolence] for failure to protect and taking custody from Latina mothers whose husbands or boyfriends have sexually molested the child . . . . Admittedly this is a problem for all kinds of women, but when it comes to Latinas, C[hild] P[rotective] S[ervices] removes custody from Latina mothers with impunity.

Id.

[145] *See* ZORZA & WOODS, *supra* note 141, at 18 ("[M]any of the Wisconsin [battered] women surveyed reported that their spouses often called the police to charge them with a crime to control them and seek revenge.").

[146] *See, e.g.*, OHIO REV. CODE ANN. § 2935.03 (3)(b) (West 1999) (stating that "it is the preferred course of action in this state that the officer . . . arrest and detain . . . the family or household member who committed the [domestic violence] offense and whom the office has reasonable cause to believe is the primary physical aggressor"). For an analysis of various arrest provisions, see Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. ILL. L. REV. 533 (1996).

[147] *See, e.g.*, FLA. STAT. ANN. § 741.29 (4)(b) (West 1999) (providing that "[a]rrest is the preferred response only with respect to the primary aggressor and not the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence").

[148] *See* Espenoza, *supra* note 143, at 196 (citing Pamela Warrick, *A Life of Their Own: They Have Been the Victims of Abusive Men — Husbands, Bosses — And Have Spent Years Laboring in the Fields, but Farm Worker Women Are Learning How to Fight for Their Rights*, L.A. TIMES, June 7, 1996, at E1).

[149] *See id.*

[150] *See id.*

[151] *See id.*

broader definition of who is not a primary aggressor,[152] arrests of victims continues to be a problem.[153]

Increased numbers of victim arrests occur in both pro-arrest and mandatory arrest jurisdictions, but may be more prevalent in mandatory arrest jurisdictions.[154] One small study that compared arrest outcomes in two Michigan cities may be suggestive of this difference.[155] This study compared arrest statistics in the cities of Ann Arbor with a mandatory arrest policy and Ypsilanti with a pro-arrest policy. In the mandatory arrest city of Ann Arbor, men were more likely to be arrested for domestic violence in cases in which the victim reported a history of abuse to police at the scene.[156] Women were more likely to be arrested when the police had been called to the house before.[157] Officers may categorize battered women as pathological or as abusers of the system when they "fail" to separate once "given the opportunity" to do so via police response.[158] Forced to make an arrest, they may retaliate against victims. If mandatory arrest policies are more likely to create backlash against women who "stay," then that backlash will likely be felt disproportionately by low-income women. Such a backlash may be fueled by

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[152] *See* WASH. REV. CODE ANN. § 10.31.100(2)(c) (West 1999). Officers in Washington are required to consider "the intent of the law to protect victims of domestic violence, (2) the comparative extent of injury inflicted or serious threats creating fear of physical injury and (3) the history of domestic violence between the parties involved." *Id.* Even when the primary aggressor is defined more narrowly as the absence of self-defense, police training may encourage officers to take into account the history of the relationship in making a determination regarding which party to arrest. *See* Phone Interview with Detective Zaccharias, Detective, Miami Beach Police Dept. (Dec. 1, 1999) (notes on file with author).

[153] The National Clearinghouse on the Defense of Battered Women is currently gathering nation-wide data on dual arrest and inappropriate arrests of women. *See* E-mail Correspondence with Andrea Bible & Sue Osthoff, National Clearinghouse for the Defense of Battered Women (on file with author).

[154] *See* ZORZA & WOODS, *supra* note 141, at 41 (reviewing arrest data in number of states and finding that while arrests of women increase both with mandatory and pro-arrest policies, this increase is most dramatic with mandatory arrest policies).

[155] *See* Andrea D. Lyon, *Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence Cases in Two Cities in Michigan*, 5 MICH. J. GENDER & L. 253, 271-97 (1999). The study's limitations make it impossible to be certain of the factors that resulted in differences regarding arrests of women.

[156] *See id.* at 280.

[157] *See id.* The comparisons between the two cities on this measure are confounded by the fact that there were fewer cases involving prior calls in Ypsilanti. *See id.* Cases in which there were prior calls made up 31.9% of domestic violence calls in Ann Arbor but only 9.5% in Ypsilanti. *See id.* at 283.

[158] *See supra* notes 23-34 and accompanying text (describing separation-focused thinking of legal actors). Any discrimination against women who make repeat calls would affect large numbers of women. *See, e.g.*, Miller & Krull, *supra* note 32, at 243 (finding that in Omaha study, victims reported average of four prior police calls to their home).

a tendency to treat women as pathological if they do not separate from their abusers, coupled with preexisting social stereotypes of deviance based on race and class.[159]

Even when battered women are not arrested, mandatory arrest policies may increase poor women's exposure to state control. For example, some jurisdictions require that police report as suspected child abuse every domestic violence call in which children are present.[160] Poor women of color are particularly vulnerable to this form of state control. In addition, some women fear that an investigation of the abuse charge will uncover their own criminal activities. This risk is particularly great when mandatory arrest is coupled with aggressive prosecution policies. Women become involved in criminal activities as a direct result of being battered.[161] Even if this were not the case, women involved in criminal activity are rendered particularly vulnerable to violence.[162] For example, drug addicted women are particularly vulnerable both to domestic violence as well as to state violence.[163] An investigation into domes-

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[159] *See supra* notes 23-33 and accompanying text (describing separation focus of legal actors); Ferraro, *supra* note 64, at 155-57 (stating that police separate people into "normal" and "deviant" categories and treat accordingly).

[160] *See* Telephone Interview between Captain Drew Kirkland, Portland, Oregon Police Department and Stacey Bussel, research assistant (June 6, 2000). Captain Kirkland explained that officers are required to report the presence of children at any domestic violence call. The police department's records division forwards the officer's domestic violence reports in which children were present to the state child and family protection agency. *See id.*

[161] *See* BETH RICHIE, COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN 114-16 (1996) (describing manner in which batterers force women into illegal sex work); *id.* at 120-23 (recounting manner in which batterers forced women to engage in theft); *id.* at 123-27 (finding that battered women developed drug dependencies in order to establish deeper connections with their drug-abusing partners). Kathleen Daly's study of women's pathways to felony court in New Haven documents two pathways that underscore the connection between abusive partners and drug use and drug related crimes. *See* KATHLEEN DALY, GENDER CRIME AND PUNISHMENT 58 (1994) (finding that women's pathways to felony court include being in relationships with violent men and being associated with boyfriends, mates, or family members who use or sell drugs).

[162] *See* Kalichman et al., *supra* note 40 (describing intersection of drug dependency, violent victimization, and HIV status).

[163] For example, criminologist Stephanie Bush-Baskette called the "war on drugs" a "war on Black women." *See* Stephanie R. Bush-Baskette, *The War on Drugs as a War Against Black Women*, *in* CRIME CONTROL AND WOMEN 113-14 (Susan L. Miller ed., 1998). Others referred to the "war on drugs" as the "war on poor people." *See* Meda Chesney-Lind, *Foreword*, *in* CRIME CONTROL AND WOMEN, *supra*, at ix, xi. The "war on drugs" has resulted in significant increases in women's imprisonment, which is especially true for African-American women. *See* Bush-Baskette, *supra*, at 113-14 (arguing that war on drugs has created huge increases in number of women in prisons). The incarceration of inner city men also has a devastating impact on the status of women because they are left to cope with familial and financial bur-

tic violence may result in the victim losing her children or in her own incarceration or both.[164]

The Risk of Deportation. The Illegal Immigration Reform and Immigrant Responsibility Act provides that certain immigrants who are convicted of a domestic violence crime are rendered deportable.[165] This provision is dangerous for battered immigrant women. While the deportation provisions likely have a chilling effect on battered women who fear that a call to the police will render their partner deportable,[166] this is not its only devastating consequence. Given the increased numbers of arrests of victims under mandatory arrest policies, some battered immigrant women have been rendered deportable as a result of their conviction for misdemeanor domestic violence. Immigrant women who are primary caretakers of children are particularly likely to plea bargain in order to avoid

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dens. *See* Mona J.E. Danner, *Three Strikes and It's* Women *Who Are Out, in* CRIME CONTROL AND WOMEN, *supra*, at 10. Also, as Tracey Meares demonstrated, "get tough" law enforcement policies "exacerbate the precursors to social disorganization." Meares, *supra* note 109, at 589. This exacerbation of social disorganization weakens neighborhood civic participation, lowers the quality of life in the neighborhood, and diminishes the likelihood that social and familial networks will be available to assist battered women.

[164] *See, e.g.*, Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1426 (1991) (describing criminalization of drug addiction during pregnancy). *See generally* LAURA GOMEZ, MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE (1997).

[165] *See* 8 U.S.C. § 1227(a)(E)(i)-(ii) (1994) (stipulating that classes of deportable aliens include those convicted of domestic violence, stalking, or violation of protection orders, and crimes against children); *see also* Espenoza, *supra* note 143, at 181-83 (discussing impact of this provision on battered immigrant women).

[166] *See* Kelly, *supra* note 83, at 679-80. Additionally, a woman whose immigration status is dependent on that of her batterer becomes deportable if he is deported before she has an opportunity to petition for lawful permanent residency. *See id.* The deportation provision likely has a disproportionate impact on poor men of color because poor men and men of color are disproportionately the subjects of police arrest. *See supra* note 103 and accompanying text. Advocates for battered women in Sacramento, California, for example, report that an INS agent explained that the INS is targeting for deportation men ordered into domestic violence treatment programs, 70% of whom were Latino, and the remainder were from India, Russia, Laos, and Vietnam. *See Speaking Up Newsletter* (Oct. 1999) (on file with author). The deportation provision may also help some women. *See* Tanya Broder & Clara Luz Navarro, *A Street Without an Exit: Excerpts from the Lives of Latinas in Post-187 California*, 7 HAST. WOMEN'S L.J. 275, 296 (1996) (recounting story of immigrant woman who relates, "[My abuser] was sent back to prison, and I went to court and was very strong . . . I declared that he had threatened me and my child in El Salvador, that he would harm her and my parents, my family. They deported him, took away his papers, his work permit, and all of his rights. And now, I don't think he can come back to this country anymore.").

jail time, and thereby unwittingly render themselves deportable.[167] Maria Sanchez's story provides an illustration.[168] When her husband came home drunk, he dragged her out of their child's room, pinned her on the couch, and began beating her. Maria bit his back. Her husband called the police and Maria was arrested. She tried telling the police that he had been beating her again and that she was defending herself but, unlike her husband, she didn't speak English and the police spoke no Spanish. When she went to court, Maria signed a form, printed in English, that waived her right to counsel and entered a guilty plea to misdemeanor assault. Maria had no understanding of the forms she was signing and the court's unqualified interpreter was no help. Despite the fact that Maria's husband had a prior record for domestic violence, despite the fact that she had endured years of her husband's abuse, Maria now faces deportation because of her domestic violence conviction.

D. Summary: Material Resources, Arrest Policies, and Alternatives

This application of the material resources test to arrest encouraging policies suggests that mandatory arrest may create significant costs for some poor women of color. These costs may outweigh the beneficial aspects of the policies, however, that calculus may vary by locale.[169] Pro-arrest policies at the state level rather than mandatory arrest policies allow *local* governments to decide whether or not to adopt a mandatory arrest policy.[170] This may provide the flexibility needed to assess the effect of arrest policies given local conditions. However, given the current realities of inadequate services for battered women, inappropriate arrests of women, harsh anti-immigrant policies, and laws that punish poor mothers by removing their children, it is hard to imagine a community in which a mandatory arrest policy would be worth the risk to poor women of

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[167] Additionally, courts that order mutual restraining orders make victims vulnerable to deportation since violation of a restraining order is a criminal offense that can result in deportation. *See* 8 U.S.C. § 1227(a)(E)(i)-(ii).

[168] *See* Philip P. Pan, *Victimized Woman Faces Deportation*, WASH. POST, Feb. 20, 2000, at A1.

[169] Circumstances for poor women of color may vary. For example, Marie de Santis, Director of Women's Justice Center in Sonoma County, California, reported that law enforcement in her area have an informal policy against cooperating with INS with regard to domestic violence victims. *See* de Santis, *supra* note 139. However, de Santis noted that this policy was not widely publicized. *See id.*

[170] Local governments may be no less likely to focus on the needs of poor women of color than do state governments, but local discretion may allow poor women of color and their allies greater access to the decision making process.

color. At the least, mandatory arrest policies should be adopted only when agreed upon by a local battered women's advocacy community that is representative of the various communities of poor women of color, including language, immigrant, and ethnic communities.[171]

In determining the preferred policy in their locale, activists should examine the quality of relations between poor communities of color and the police,[172] including the presence of anti-immigrant sentiment. Relations between police and communities may be measured by a number of factors, including: the adequacy/inadequacy of police resources in a given community;[173] the frequency of police brutality, harassment, and related complaints in a given locale; the degree to which methods are in place to report such police misconduct and the efficacy of those methods;[174] the commitment of local police leadership to both racial fairness and to responding to domestic violence calls. Local advocates must also evaluate the strength of domestic violence community services for poor women of color and the degree to which state actors — notably prosecutors and child protection service workers — understand the circumstances of poor women of color in their locale.

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[171] As Jenny Rivera described, women of color are often called upon to present an univocal voice when part of a larger coalition. "Communities with disparately less power in the larger social structure are disparately represented in the coalition [against domestic violence] . . . ." Rivera, *Models for Community Participation*, *supra* note 71, at 295. Rivera explains how these dynamics prevent women of color from expressing the diverse views of members of their various communities. *See id.*

[172] *See* Claire Renzetti, *Connecting the Dots: Women, Public Policy, and Social Control*, *in* CRIME CONTROL AND WOMEN, *supra* note 163, at 188 (describing conversations with battered women of color and battered lesbians "who are reluctant to turn for help to a criminal justice system that is racist and homophobic, and they do not wish their partners to be subjected to the abuses and brutality that the police and courts have historically inflicted on minorities and homosexuals"); Rivera, *supra* note 65, at 245-46 (noting that Latinas/os have had "a long, acrimonious history of interaction with local police and federal law enforcement agencies.").

[173] *See* Rodgers, *supra* note 109, at 58 (finding that neighborhoods with higher general crime rates and lower numbers of police per one thousand residents had significantly higher rates of domestic violence recidivism).

[174] Jenny Rivera similarly argued that:

> Extensive educational efforts . . . must be linked to mandatory arrest policies to inform the community of the policy and of the duties imposed on the police. Good faith and trust must be established by having the police work with Latino organizations and Latina advocates whose reputations and commitment to the community are well established.

Rivera, *supra* note 65, at 254.

The decision whether or not to mandate that police arrest perpetrators of domestic violence does not exhaust the possibilities for constraining police action. As evidenced by women's satisfaction with police responses that provide them with information regarding services and their legal rights, police can provide women with critical links to material resources. We should encourage and expand this police action by requiring police to provide or locate transportation and other services for battered women. For example, Lawrence Sherman recommended "mandatory action" policies that require police to choose from a list of actions such as offering the victim transportation to a shelter, taking the suspect to a detoxification treatment center, allowing the victim to decide if an immediate arrest should be made, or mobilizing the victim's social networks to provide her with short-term protection.[175]

The preliminary data regarding neighborhood differences in domestic violence recidivism rates suggests a focus on community based criminal interventions.[176] Models of community policing that engage community groups in establishing local police priorities may be useful in increasing women's resources. For example, in Chicago, which has a pro-arrest rather than a mandatory arrest policy, a number of neighborhood groups involved with city community policing efforts have determined that domestic violence is a priority issue in their neighborhood.[177]

There may be other ways to meet the twin goals of mandating that police provide protection for poor women of color while promoting women's empowerment. For example, special citizen panels could be established to monitor police performance on domestic violence calls and serve as a complaint center for battered

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[175] *See* LAWRENCE W. SHERMAN ET AL., POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 255-56 (1992).

[176] *See supra* note 109 and accompanying text. At the simplest level, focused, but low-level, police presence directed at domestic violence perpetrators may make a difference. *See* Jalna Hanmer et al., *Arresting Evidence: Domestic Violence and Repeat Victimisation, in* POLICING AND REDUCING CRIME UNIT 38 (Police Research Series Paper 104, 1999) (describing study in West Yorkshire, England where wives reported decrease in violence after batterers were told that police would be keeping their homes under surveillance).

[177] *See* Landis, *supra* note 9. Critics have noted that community policing is problematic because citizens become nothing more than police cheerleaders, providing their approval for plans that originate with the police and not the citizenry. *See* Telephone Interview with Will Gonzalez, Police-Barrio Relations Project (Nov. 29, 1999) (notes on file with author); *see also* Angela Harris, *Criminal Justice as Environmental Justice*, 1 J. GENDER RACE & JUST. 1, 33 (1997) ("[T]he notion of 'community policing' can simply put a new label on the old state-centered, police-oriented approach to crime.").

women.[178] Anti-domestic violence work that is linked with work against police brutality may be particularly sensitive to the degree to which police are responsive to the needs of poor women of color. For example, the Philadelphia Barrio Project,[179] which focuses on police brutality issues in the predominantly Latina/o sections of the city, coordinates its work with battered women's advocates to press for adequate police response to battered women.[180] This kind of coordinated effort and community outreach means that battered women have recourse both against police inaction as well as against police brutality. Some activists and scholars are investigating the use of restorative justice programs such as community conferencing and peacemaking.[181] While these processes present challenges to establishing safety for battered women, they may widen the net of responsibility so as to increase material resources available for victims,[182] thereby increasing social supports and services for victims.[183]

CONCLUSION: THE MATERIAL RESOURCES TEST AND SHIFTING POWER FOR BATTERED WOMEN

The most obvious impact of applying the material resources test is to shift significant monies to direct aid for victims and to target more significant aid to poor women and especially poor women of color. There are many possible steps towards this goal. Because of the possible relevance of neighborhood disintegration to domestic violence recidivism, particular services should be focused on increasing the autonomy of women in those neighborhoods through

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[178] I am grateful to Professor Martha Mahoney for suggesting this alternative. For a somewhat similar concept, see Dwight L. Greene, *Abusive Prosecutors: Gender, Race & Class Discretion and the Prosecution of Drug-Addicted Mothers*, 39 BUFF. L. REV. 737 (1992), recommending the development of prosecution panels to monitor prosecutorial discretion.

[179] *See* Gonzalez, *supra* note 177. These areas of the city represent some its poorest areas and are "the epi-center of the drug trade for the [entire] . . . Philadelphia area." *Id.*

[180] For example, the project produced cards for women entitled "what to do when the police won't enforce your restraining order." *Id.*

[181] *See* John Braithwaite & Kathleen Daly, *Masculinities, Violence and Communitarian Control*, *in* JUST BOYS DOING BUSINESS? MEN, MASCULINITIES, AND CRIME 189, 192-96 (Tim Newburn & Elizabeth A. Stanko eds., 1994) (describing community conferencing method for domestic violence cases); Coker, *supra* note 12, at 42-43 (suggesting that peacemaking may provide additional material resources for victims and peacemakers disrupt batterer's familial supports for battering).

[182] *See* Coker, *supra* note 12, at 42-43.

[183] *See id.*

resource enhancement.[184] Current legal remedies that enhance resources for battered women could be made more effective. For example, crime victim compensation requirements that victims cooperate with the prosecution of the batterer, renders the aid useless for many women.[185] In addition, compensation is frequently available for psychological counseling, but not for meeting the material needs of victims.[186] Law reform that increases criminal penalties without evidence of gains for battered women should be disfavored and law that diminishes battered women's material resources should be eliminated.[187]

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[184] Currently, the Empowerment Zones Program is the primary urban federal policy initiative that is geographic-specific. *See* Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 298 (1999). However, these programs may be inadequate in improving women's economic status. *See id.* at 343 (writing that Empowerment Zone Programs fail to address fact that "[these neighborhoods] are regarded as deviant and inferior, often are subjected to programs that are beneficial to others and less beneficial to them and . . . abandoned to suffer from a marginalization that threatens to permanently cut them off from the rest of society."); *see also* Austin, *supra* note 5, at 781 ("Government programs targeting poor women have not been aimed at improving their asset base and thereby permanently altering their class status."). Development projects that assist micro-enterprises may act as domestic violence prevention strategies because they decrease some women's vulnerability to violence. *See* Regina Austin, *"The Black Community," Its Lawbreakers, and Politics of Identification*, 65 S. CAL. L. REV. 1769, 1807-08 (1992) (noting that states should provide assistance to informal economies in poor black communities, make available social welfare benefits that are not wage based (such as health insurance), and "support new forms of communal or cooperative ownership that break down the distinction between capital and labor"). I do not mean to suggest that economic development will keep all women safe. Some batterers are relentlessly obsessive and women will only be safe if the batterer is incapacitated or the woman is inaccessible. *See* Berk, *supra* note 104, at 335 (recommending arrest for those batterers who are particularly dangerous, accompanied by support services for the victim); Saunders, *supra* note 24, at 26-30 (describing differences in recidivism risks between battering men).

[185] *See* Victims of Crime Act § 1403, 42 U.S.C. § 10602 (1994). For a discussion of this provision, see Mills, *supra* note 12, at 591-92.

[186] *See* de Santis, *supra* note 139. De Santis noted:

> [A] huge problem is that the [California] Victim Assistance Program, which is overflowing with money, prioritizes counseling. Well maybe that's fine for victims who have sufficient resources in other areas; transport[ation], housing, food, childcare, etc. But with poor women who desperately need the basics to bridge out of the violence, Victim Assistance is useless. We beg and beg and the most we ever get is $100. It's disgusting.

Id.

[187] For example, IIRAIRA's domestic violence deportation provisions diminish women's resources and should be repealed. *See supra* notes 165-68 and accompanying text. Some advocates for battered women have urged repeal of these provisions, while others support a compromise measure allowing for deportation only when the victim agrees, or when the prosecutor proves that it is necessary to secure the victim's safety. *See* Telephone Interview with Leslye Orloff, Attorney, NOW Legal Defense Fund (notes on file with author); *see also*

The material resources test should be incorporated into federal funding criteria for domestic violence intervention projects. Federal dollars should not support universal (state-wide) mandatory arrest policies, as is currently the case. Rather, funding should encourage local assessments of the impact of arrest policies on poor women of color. In addition, funding criteria should support those programs that represent broad based coalitions that are either focused on particular neighborhoods or particular racial/ethnic groups.[188] Such coalitions are more likely to have the local knowledge required to assess the situation for poor women of color.[189]

Application of the material resources test may also suggest changes in the way lawyers engage in their legal representation of battered women.[190] For example, Legal Services in Tampa, Florida formed an organization called ChildNet[191] to respond to the material and social support needs of battered women clients. Jeanie Williamson, Director of ChildNet explained that staff attorneys were frustrated with the inability of legal remedies to give women freedom from abusive partners. ChildNet provides women with

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Espenoza, *supra* note 143, at 215 (arguing that IIRAIRA provisions for deportation of those convicted of domestic violence charges should be repealed).

[188] Jenny Rivera notes that to the extent that funding priorities are for programs that have a history of domestic violence work, "programs developed by women of color which are community-based may proceed in the funding process at a disadvantage because of their inexperience and insufficient history . . . ." Rivera, *Multiple Consciousness, supra* note 71, at 508. The current criteria for federal Violence Against Women Act funds stresses the importance of serving "underserved populations." *See* 42 U.S.C. § 10402(a)(2)(C) (1999) (requiring states receiving federal grants for anti-domestic violence efforts to develop state plans that address needs of "populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation."); *id.* § 10418(c) (requiring grant applicants to include "opinion leaders from each sector of the community" in planning service programs).

[189] Though it is beyond the scope of this article to examine programs that are not currently understood to be domestic violence interventions, the importance of the links between women's poverty and violent victimization has important implications for other programs, as well. For example, programs for community development and community policing should recognize the importance of violence and violence prevention in bolstering women's wealth. *See* Raphael, *Welfare Dependency, supra* note 38, at 202 (stating that welfare-to-work programs must recognize importance of domestic violence in thwarting women's educational and job opportunities); *see also* Browne & Bassuk, *supra* note 13, at 271 (arguing that services for poor women must recognize prevalence of violence in their lives).

[190] *See* Margulies, *supra* note 38, at 1096 (contending that lawyers for poor battered women must engage in what is often understood as "social work," such as providing transportation, information about community services, and emotional support).

[191] *See* Phone Interview with Jeanie Williamson, Project Director, ChildNet (Mar. 1, 2000) (on file with author). ChildNet's funding restrictions require that eligible clients have a child under the age of five or be pregnant. *See id.* A second organization, SafeNet is available for any battered woman client. *See id.* The services are similar. *See id.*

advocates, who assist them in locating community services including education, childcare, and job training. Similarly, Linda Mills has argued for the establishment of domestic violence commissions that would assist women with housing and job needs as well as provide legal remedies such as restraining orders.[192]

Funding for domestic violence research should prioritize research that addresses the needs of poor women, and especially poor women of color. This research must escape the black/white paradigm limitations of current domestic violence research and address the particular needs of Latinas and other women of color who are frequently ignored by research.

The measure of the efficacy of any domestic violence intervention strategy must account for, as much as possible, the various forces that mediate and shape women's experiences of battering. The material resources test attempts to do this by requiring an inquiry into the likelihood that a given intervention strategy will result in increased material resources for women, and particularly for poor women of color.[193] Material resources are critically important in battered women's survival. Without the specific attention that the material resources test provides, this importance will continue to be overlooked.

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[192] *See* Linda Mills, *Empowering Battered Women Transnationally: The Case for Postmodern Interventions*, 41 SOC. WORK 261 (1996); *see also* Virginia Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Women*, 53 U. MIAMI L. REV. 749 (1999) (describing LUCHA project, membership organization for immigrant battered women that requires women to advocate for each other and attend classes in order to receive free legal representation); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 252 (1996) (describing Stacy Brustin's work with AYUDA, Inc. where Latina victims of domestic violence meet for series of "proactive educational sessions").

[193] The material resources test might help us sort through a number of other domestic violence intervention strategies. For example, the material resources test may be applied to "no-drop" prosecution policies that mandate prosecution of domestic violence offenses regardless of the victim's preferences.