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# The William Mitchell Law Raza Journal

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# **The William Mitchell Law Raza Journal**

**-ARTICLE-**

**An Examination of the Effects of Institutional Racism and  
Systemic Prejudice on Intimate Partner Violence in Minority Communities**

*By Emerson Beishline*

## I. INTRODUCTION

While intimate partner violence (“IPV”)<sup>1</sup> was once seen as an exclusively private family matter, it is increasingly being seen as an integral aspect of a larger system of social domination against women, the poor, people of color, sexual minorities, and immigrants. These groups often experience significantly higher rates of IPV than whites, heterosexual males, the affluent, and citizens. This paper will examine and explain troubling differences in rates of IPV across the minority classifications of sex/gender, class, race, ethnicity, sexual orientation, and citizenship status. The paper will also study how these identities intersect to create even higher rates of IPV for some minorities.

This paper is a reflection of my desire to understand how IPV affects all minorities, especially those that experience near-complete systemic subordination as a result of the compounding of multiple dimensions of their identities. As a cisgendered, straight, white, middle-class male, I recognize (on some level) that I have a vast amount of privilege. However, I fully embrace my own (privileged) discomfort in the interest of learning more about how IPV is accentuated by institutional racism and systemic prejudice. To be clear, this paper is not meant to reinforce stereotypes. Many minorities, Black<sup>2</sup> men in particular, have already been stereotyped as violent.<sup>3</sup> My intention is to deconstruct how prevailing systems of control subordinate certain groups of people and to suggest ways in which these systems can be dismantled or at least resisted. Since this paper will discuss many different identities, I will necessarily have to discuss each identity separately. However, I will attempt to draw intersectional comparisons and observations where possible and appropriate.

Although identity categories are often treated as negative frameworks in which the social power of the privileged works to marginalize those who are different, some scholars believe that these categories should be reworked and embraced as a source of social empowerment and

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<sup>1</sup> I will use the terms “intimate partner violence,” “IPV,” and “domestic violence” interchangeably.

<sup>2</sup> I will use “Black” and “African American” interchangeably throughout this paper. I have chosen to capitalize the word “Black” and write the word “white” in lowercase throughout this paper. I believe Blacks constitute a cultural and ethnic group that deserves the same status that Asians, Latinos, and other ethnic and racial groups enjoy in print. Most American whites think of themselves as German-, Irish-, Italian-, Polish-, or Jewish-American, etc. Therefore, I do not capitalize “white” because it is not a proper noun referring to a specific ethnic or cultural group. *See, e.g.,* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1387 n.2 (1988).

<sup>3</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1253 (1991).

reconstruction.<sup>4</sup> One of the foremost problems with identity politics is its tendency to conflate or ignore intragroup differences.<sup>5</sup> Ignoring differences within a group is problematic because it contributes to tension in those groups and it discourages a proper analysis of how all of the dimensions of a person's identity—such as sex/gender, race, ethnicity, sexual orientation, and class—intersect to create fundamentally different (and often amplified) experiences with IPV.<sup>6</sup>

With this understanding in mind, I will begin this paper by defining IPV and explaining rates of IPV generally, and then continue by exploring many of the different factors that result in increased rates of IPV for women, people of color, non-citizens, members of some collectivist cultures, disabled individuals, sexual minorities, and gender nonconformists. I will then suggest several ways in which to reduce IPV in all minority communities, including improving access to shelters and counseling services and altering police responses to drug problems, undocumented immigration, Native American distrust, and sexual assaults perpetuated by law enforcement officers. I will also discuss and critically review the increasing militarization of police, racial profiling policies, mandatory arrest policies, and other established policing strategies. I will then review the impact of domestic and international law and certain domestic policies affecting IPV in minority communities. Finally, I will complete my discussion of IPV by examining community strategies minorities can use to police IPV on their own in the absence of any significant policy changes by local, state, and federal policymakers.

## II. DEFINING INTIMATE PARTNER VIOLENCE

Unfortunately, definitions of “intimate partner violence” vary from study to study and thereby create considerable problems for any in-depth analysis of IPV not involving a completely new and comprehensive stand-alone study at a national scale. However, before this paper can continue with a discussion of “intimate partner violence,” it is important to provide a functional definition that encompasses various definitions already being used in this field of study.

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<sup>4</sup> *Id.* at 1242.

<sup>5</sup> *Id.* One way in which identity politics obscure intragroup differences is by resorting to pan-ethnic labeling. Pan-ethnic labeling ignores subgroups within racial and ethnic classifications and often obscures the accuracy of statistics on IPV and hides more subtle but important observations about IPV in the United States. Notwithstanding the difficulty of conducting research that would take into account the subgroups to which each participant belongs, more research should be conducted on IPV within relatively large racial and ethnic subgroups.

<sup>6</sup> *Id.*

For purposes of this paper, the term “intimate partner violence” will generally refer to patterns of physical, sexual, or psychological harm by a partner, that are used to manipulate or control the thoughts, beliefs, or behaviors of another in order to assert power, dominance, and control in the relationship.<sup>7</sup> This definition shall include current or former intimate partners who commit violence against male or female partners in dating and courtship, and marital or cohabitation relationships.<sup>8</sup> Notably, this definition of “intimate partner violence” does not include other broader forms of abuse such as deprivation or neglect.<sup>9</sup>

### III. RATES OF INTIMATE PARTNER VIOLENCE GENERALLY

Studies show that anywhere from 4.6 to 39.3 percent of women and 3.6 to 32.9 percent of men have experienced some form of IPV in the United States.<sup>10</sup> One U.S. Department of Justice study estimates that “approximately 4.9 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually.”<sup>11</sup> These numbers are especially troubling when considered together with the fact that reporting rates for rape and sexual assault run at about 30 percent.<sup>12</sup> What is immediately apparent from the wide range in these percentages is that: (1) each study of IPV has been conducted with a fundamentally different focus and methodology,<sup>13</sup> and (2) there is no standard definition of IPV. Notwithstanding the issues with all of the studies cited in this paper, I will attempt to dig deeper into statistics on IPV and analyze and draw safe conclusions based on the general consensus reached in these studies.

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<sup>7</sup> Kae Greenberg, *Still Hidden in the Closet: Trans Women and Domestic Violence*, 27 BERKELEY J. GENDER L. & JUST. 198, 204 (2012).

<sup>8</sup> Sana Loue, *Intimate Partner Violence Bridging The Gap Between Law and Science*, 21 J. LEGAL MED. 1, 2 (2000).

<sup>9</sup> Dean G. Kilpatrick, *Interpersonal Violence and Public Policy: What About the Victims?*, 32 J.L. MED. & ETHICS 73 (2004) (The World Health Organization maintains a broader definition of IPV that also includes deprivation or neglect as part of its definition of violence).

<sup>10</sup> See generally Loue, *supra* note 8, at 3, 5; Christopher G. Ellison, et al., *Race/Ethnicity, Religious Involvement, and Domestic Violence*, 13 VIOLENCE AGAINST WOMEN 11, 1094-1112 (2007).

<sup>11</sup> *Police Violence and Domestic Violence*, INCITE! WOMEN OF COLOR AGAINST VIOLENCE 37, [http://www.incite-national.org/media/docs/3696\\_TOOLKIT-FINAL.pdf](http://www.incite-national.org/media/docs/3696_TOOLKIT-FINAL.pdf) (last visited Mar. 11, 2013) (citing Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence, Findings From the National Violence Against Women Survey*, NATIONAL CRIMINAL JUSTICE 181867 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>).

<sup>12</sup> *Id.*

<sup>13</sup> For instance, in the context of typical IPV analysis across racial and ethnic classifications there is a tendency to compare minority groups to a white control group, or to focus specifically on one racial or ethnic group. See Tjaden, *supra* note 11.

#### IV. INTIMATE PARTNER VIOLENCE AGAINST WOMEN AS A CLASS

##### A. Intimate Partner Violence Has A Distinct Gender Bias

The most obvious and immediate general consensus is that women are far more likely to experience intimate partner violence than are men.<sup>14</sup> Among women admitted to a primary care facility for medical attention, those most likely to have experienced IPV have been found to be “under the age of 35; to be single, separated, or divorced; to receive medical assistance or to be without insurance; to abuse drugs or alcohol; and to have a partner who abuses drugs or alcohol<sup>15</sup>.” Many of these women experience crippling poverty and unemployment, have childcare responsibilities, lack job skills, or experience racially discriminatory employment and housing practices that make it harder to remove themselves from relationships plagued by IPV.<sup>16</sup>

Although studies have indicated that violence among pregnant women may not be higher than among the general population, one multi-state study found that pregnant women who “had had less than 12 years of education, were nonwhite,<sup>17</sup> were 19 years of age or younger, were unmarried, were living in crowded conditions, had participated in the WIC program, and had an unintended pregnancy” were at higher risk of experiencing IPV.<sup>18</sup> Evidence also suggests that women who promote condom use or disclose their HIV status may also increase their risk of experiencing IPV.<sup>19</sup>

##### *1. Social Entrapment: How an Abuser Maintains His Power Over a Woman*

Social entrapment is a major barrier to a woman’s ability to leave her abuser. Social entrapment in the context of IPV refers to the social dimension of a woman’s vulnerability to violence from male partners and her ability to resist and escape abuse.<sup>20</sup> This approach links private violence to the indifference of powerful institutions to women’s suffering and identifies the ways in which men’s control is enhanced by the structural inequalities of gender, race, class, and other identities.<sup>21</sup> Essentially, social entrapment explains how an abuser uses social

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<sup>14</sup> Ellison, *supra* note 10, at 1094.

<sup>15</sup> Loue, *supra* note 8, at 7.

<sup>16</sup> Crenshaw, *supra* note 3, at 1245.

<sup>17</sup> Although this term requires the power of whiteness to create an “other,” I chose to use this term because it is the only way to concisely express a concept that excludes whiteness.

<sup>18</sup> Loue, *supra* note 8, at 7.

<sup>19</sup> Loue, *supra* note 8, at 7 (“In at least two cases, women have been shot following their disclosure of their HIV status to their sexual partners.”).

<sup>20</sup> Greenberg, *supra* note 7, at 205.

<sup>21</sup> James Ptacek, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSE* 10 (1st ed. 1999).

stereotypes and constructs them to his advantage to help control a relationship characterized by abuse.

To assert control, an abuser will often isolate the abused person from her network of support and use existing patriarchal attitudes and stereotypes about a woman's role in society to ensure his dominance in the relationship.<sup>22</sup> Health, criminal justice, and social service institutions often exacerbate fail to provide appropriate services and further exacerbate the entrapment that the abused woman feels. For example, the medical gaze of a health professional will often transpose a disease model onto the trauma, injuries, and mental health disorders and then overlook the social injustices of abuse while highlighting the survivor's individual pathology.<sup>23</sup> Similar failures by police and court systems further increase a victim's sense of isolation.<sup>24</sup> The intersection of these forms of oppression compounds to isolate and entrap a victim in a system dominated by abusive male authority.<sup>25</sup> While social entrapment can exhibit itself in any relationship, battered women experience it far more often than members of other groups.

## ***2. Explaining "Battered Women Syndrome"***

Although a proper definition of "battered women syndrome" is far from clear, it generally refers to the ways in which abused women experience and respond to physical, sexual, and psychological violence and abuse by an intimate partner.<sup>26</sup> As the medical and scientific community have improved their understanding of IPV and the responses of abused women to that violence, that knowledge has been applied for the benefit of battered women in legal contexts such as criminal prosecutions, clemency hearings, personal injury claims against abusers, marital dissolutions, and child custody proceedings.<sup>27</sup>

Battered women often commit assaults on their abusive partners as well. The reasons behind high rates of female assaults on their male partners are complex but research suggests that these numbers often stem from a battered woman's need to defend against an assault or desire to retaliate against prior attacks on their person.<sup>28</sup> The distinguishing factor hidden by the numbers outlined above is that women have consistently reported injuries as a result of this violence far

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<sup>22</sup> Greenberg, *supra* note 7, at 206.

<sup>23</sup> Greenberg, *supra* note 7, at 207.

<sup>24</sup> Greenberg, *supra* note 7, at 207.

<sup>25</sup> Greenberg, *supra* note 7, at 207.

<sup>26</sup> Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1193-94 (1993).

<sup>27</sup> *Id.*

<sup>28</sup> Loue, *supra* note 8, at 5.



more often than men.<sup>29</sup> The criminal justice and police institutions need to take into account that, in many cases, battered women may respond with violence in kind as a form of self-preservation.

Another very different way in which battered women respond to IPV is by using silence. A lack of resources or other means of ending violence often limits a victim's ability to reclaim her identity and this contributes to her silencing.<sup>30</sup> Unfortunately, this silence is institutionalized when society fails to provide the necessary resources for a woman to overcome an abuser's institutionally sanctioned power and control.<sup>31</sup>

## V. INTIMATE PARTNER VIOLENCE AGAINST WOMEN OF COLOR

### A. Intimate Partner Violence Has A Distinct Racial Bias

Generally speaking, racial and ethnic minorities experience higher rates of IPV than white non-Hispanics. The U.S. Census Bureau projects that minorities will make 50 percent of the U.S. population by 2050.<sup>32</sup> Thus, it is becoming increasingly important to analyze the reasons for wide variations in the rates of IPV among racial and ethnic groups. Service providers and government institutions must adapt to this reality and understand the complexity of the problems each of these groups faces if our society is serious about reducing IPV in our communities.

#### 1. "Racism" and "Institutional Racism" Defined

The experiences that survivors of IPV encounter might be similar across the board but the responses to and tools available to non-white survivors are substantially lacking.<sup>33</sup> Thus, the incidences and general prevalence of IPV varies widely across cultures and racial contexts.<sup>34</sup> Critical race theorists hold that all of American society and its institutions are racist.<sup>35</sup> Institutional racism may be very well be at the heart of the reason why minorities and women of color lack the tools they need to escape and resist IPV.<sup>36</sup> Therefore, the term needs to be defined before a more complex discussion can occur around this topic.

The definition of racism is complicated and scholars take many different approaches to

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<sup>29</sup> Loue, *supra* note 8, at 3.

<sup>30</sup> Zanita E. Fenton, *Mirrored Silence: Reflections on Judicial Complicity in Private Violence*, 78 OR. L. REV. 995, 1008 (1999).

<sup>31</sup> *Id.*

<sup>32</sup> Susan F. Grossman & Marta Lundy, *Domestic Violence Across Race and Ethnicity Implications for Social Work Practice and Policy*, 13 VIOLENCE AGAINST WOMEN 10, 1029-1052 (2007).

<sup>33</sup> See generally, *id.*

<sup>34</sup> Loue, *supra* note 8, at 2-3.

<sup>35</sup> Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85, 91 (1994).

<sup>36</sup> See Casey Taft, et al., *Intimate partner violence against African American women: An examination of the socio-cultural context*, 14 AGGRESSION AND VIOLENT BEHAVIOR, ELSEVIER LTD., 50-58 (2009).

defining it. The Encyclopedia Britannica defines racism as:

Any action, practice, or belief that reflects the racial worldview—the ideology that humans are divided into separate and exclusive biological entities called ‘races,’ that there is a causal link between inherited physical traits and traits of personality, intellect, morality, and other cultural behavioral features, and that some races are innately superior to others.<sup>37</sup>

Institutional racism is also defined in various ways. One particularly simple definition states that institutional racism is “the maintenance of institutions that systematically advantage whites.”<sup>38</sup> One scholar argues that the modern social contract really amounts to a racial contract “to exploit people of color to the material, mainly economic but also political, advantages of white people.”<sup>39</sup> White racism in particular can be explained as “all our institutions of education and information—political and civic, religious and creative—which either knowingly or unknowingly, ‘provide the public rationale to justify, explain, legitimize, or tolerate racism.’”<sup>40</sup> Evidence suggests that interpersonal racism and institutional racism at the hands of law enforcement and society in general serve as a major source for increased levels of IPV across minority racial groups.<sup>41</sup> The reality is that white patriarchal institutions disempower a survivor of color and disrupt her perception of her ability to successfully leave an abuser.<sup>42</sup>

## ***2. Rates of Intimate Partner Violence in Native American Communities***

Although researchers know that Native American women experience the highest rates of lifetime victimization related to rape, physical assault, and stalking,<sup>43</sup> there is very little data on IPV in Native communities.<sup>44</sup> As of 2004, only seven small studies were conducted on IPV in Native American communities and most studies used a unique definition of IPV.<sup>45</sup> In a study

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<sup>37</sup> ENCYCLOPÆDIA BRITANNICA ONLINE, *Racism*, <http://www.britannica.com/EBchecked/topic/488187/racism> (last visited Mar. 11, 2013).

<sup>38</sup> Richard Delgado & Jean Stefancic, *Critical White Studies: Looking Behind the Mirror* 630 (1997).

<sup>39</sup> Marissa Jackson, *Neo-Colonialism, Same Old Racism: A Critical Analysis of the United States' Shift Toward Colorblindness As A Tool for the Protection of the American Colonial Empire and White Supremacy*, 11 *Berkeley J. Afr.-Am. L. & Pol'y* 156, 166 (2009).

<sup>40</sup> Brooks, *supra* note 35, at 90.

<sup>41</sup> Ellison, *supra* note 10, at 1097.

<sup>42</sup> Greenberg, *supra* note 7, at 205.

<sup>43</sup> Grossman, *supra* note 32, at 1031.

<sup>44</sup> Lorraine Halinka Malcoe, et al., *Socioeconomic Disparities in Intimate Partner Violence against Native American Women: A Cross-sectional Study* (2004).

<sup>45</sup> Each study used its own definition. See, e.g., David Fairchild, et al., *Prevalence of adult domestic violence among women seeking routine care in a Native American health care facility*, 88 *AM. J. PUB. HEALTH* 1515 (1998)

completed at a tribally operated clinic in Oklahoma, researchers found that 58.7 percent of Native American women reported lifetime physical and/or sexual IPV.<sup>46</sup> In a study conducted on the San Carlos Apache reservation, researchers found that 75.2 percent of interviewees had experienced physical partner violence in their *current* relationship.<sup>47</sup> In a study of women on the Navajo reservation, researchers found that 41.9 percent of Native women had been physically assaulted by a partner in their lifetimes.<sup>48</sup> A 2008 study estimates that 39 percent of Native American women are survivors of domestic violence.<sup>49</sup> Native American women also report that over 85 percent of perpetrators in rape and sexual assault are non-Native.<sup>50</sup> These studies indicate that Native women experience alarming rates of IPV, especially at the hands of non-Native men. Significantly more research needs to be done on rates of IPV in Native American communities to determine how much violence is directed at Native women from both their Native American and non-Native partners so that we can provide relevant solutions to this epidemic.

### ***3. Rates of Intimate Partner Violence in Hispanic Communities***

Abuse in Hispanic households in the United States often takes place in the context of poverty, underemployment, unemployment, cultural isolation, lack of education, language barriers, and non-citizen status.<sup>51</sup> As a result, Latina women are estimated to experience nearly twice the rate of partner violence as white women.<sup>52</sup> A study of Los Angeles residents found that 20 percent of Mexican-Americans born in Mexico, 21.6 percent of non-Hispanic whites born in the United States, and 30.9 percent of Mexican-Americans born in the United States had experienced IPV.<sup>53</sup> A national study comparing Anglo, Cuban, Puerto Rican, Mexican, and Mexican-American men and their rates of violence against a spouse found that Puerto Rican- and

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(“domestic violence” defined as “verbal, physical, or sexual abuse within the previous 12 months”); Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*. U.S. Dep’t. of Justice, Office of Justice Programs, National Institute of Justice (2000). (“The survey’s definition of intimate partner violence resembles the one developed by CDC because it includes violence occurring between persons who have a current or former dating, marital, or cohabiting relationship and same-sex and opposite-sex cohabitants. However, it deviates from CDC’s definition because it includes stalking as well as rape and physical assault”).

<sup>46</sup> Malcoe, *supra* note 44.

<sup>47</sup> Malcoe, *supra* note 44.

<sup>48</sup> Malcoe, *supra* note 44.

<sup>49</sup> Rebecca A. Hart & M. Alexander Lowther, *Honoring Sovereignty: Aiding Tribal Efforts to Protect Native American Women from Domestic Violence*, 96 Cal. L. Rev. 185, 188 (2008) (citing M. Black & M. Breiding, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence--United States*, 2005, Morbidity and Mortality Weekly Rep. (Feb. 8, 2008)).

<sup>50</sup> *Id.* at 189 (citing American Indians and Crime 1992-2002).

<sup>51</sup> Grossman, *supra* note 32, at 1032.

<sup>52</sup> Grossman, *supra* note 32, at 1032.

<sup>53</sup> Loue, *supra* note 8, at 5; *see also* Grossman, *supra* note 32, at 1031-32.

Mexican-American men born in the United States had the highest reported rates of assault while Cuban men had the lowest.<sup>54</sup>

These statistics of IPV in Hispanic households seem to indicate the very interesting possibility of a stronger culture of violence in the United States, or a greater ability for abusive American-born men to consolidate and leverage structural inequality and a lack of appropriate services in their favor to control a relationship. Some of the difference in the rates of IPV in Hispanic households as compared to other ethnic groups may be attributed to their younger median age.<sup>55</sup> That is, younger couples may display a greater willingness to talk about IPV, or there may be a greater likelihood of violence in younger age groups.<sup>56</sup>

#### ***4. Rates of Intimate Partner Violence in African American Communities***

African American women experience significantly more IPV than white women, with one estimate providing that Black women experience IPV at a rate nearly 35 percent higher than white women.<sup>57</sup> A 1999 study found that domestic homicides accounted for 24 percent of all homicides against Black women and 3.5 percent of all homicides against Black men.<sup>58</sup>

There are several possible reasons why Black women experience and commit high rates of domestic homicide or experience significantly higher rates of IPV than many other groups of women. First, Black women may be more willing to self-report severe acts of IPV. This in turn may increase the number of encounters where Black women experience fatal retaliation or commit domestic homicide as a means of self-defense.<sup>59</sup> Second, Black women are more likely to reside in communities that experience high rates of community violence and may be more inclined to accept pro-violence solutions especially when a violent intimate partner imports that violence for use in the relationship.<sup>60</sup> Finally, Black women often have higher rates of illicit drug use, engage in other types of criminal activity, and have prior histories of incarceration.<sup>61</sup> Psychosocial factors such as alcohol and substance abuse, stress, and social isolation are

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<sup>54</sup> Loue, *supra* note 8, at 4 (citing Glenda Kaufman Kantor et al., *Sociocultural Status and Incidence of Marital Violence in Hispanic Families*, 9 VIOLENCE VICTIMS 207 (1994)).

<sup>55</sup> Loue, *supra* note 8, at 6.

<sup>56</sup> Loue, *supra* note 8, at 6.

<sup>57</sup> William Oliver, et al., *Prisoner Reentry and Intimate Partner Violence in the African American Community: The Case for Culturally Competent Interventions*, 2004 J. Inst. Just. Int'l Stud. 147, 148 (2004).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 149.

<sup>60</sup> *Id.* at 149.

<sup>61</sup> *Id.* at 149.

associated with increased IPV.<sup>62</sup> This may also cause them to be isolated from sources of support that would discourage retaliatory violence as a means of self-defense.<sup>63</sup>

### ***5. Rates of Intimate Partner Violence in Asian American Communities***

About 17.6 percent of Asians have experienced severe IPV.<sup>64</sup> Asians in at least one study had only discussed an incident involving IPV with police or a lawyer in 25 percent of cases, compared with 48 percent of Latinos and 33 percent of African American survivors.<sup>65</sup> However, Asians disclosed violence to a friend in a full 90 percent of cases.<sup>66</sup> In order to gain access to services, Asian American women often have to overcome language and communication barriers, cultural stereotypes, religious imperatives, as well as the stigma and shame that comes from reporting violence.<sup>67</sup> The “model minority” myth has also continued to harm the prospect of open discussion of the differences in Asian cultures and the difficulties that Asian American survivors of IPV experience.<sup>68</sup>

## **VI. EXPLAINING OTHER INTERSECTIONAL CAUSES OF INTIMATE PARTNER VIOLENCE IN MINORITY COMMUNITIES**

Some people may suggest that “inferior” cultural characteristics and values account for some significant differences in rates of violence against, in particular, women. However, a more plausible and more complete explanation of the differences in rates of domestic violence is that minorities and women are more likely to live in concentrated communities that experience and are affected by, *inter alia*, higher rates of crime, violence, unemployment, poverty and income inequality, housing problems, environmental hazards, and lower educational level.<sup>69</sup> Some

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<sup>62</sup> *Id.*; Loue, *supra* note 8, at 6 (“those who are currently experiencing violence in their intimate relations have been found more likely... to abuse drugs or alcohol; and to have a partner who abuses drugs or alcohol”).

<sup>63</sup> Oliver, *supra* note 57, at 149.

<sup>64</sup> Hyunkag Cho, *Use of Mental Health Services Among Asian and Latino Victims of Intimate Partner Violence* (2012).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Grossman, *supra* note 32, at 1033. Note that these implications may not apply to all Asian ethnic groups, as once again there has been little emphasis on clarifying the differences among the various Asian groups.

<sup>68</sup> Raquel J. Gabriel, *Minority Groups and Intimate Partner Violence: A Selected Annotated Bibliography*, 19 ST. THOMAS L. REV. 451, 465 (2007).

<sup>69</sup> Ellison, *supra* note 10; Grossman, *supra* note 32; World Health Organization, *World Report on Violence and Health* (Etienne G. Krug et al. eds., 2002); Loue, *supra* note 8, at 6 (“Research indicates that those at increased risk of violence in their marriages include Blacks, young persons, urban dwellers, those who had lesser levels of education, and those with lower incomes... [T]hose who are currently experiencing violence in their intimate relations have been found more likely to be under the age of 35; to be single, separated, or divorced; to receive medical assistance or to be without insurance; to abuse drugs or alcohol; and to have a partner who abuses drugs or alcohol.”).

research indicates that ethnic differences in rates of violence often shrink radically when socioeconomic factors are controlled.<sup>70</sup> These social problems are the manifestations of institutional racism and violence that disproportionately affect minorities and women.

### ***1. Intimate Partner Violence Has a Distinct Citizenship Status Bias***

Immigrant women are more likely than any other category of women in the United States to experience IPV.<sup>71</sup> One estimate found that between 30 and 50 percent of Latina, South Asian, and Korean immigrant women have experienced sexual or physical abuse by an intimate partner.<sup>72</sup> Evidence also suggests that the severity of violence against immigrant women may be greater than for any other categories of women.<sup>73</sup> Immigrant women are at an increased risk of IPV because of issues with language, lack of economic resources, social isolation, immigration stress, immigration status,<sup>74</sup> and because they often must rely on their spouses for information regarding their legal status and can suffer from threats of deportation.<sup>75</sup>

### ***2. Social Collectivism and Strong Patriarchal Attitudes May Contribute to Higher Rates of Intimate Partner Violence***

Blacks, Latinas, and Asians may abstain from using state resources to help end violence in their lives because of the potential for stigmatization from their communities, a desire to avoid perpetuating stereotypes, and the possibility of retaliatory violence from an abuser.<sup>76</sup> Violence against a female partner is more likely to occur in patriarchal societies that condone the use of violence as a form of dispute resolution.<sup>77</sup> Asian American groups often exhibit patriarchal family structures.<sup>78</sup> Community may be so important to some Asian American groups that abused women in these contexts may feel it is necessary to sacrifice their own well-being for community

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<sup>70</sup> Grossman, *supra* note 32, at 1032 (“[c]ontrolling for income and gender, Rennison and Planty (2003) found that differences in the incidence of victimization related to race disappeared, suggesting that SES accounts for variations between groups more than race and ethnicity alone”).

<sup>71</sup> Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure? Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 35-36 (2004).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Loue, *supra* note 8, at 2-3 (“Research conducted on a societal level indicates that wife beating is more likely to occur in societies... in which husbands have greater economic power over their spouses”).

<sup>75</sup> Crenshaw, *supra* note 3, at 1299.

<sup>76</sup> Fenton, *supra* note 30, at 1015-16.

<sup>77</sup> Ellison, *supra* note 10; *See also* World Health Organization, *supra* note 66.

<sup>78</sup> Grossman, *supra* note 32, at 1032.

cohesion.<sup>79</sup> In order to avoid bringing shame to their communities, Asian American women will often respond to IPV with silence and refuse to involve the state.<sup>80</sup>

Complicating the analysis of IPV across racial and ethnic groups is the fact that some ethnicities and cultures have a varying and complex understanding of what constitutes abuse.<sup>81</sup> Some Hispanics do not consider hitting, verbal abuse, and lack of food and adequate shelter as abusive.<sup>82</sup> Some research also indicates that there are variations within the Asian American community itself relating to the willingness to accept violence.<sup>83</sup> Specifically, Vietnamese, Khmer, and Laotians display a higher tolerance for violence than the Chinese.<sup>84</sup>

### ***3. Disabilities Increase the Risk of Intimate Partner Violence***

One state survey found that 56 percent of physically disabled women have experienced domestic abuse.<sup>85</sup> Another study found that 92 percent of disabled women ranked violence against them as their top concern.<sup>86</sup> The combination of sexism and ableism make it very difficult for disabled women to assimilate into a society that does not recognize them as full members of society.<sup>87</sup> This marginalization may be a major cause of increased levels of IPV for the disabled.<sup>88</sup>

## **VII. EXPLAINING DIFFERENCES IN RATES OF IPV ACROSS SEXUAL AND GENDER IDENTITIES**

### **A. Intimate Partner Violence Has A Distinct Bias Against Gay, Lesbian, Bisexual, Transgender, And Gender Non-Conforming Individuals**

Few studies have examined the rates of intimate partner violence among sexual minorities. However, a 2010 study by the UCLA Center for Health Policy Research found that 16.7 percent of heterosexual adults, 40.6 percent of bisexuals, and 27.9 percent of gays and lesbians have experienced IPV.<sup>89</sup> Although even fewer studies have been conducted on rates of IPV among people that identify as transgender, or “trans,” one comprehensive study has found

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<sup>79</sup> Fenton, *supra* note 30, at 1015-16.

<sup>80</sup> Fenton, *supra* note 30, 1015-16; *see also* Grossman, *supra* note 32, at 1033.

<sup>81</sup> Grossman, *supra* note 32, at 1033.

<sup>82</sup> Grossman, *supra* note 32, at 1033.

<sup>83</sup> Grossman, *supra* note 32, at 1033.

<sup>84</sup> Grossman, *supra* note 32, at 1033.

<sup>85</sup> Gabriel, *supra* note 68, at 475.

<sup>86</sup> Gabriel, *supra* note 68, at 475.

<sup>87</sup> Gabriel, *supra* note 68, at 475.

<sup>88</sup> Gabriel, *supra* note 68, at 475.

<sup>89</sup> *Lesbian, Gay, Bisexual, Transgender and Queer Domestic/Intimate Partner Violence in the United States in 2009*, National Coalition of Anti-Violence Programs (2010).

that 19 percent of respondents had been subjected to IPV “specifically because they were trans or gender non-conforming.”<sup>90</sup> In another study, 50 percent of transgender respondents stated that they had been assaulted or raped by a partner and 31 percent identified themselves as domestic violence survivors.<sup>91</sup>

Trans people experience twice the rate of unemployment as the general population, consistently find themselves underemployed and underpaid, and generally lack access to education.<sup>92</sup> In fact, trans people are nearly four times as likely as the general population to have an income under \$10,000.<sup>93</sup> The lack of trans-inclusive, anti-discrimination laws means that trans people can be fired from their jobs and yet have no legal recourse for discrimination.<sup>94</sup> These financial issues may sometimes mean that abused trans people are more susceptible to economic control by their abusers. The issues that all sexual minorities experience are often complicated by the intersection of other marginalized identities such as being people of color. For example, four times as many trans people as people in the general population are unemployed.<sup>95</sup> Ignorance, prejudice, and blatant discrimination result in a lack of appropriate services for trans people.<sup>96</sup> The lack of trans-competent services and the resulting stigma from transphobia gives abusers a wide variety of tools to choose from to maintain power and control in the relationship.<sup>97</sup>

Many LGBT<sup>98</sup> and GNC<sup>99</sup> individuals do not wish to contact the police in a situation involving IPV for fear of having their sexual orientation or gender status disclosed and thereby experiencing mistreatment or non-response by police.<sup>100</sup> Once their status has been revealed or discovered, they are often not believed, are treated as not being worthy of protection, or are

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<sup>90</sup> Greenberg, *supra* note 7, 200-01 (citing Diana Courvant & Loree Cook-Daniels, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities (Survivor Project 2000-2003)* (This study seems not to distinguish between domestic violence from family members and from partners/spouses); Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 88 (Nat'l Ctr. for Transgender Equality & Nat'l Gay & Lesbian Task Force, 2011).

<sup>91</sup> Greenberg, *supra* note 7, at 200.

<sup>92</sup> Greenberg, *supra* note 7, at 201-02.

<sup>93</sup> Greenberg, *supra* note 7, at 201-02.

<sup>94</sup> Greenberg, *supra* note 7, at 201-02 (“For a piece of legislation to be “trans-inclusive,” it must include gender identity as a protected class”).

<sup>95</sup> Greenberg, *supra* note 7, at 201-02.

<sup>96</sup> *Intimate Partner Abuse and Relationship Violence*, American Psychological Association, available at <http://www.apa.org/pi/women/programs/violence/partner-violence.pdf>.

<sup>97</sup> *Id.*

<sup>98</sup> LGBT is an acronym meaning Lesbian, Gay, Bisexual, Transgender.

<sup>99</sup> GNC is an acronym meaning Gender Non-Conforming.

<sup>100</sup> *Lesbian, Gay, Bisexual, Transgender Domestic Violence in the United States in 2006*, (National Coalition of Anti-Violence Programs 2006).



arbitrarily arrested by police responding to violence against them.<sup>101</sup> Police often subject trans and gender nonconforming people to invasive and abusive searches “to satisfy their curiosity, humiliate, or to involuntarily assign a gender based on genital status.”<sup>102</sup> This discrimination by law enforcement officers contributes to a reluctance to report abuse from an intimate partner.

To the extent that non-heterosexual<sup>103</sup> relationships are viewed as a threat to expected heteronormative constructs that define socially acceptable relationships, there is a forced silence that works to the abuser’s advantage in a relationship suffering from IPV.<sup>104</sup> Abusers can use intentional exposure to sexually transmitted and other diseases, other marginalized identities, and the threat of “outing” a partner to maintain his or her power and control in the relationship.<sup>105</sup>

## VIII. RECOMMENDATIONS FOR REDUCING IPV IN ALL MINORITY COMMUNITIES

### A. Improving Shelters And Counseling Services--Access & Accommodation

With what limited resources they have, shelters should continue to develop methods to address the complex ways in which various identities and social dimensions converge in the lives of battered women, people of color, and sexual minorities and complicate their abilities to overcome the effects of negative institutional policies imposed on them.<sup>106</sup> Shelters should also identify subgroups within racial and ethnic groups to provide an inviting, meaningful, and relevant shelter experience for all battered women of color.<sup>107</sup> Also, it is imperative to understand that counselors who provide rape crisis services to women of color must often spend significantly more resources working out issues other than the rape itself first.<sup>108</sup> Unfortunately, funding agencies often allocate funds according to standards of need appropriate for a largely white and middle class population.<sup>109</sup> These funding standards make it difficult for counselors to

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<sup>101</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing M. Haviland, et al., *The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City* (Family Violence Project, Urban Justice Center 2001).

<sup>102</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 44 (citing Amnesty International, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* (2005)).

<sup>103</sup> Although this term may reinforce heteronormativity by labeling people against the perceived norm of heterosexuality, it remains one of the best, all-encompassing terms to describe the entire range of sexual identities. The term can also be understood to include gender identities.

<sup>104</sup> Fenton, *supra* note 29 at 1008.

<sup>105</sup> Greenberg, *supra* note 7, at 204-05; *Lesbian, Gay, Bisexual, Transgender Domestic Violence in the United States in 2006*, (National Coalition of Anti-Violence Programs 2006).

<sup>106</sup> See generally Crenshaw, *supra* note 3.

<sup>107</sup> Grossman, *supra* note 32, at 1048.

<sup>108</sup> Crenshaw, *supra* note 3, at 1250.

<sup>109</sup> Crenshaw, *supra* note 3, at 1250.

properly address the needs of nonwhites and the poor.<sup>110</sup> Thus, one way in which resource centers can meet the needs of the underserved minority is by earmarking more resources to disseminate information and by providing extended services for battered women in these communities.<sup>111</sup>

Although acculturation is a complex phenomenon, women who do not speak the dominant language, do not know of the existence of available resources, and have very little social supports other than the abuser will often be reluctant to reach out for help as well.<sup>112</sup> Language issues are even more complicated among Asians because Asian groups often exhibit a wide variety of mutually unintelligible dialects, which complicate the provision of services.<sup>113</sup> Language barriers create a structural problem that often limits the ability for women of all ethnicities that do not speak English from utilizing existing support services, such as shelters, to help them resist IPV.<sup>114</sup> All of these inadequately addressed realities make it considerably more difficult for these minorities to find alternative living arrangements.<sup>115</sup> As discussed earlier, many Asian communities will cut off access to community support if the abused reaches out for help.<sup>116</sup> To alleviate this type of problem in Asian and other communities, service providers should develop ways to provide access to more financial assistance, employment opportunities, alternative shelter, support groups, emotional support, and legal services.<sup>117</sup> This is especially needed in urban environments.<sup>118</sup>

Shelters are often unable to accommodate women with limited physical mobility as well.<sup>119</sup> Our communities should work to recognize the special circumstances of the disabled and create services that can utilize the experiences of both groups to assisted disabled women to resist and avoid IPV.<sup>120</sup> These suggestions can be expanded by creating awareness of support

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<sup>110</sup> Crenshaw, *supra* note 3, at 1250.

<sup>111</sup> Crenshaw, *supra* note 3, at 1251.

<sup>112</sup> Grossman, *supra* note 32, at 1034.

<sup>113</sup> Grossman, *supra* note 32, at 1034.

<sup>114</sup> Crenshaw, *supra* note 3, at 1249 (the author asserts that such barriers not only limit access to information about shelters, but also limit access to the security shelters provide. Some shelters turn non-English-speaking women away for lack of bilingual personnel and resources.”).

<sup>115</sup> Robert G. Schwemm, *Why Do Landlords Still Discriminate (and What Can Be Done About It)?*, 40 J. MARSHALL L. REV. 455, 457 (2007) (A study conducted by HUD in 2000 found that white potential renters were favored over Blacks by 21.6 percent and over Latinos by 25.7 percent in metropolitan rental markets).

<sup>116</sup> Grossman, *supra* note 32, at 1048.

<sup>117</sup> Grossman, *supra* note 32, at 1048.

<sup>118</sup> Grossman, *supra* note 32, at 1048.

<sup>119</sup> Gabriel, *supra* note 68, at 475.

<sup>120</sup> Gabriel, *supra* note 68, at 475.

programs among the disabled, creating programs geared toward the physically disabled, and by implementing more effective training of program support staff in shelters in order to better assist disabled and battered women.<sup>121</sup>

### **B. Altering Police Responses – Particularly In Minority Communities**

Unfortunately, several things stand in the way of better relations between law enforcement bodies and minority communities. This includes a police culture that often covets increased militarization, cultivates an us-versus-them attitude, discourages racial and gender diversity within the department, and encourages racial profiling.<sup>122</sup> This environment often also advocates hegemonic masculinity that fosters a fierce resistance to the notion that the vast majority of batterers are men and the vast majority of survivors are women.<sup>123</sup>

The systems of privilege within police ranks seem intent on protecting law enforcement institutions that engender a very real fear of law enforcement. The practice of mass incarceration of people of color often means a family may very well end up being fatherless if one partner involves the police in an IPV matter.<sup>124</sup> In particular, widespread discrimination against Black men by police institutions requires their partners to carefully consider that a call for help may result in the incarceration of the abuser and may also result in their own incarceration.<sup>125</sup> This in turn contributes to underreporting of IPV.<sup>126</sup> This institutional discrimination results in a “deep, race-based ambivalence about the causes of and solutions to” IPV.<sup>127</sup>

Entrenched institutionalized racism and prejudice within police institutions is a major obstacle to minority communities trying to develop strategies to make their communities safer for people of color suffering from the effects of IPV. Inadequate federal and state funding, and disinterest in proper police training on how IPV intersects with other hierarchical systems of power such as sexism, racism, homophobia, and classism is also a major problem for activists who believe that police institutions can be utilized as a force for lasting, positive change.<sup>128</sup> Although any plan involving the very institutions responsible for enforcing privilege and

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<sup>121</sup> Gabriel, *supra* note 68, at 475.

<sup>122</sup> Kimberly Huisman, *Training Police Officers on Domestic Violence and Racism: Challenges and Strategies* (2005).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Grossman, *supra* note 32, at 1033.

<sup>126</sup> *Id.*

<sup>127</sup> Grossman, *supra* note 32, at 1033.

<sup>128</sup> Huisman, *supra* note 122.

inequality will be less than perfect, communities should still put pressure on law enforcement institutions to train their officers to recognize and resist the implications of racial inequality and other forms of oppression, especially in the context of their responses to IPV.<sup>129</sup>

### ***1. End the Devastating War on Drugs***

The so-called “war on drugs” disproportionately affects minorities and women.<sup>130</sup> In particular, women of color who find themselves trapped in an abusive relationship with men involved in drug trafficking and women who use controlled substances to self-medicate are often subjected to unusually heavy-handed criminal sanctions as a result of the war on drugs.<sup>131</sup>

Women of color are often stereotyped as drug couriers and are singled out for searches far more regularly than white women.<sup>132</sup> In fact, the U.S. General Accounting Office found that Black women are nine times as likely to be searched as white women and only half as likely to be found carrying contraband as their white counterparts.<sup>133</sup>

The “war on drugs” has also given rise to greater surveillance and policing of the reproductive rights of women of color.<sup>134</sup> Selective testing of pregnant women of color for drug use and heightened surveillance of indigent mothers of color in the context of policing child abuse and neglect are gender- and race-specific manifestations of the “war on drugs.”<sup>135</sup> Women of color and other individuals whose identities have multiple dimensions end up experiencing how the intersection of their identities compound to intensify their systemic subordination in U.S. society. In short, the failed “war on drugs” must end before minorities can expect to dismantle major aspects of the systems of oppression around them.

### ***2. End the War on Immigrants***

Immigrant women may also fear deportation if they involve police for any reason whatsoever and this may act as a major disincentive to involving the legal and police systems to

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<sup>129</sup> Huisman, *supra* note 122.

<sup>130</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 29 (citing The Sentencing Project, *Disparity by Geography: The War on Drugs in America's Cities* (2008); Human Rights Watch, *Targeting Blacks: Drug Enforcement and Race in the United States* (2008); Justice Policy Institute, *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties* (2007); Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs* (2000)).

<sup>131</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 29.

<sup>132</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 30.

<sup>133</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 30 (citing a 2000 U.S. government General Accounting Office study).

<sup>134</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 31.

<sup>135</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 31.

help solve abuse.<sup>136</sup> Although there are legal safeguards (to be discussed later) against deportation of battered immigrant women, many do not know about the laws or do not trust the laws because of their personal experiences with the law both in their home countries and here in the United States.<sup>137</sup> To combat the large amount of distrust, activists and community members need to put increasing pressure on law enforcement institutions that continue to abuse the rights of immigrants.

### ***3. Address Persistent Distrust in Native American Communities Created by Centuries of Genocide, Neglect, and Disempowerment***

Native women living on reservations have very little protection from violence because tribal law enforcement does not have the jurisdiction necessary to act on complaints in cases involving non-Native abusers.<sup>138</sup> Although federal law enforcement agencies have jurisdiction in these cases, they often fail to adequately investigate and prosecute crimes against Native women.<sup>139</sup> Furthermore, Native Americans often do not want to rely on police and other services because of a deep-seated mistrust of white institutions after sharing several hundred years of apartheid history with European Americans.<sup>140</sup> The services that do exist are also slow and ineffectual.<sup>141</sup> Native women do not see utilizing law enforcement for protection as an option because of the government's ongoing failure to take action, particularly against non-Natives.<sup>142</sup> Major changes in the law (to be discussed *infra*) need to be made to give Native Americans a greater ability to create a framework to protect Native women from non-Native abusers that currently remain unprosecuted.

### ***4. Punish Sexual Assault by Law Enforcement***

Evidence suggests that women and transgender people of color experience alarming rates of rape, sexual assault, and sexual harassment by police officers.<sup>143</sup> In studies completed in Missouri and Florida, sexual misconduct was the basis for law enforcement license revocations

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<sup>136</sup> Grossman, *supra* note 32, at 1033.

<sup>137</sup> Grossman, *supra* note 32, at 1034.

<sup>138</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 35 (citing Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Violence* (2007)).

<sup>139</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 40.

<sup>140</sup> Grossman, *supra* note 32, at 1035.

<sup>141</sup> Grossman, *supra* note 32, at 1035.

<sup>142</sup> ] INCITE! Women of Color Against Violence, *supra* note 11, at 35 (citing Sarah Deer, *Federal Indian Law and Violent Crime, in The Color of Violence: The INCITE! Anthology*, SOUTH END PRESS (2006)).

<sup>143</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 45.

in almost 25 percent of cases.<sup>144</sup> Interestingly, many police departments do not train officers on this issue, nor do they have a written policy prohibiting police officers from committing sexual harassment or abuse of the public.<sup>145</sup> More law enforcement departments need to take a proactive approach to this problem. In the event that police departments are unwilling to self-regulate, action groups should focus on gaining public support for increasing civilian oversight of police institutions.

***5. Curtail the Militarization of Police and Racial Profiling Practices That Contribute to Community Distrust and a Loss of Civil Liberties***

The militarization of domestic police forces is increasingly exacerbating the violence suffered by minorities at the hands of law enforcement.<sup>146</sup> Most police departments have trained with active duty military experts or with police officers that have special operations experience.<sup>147</sup> That training has contributed to more recent changes in police tactics and the makeup of police equipment and weapons.<sup>148</sup>

For instance, police in many communities of color routinely set up checkpoints in neighborhoods and public housing and question residents or demand that they provide identification.<sup>149</sup> In New York City alone, nearly 700,000 people were randomly stopped in 2011 for a so-called “stop and frisk.”<sup>150</sup> Only 10 percent of those stopped were white, while 87 percent were either Black or Latino/a.<sup>151</sup> Law enforcement officials justify their unconstitutional tactics by claiming that it is their prerogative to clamp down on crime. However, 86 percent of people

<sup>144</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 43 (citing R. L. Goldman & S. Puro, *Revocation of Police Officer Certification*, 45 ST. LOUIS L. J. 541, 563, n.142 (2001); Timothy Maher, *Police Sexual Misconduct: Officers’ Perceptions of its Extent and Causality*, CRIM. JUST. REV. 28(2): 355 (2003)).

<sup>145</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 45.

<sup>146</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 9 (citing T. McClary & A. Ritchie, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States* 19, Report to UN Human Rights Committee (2006)).

<sup>147</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 9 (citing P. Kraska, *Militarizing Criminal Justice: Exploring the Possibilities*, 27 J. POL. & MIL. SOC. 205-215 (1999)).

<sup>148</sup> National Network for Immigrant and Refugee Rights, *Preliminary Report and Findings of the Emergency National Border Justice and Solidarity Community Tour: Militarization and Impunity at the Border* (2006); Timothy Dunn, *The Militarization of the US-Mexico Border 1978-1992: Low-Intensity Conflict Doctrine Comes Home* (1996).

<sup>149</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 10 (citing *New Orleans to Combat Crime Wave with Overnight Checkpoints*, (Fox News, Jan. 10, 2007); *Latino Groups Slam Richmond Police Checkpoints*, (cbs4.com, Aug. 28, 2008); Corey Roush, *Warrantless Public Housing Searches: Individual Violations or Community Solutions*, 34 AM. CRIM. L. REV. 261 (1996)).

<sup>150</sup> New York Civil Liberties Union, *Racial Justice, Stop and Frisk Data*, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Mar. 11, 2013)

<sup>151</sup> *Id.*

stopped were completely innocent.<sup>152</sup> These statistics indicate that massive racial profiling does little to stop crime and only further exacerbates the deep mistrust that minorities display toward law enforcement. Activists and community members need to work together with or without law enforcement to explore ways in which to alter or avoid police practices that encourage racial profiling.

### ***6. Reevaluate Mandatory Arrest Policies***

Policies that encourage or mandate arrests in IPV situations result in a sharp increase in arrests of women,<sup>153</sup> which is to say: mandatory arrest policies often lead to arbitrary arrests of survivors of IPV rather than the abuser.<sup>154</sup> One report from 2001 found that in some cities, over 20 percent of those arrested for domestic violence were women.<sup>155</sup> Another study done in New York City found that survivors of domestic violence had been arrested in 27 percent of examined cases.<sup>156</sup> Of those arrestees, 85 percent were injured during the incident that led to the arrest.<sup>157</sup> The same study found that in dual arrest or retaliatory arrest cases, 66 percent were Black or Latino/a, 43 percent were living below the poverty line, and 19 percent were receiving public assistance.<sup>158</sup>

In mandatory arrest situations, officers will often resort to arresting both the abused woman and her partner in the hopes that the criminal justice system will sort out the problem.<sup>159</sup> According to a Washington, D.C. sex workers' organization, women who engage in sex work are almost always subject to dual arrest in the context of domestic violence responses.<sup>160</sup> Lesbian women often experience the same treatment.<sup>161</sup> Women who experienced dual arrests also tend to

<sup>152</sup> *Id.*

<sup>153</sup> Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1043-48 (2000).

<sup>154</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38.

<sup>155</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing Susan Miller, *The Paradox of Women Arrested for Domestic Violence*, 7 VIOLENCE AGAINST WOMEN (2001)).

<sup>156</sup> INCITE! Women of Color Against Violence, *supra* note 11, at .

<sup>157</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing M. Haviland, et al., *The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City* (Family Violence Project, Urban Justice Center 2001)).

<sup>158</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38.

<sup>159</sup> Coker, *supra* note 153, at 1043-48.

<sup>160</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing Susan Miller, *The Paradox of Women Arrested for Domestic Violence*, 7 VIOLENCE AGAINST WOMEN (2001)).

<sup>161</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing Susan Miller, *The Paradox of Women Arrested for Domestic Violence*, 7 VIOLENCE AGAINST WOMEN (2001)).

be “deviating from gender-role prescriptions of appropriate female behavior” by using drugs or alcohol.<sup>162</sup>

Sole arrests of abused women also markedly increase in jurisdictions mandating arrest.<sup>163</sup> Often the result of this policy is that battered women are prosecuted, even in circumstances where the woman’s actions were defensive.<sup>164</sup> In jurisdictions that require police to arrest the primary aggressor, this is very problematic because it may not be clear that the battered woman is acting in self-defense according to the traditional legal definition.<sup>165</sup> This increases the likelihood that survivors are arrested instead of the abusive partner.<sup>166</sup> Even if a prosecutor declines to prosecute, these sorts of mandatory arrest policies may subject survivors to violence such as the use of force during arrest, threats to remove children into state custody, strip searches, other forms of violence experienced while being incarcerated, loss of employment, and the possibility that an abusive spouse will use the arrest policy to his advantage in the future.<sup>167</sup> Some jurisdictions even require that police report any incidence of domestic violence as child abuse.<sup>168</sup> Women of color are particularly vulnerable to this form of state control, especially if they are involved in some form of criminalized activity.<sup>169</sup>

Incarcerating survivors that have just experienced a bout of domestic violence severe enough to involve law enforcement only serves to amplify the trauma that survivors experience.<sup>170</sup> Women who have been arrested before are also more likely to be arrested again.<sup>171</sup> Battered women who do not separate from their abusing spouses are also often treated by police as pathological or abusers of the system.<sup>172</sup> These attitudes and practices coupled with stereotypical notions of race, class, and gender will often lead officers to retaliate against abused women if they are forced to make an arrest.<sup>173</sup> Immigrant women often do not wish to report their spouse because arrest under mandatory arrest laws may mean that they themselves could face

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<sup>162</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing M. Haviland, et al., *The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City* (Family Violence Project, Urban Justice Center 2001)).

<sup>163</sup> Coker, *supra* note 153, at 1043-48.

<sup>164</sup> Coker, *supra* note 153, at 1043-48.

<sup>165</sup> Coker, *supra* note 153, at 1043-48.

<sup>166</sup> Coker, *supra* note 153, at 1043-48.

<sup>167</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38; Coker, *supra* note 153, at 1043-48.

<sup>168</sup> Coker, *supra* note 153, at 1043-48.

<sup>169</sup> Coker, *supra* note 153, at 1043-48.

<sup>170</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 40.

<sup>171</sup> Coker, *supra* note 153, at 1043-48.

<sup>172</sup> Coker, *supra* note 153, at 1043-48.

<sup>173</sup> Coker, *supra* note 153, at 1043-48.



both arrest and deportation.<sup>174</sup> Furthermore, mandatory arrest policies are likely to disproportionately impact indigent women and women of color who end up staying with their abusive spouses because they do not possess the resources needed to separate or resist their abusive spouses.<sup>175</sup> It is clear from this information that mandatory arrest policies often end up being misapplied and used disproportionately against abused non-conforming women and minorities.<sup>176</sup> This suggests that mandatory arrest policies desperately need to be reevaluated.

### ***7. Acknowledge That Old Policing Strategies Do Not Work***

“Zero-tolerance policing” refers to a policy of increasing police presence and responding drastically to even minor violations of the law in areas considered to be high-crime.<sup>177</sup> “Quality of life policing” refers to a practice of increasing police presence and responding harshly to even minor violations in areas characterized by non-criminal activities such as standing, congregating, sleeping, eating or drinking in public, as well as other minor offenses.<sup>178</sup> This policing policy is based on the “broken windows” theory, which holds that even minor signs of disorder in a neighborhood can quickly lead to an increase in serious crime if left unchecked.<sup>179</sup> Extensive racial profiling and a combination of these modern policing approaches create a massive criminalization scheme disproportionately affecting people of color and the indigent.<sup>180</sup>

Vague laws also give police officers almost unlimited power to deem what conduct is disorderly or unlawful.<sup>181</sup> More specific laws are often applied discriminatorily against certain

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<sup>174</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 40 (citing Anita Raj & Jay Silverman, *Violence Against Immigrant Women: The Role of Culture, Context and Legal Immigrant Status on Intimate Partner Violence*, 8 VIOLENCE AGAINST WOMEN 367-398 (2002); Deena Jang, et al., *Domestic Violence in Immigrant and Refugee Communities: Assessing the Rights of Battered Women*, San Francisco: Family Violence Prevention Fund (1997 2d ed.).

<sup>175</sup> Coker, *supra* note 153, at 1043-48.

<sup>176</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 38 (citing Susan Miller, *The Paradox of Women Arrested for Domestic Violence*, 7 VIOLENCE AGAINST WOMEN (2001)).

<sup>177</sup> See generally, Andrea McCardle, *Zero Tolerance: Quality of Life and the New Police Brutality in New York City* (A. McArdle & T. Erzen eds., 2001).

<sup>178</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 17 (citing Bernard Harcourt, *Reflecting on the Subject: A Critique of the social influence conception of deterrence, the broken windows theory, and order maintenance policing New York style*, 97 Mich. L. Rev. 291, 308-342 (1998); Andrea McCardle, *Zero Tolerance: Quality of Life and the New Police Brutality in New York City* (A. McArdle & T. Erzen eds., 2001)).

<sup>179</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 17 (citing G. Kelling, *The Broken Windows Theory* 23-34 (1982); Bernard Harcourt, *Policing Disorder: Can we reduce serious crime by punishing petty offenses?*, Boston Review (2002); Peter Barta, *Giuliani, Broken Windows, and the Right to Beg*, 6 GEORGETOWN J. OF POVERTY LAW AND POLICY 165- 94 (2002)).

<sup>180</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 17.

<sup>181</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 17 (citing Andrea McCardle, *Zero Tolerance: Quality of Life and the New Police Brutality in New York City* (A. McArdle & T. Erzen eds., 2001)).

minority communities.<sup>182</sup> In turn, this broad discretion allows police officers to act on their racism, sexism, homophobia, transphobia, classism, and to enforce their ideas of appropriate gender and sexual hierarchies.<sup>183</sup> Minorities that are targeted by this system of policing are less likely to rely on the existing systems for help with IPV as a result. Importantly, although the number of men in prison has markedly increased over the past couple of decades, women do not seem to be much safer from IPV.<sup>184</sup> Unfortunately, a complete change in policing policies needs to occur within the law enforcement community and the criminal justice system before minorities and women can feel safe enough from abusive police officers to rely on them to intervene appropriately in IPV situations.

### ***8. Use More Appropriate Policing Strategies***

One way to start changing police attitudes on the ground would be by implementing department-wide strategies that have proven to be far more successful at reducing crime while also doing a better job at respecting people's civil and human rights. "Hot spot policing" is one police strategy that seems to be effective at reducing crime and disorder.<sup>185</sup> The majority of studies on this strategy have found that focusing on individual streets shown to have high crime rates can significantly reduce crime in an entire neighborhood.<sup>186</sup> This policing strategy is most effective if officers spend about 15 minutes at each hot spot at random intervals.<sup>187</sup> Situational prevention strategies that focus on disrupting the dynamics that allow crime to occur are also highly effective at reducing crime and disorder.<sup>188</sup> This means that police officers should provide a problem-oriented response that focuses on analyzing problems at the hot spot and responding with tailored solutions.<sup>189</sup>

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<sup>182</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 17 (citing Andrea McCardle, *Zero Tolerance: Quality of Life and the New Police Brutality in New York City* (A. McArdle & T. Erzen eds., 2001)).

<sup>183</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 18.

<sup>184</sup> INCITE! Women of Color Against Violence, *supra* note 11, at 18 (Although rates of violence against women have declined since 1993, they have declined at slower rates than violence against men, particularly where intimate partner homicide is concerned).

<sup>185</sup> Cody Telep, *What is Known About the Effectiveness of Police Practices?* (2011), [http://www.jjay.cuny.edu/Telep\\_Weisburd.pdf](http://www.jjay.cuny.edu/Telep_Weisburd.pdf) (last visited March 13, 2013).

<sup>186</sup> *Id.* ("Analyses tend to show that 50 percent of calls or incidents are concentrated in less than five percent of places (e.g. addresses or street segments) in a city... [T]he Minneapolis Hot Spots Patrol Experiment used computerized mapping of crime calls to identify 110 hot spots of roughly street-block length. Police patrol was doubled on average for the experimental sites over a ten-month period. The study found that the experimental as compared with the control hot spots experienced statistically significant reductions in crime calls and observed disorders").

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

It is important to keep in mind that no strategy will work if the citizenry distrust the police. This is especially important in minority neighborhoods, where the relationships between institutions of power and the citizenry are particularly strained.<sup>190</sup> Legitimacy issues can be counteracted with officers doing door-to-door visits in hot spot locales just to get to know people, as this has been shown to be a very effective approach for increasing citizen satisfaction while also reducing crime and disorder.<sup>191</sup> When citizens see police as more legitimate, they are more likely to cooperate with and reach out to police when they experience a problem.<sup>192</sup> Not surprisingly, citizens need to feel that they are being treated with respect and that they have a say in the context of a neutral decision making process.<sup>193</sup>

## **IX. THE EFFECTS OF LAW AND PUBLIC POLICY ON INTIMATE PARTNER VIOLENCE**

### **A. The Effects Of Domestic Law On Intimate Partner Violence**

Convincing whites that IPV is not just a minority problem is not the solution.<sup>194</sup> Minorities will not share equally in the distribution of resources until policymakers begin to ask why violence remains insignificant as long as it is understood to be “just a minority problem.”<sup>195</sup> Whether policymakers will ever be forced to confront the experiences of minorities remains to be seen. Intervention strategies that choose not to consider how the systems of race, gender, sexual orientation, and class converge to create greater dimensions of disempowerment are of limited usefulness to people who because of those dimensions face different obstacles.<sup>196</sup> Nonetheless, there are several pieces of legislation that have attempted to address intimate partner violence in the United States. Each has had limited success.

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<sup>190</sup> *Id.* (In a “national survey of nearly 1,800 adults... half of white respondents were satisfied with the police, but only 22 percent of blacks surveyed were. Forty percent of black respondents said they had been treated unfairly by police because of race compared to just two percent of whites surveyed. Similarly, 54 percent of black respondents felt they had been stopped by the police for no reason, and 48 percent believed they were the victims of excessive police force, while only 16 and 13 percent of white respondents, respectively, felt the same way.”).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Crenshaw, *supra* 3, at 1260–61.

<sup>195</sup> Crenshaw, *supra* 3, at 1260.

<sup>196</sup> Crenshaw, *supra* 3, at 1246.

### *1. The Violence Against Women Act*

On March 7, 2013, President Barack Obama signed a bill that reauthorized the Violence Against Women Act (“VAWA”).<sup>197</sup> The reauthorization of VAWA came after fierce opposition by conservative Republicans in the House who objected to provisions that granting more temporary visas to battered immigrants, protecting gay and transgender individuals, and expanding Native American jurisdiction over non-Natives in the context of intimate partner violence cases.<sup>198</sup>

VAWA currently penalizes anyone who does any interstate or foreign travel or leaves an Indian reservation with the “intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner...”<sup>199</sup> VAWA also penalizes anyone who makes an intimate partner travel between states or countries or leave a reservation “by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner...”<sup>200</sup> The severity of the injury caused determines the penalty for violating VAWA.<sup>201</sup> VAWA also provides that protection orders issued by the courts of one state or Indian tribe should be given full faith and credit in any other jurisdiction.<sup>202</sup> While VAWA originally focused solely on domestic violence victims, the subsequent reauthorization has incorporated aid to victims of domestic violence, dating violence, sexual assault, and stalking.<sup>203</sup>

VAWA contains two forms of relief for immigrant survivors of IPV. The first provision provides the abused individual with the ability to lodge a self-petition and the second provision provides a special form of suspension of deportation.<sup>204</sup> If a self-petitioner demonstrates that she meets several qualifications in the law,<sup>205</sup> she can apply to halt deportation proceedings and

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<sup>197</sup> Rhonda McMillion, *Two for One Congress Moves to Reauthorize Laws Targeting Domestic Violence, Human Trafficking*, ABA J., May 2013, at 59.

<sup>198</sup> Alyse Faye Haugen, *When It Rains, It Pours: The Violence Against Women Act's Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, at 1064–65 n.146 (2012).

<sup>199</sup> Amy Keane, *Validity and Applicability of Violence Against Women Act (VAWA)*, 18 U.S.C.A. §§ 2261 to 2266, 195 A.L.R. 319 (2012).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> McMillion, *supra* note 197, at 59.

<sup>204</sup> Loue, *supra* note 8, at 24.

<sup>205</sup> Loue, *supra* note 8, at 23 (“(1) he or she has been battered or the “subject of extreme cruelty,” (2) the abuse was perpetrated by a spouse, (3) that spouse is a U.S. citizen or lawful permanent resident, (4) the abuse took place

instead remain in the United States as a permanent resident.<sup>206</sup> One problem with the waiver is that survivors who wish to divorce or separate from their partner have to choose between physical safety and the stability of their immigration status.<sup>207</sup> For instance, if the divorce or separation is sought while the residency application is pending, the abused spouse can place the *bona fides* of the marriage in doubt and thereby put the immigration status of the abused spouse at risk.<sup>208</sup> Furthermore, if the abused spouse terminated her marriage within the two-year conditional residency period, she can no longer have access to family-based immigration relief.<sup>209</sup> In this situation, she is at the mercy of her abusive partner to sponsor her residency petition unless she qualifies for an “extreme hardship waiver.”<sup>210</sup> In order to qualify for this waiver, the survivor must convince an adjudicator that she would be subject to extreme hardship if she were to return to her home country.<sup>211</sup> These petition issues inadvertently consolidate a lot of power in the hands of the abusive spouse. To account for this problem, Congress should relax waiver requirements in the interest of protecting survivors of IPV from further violence.

The most controversial part of VAWA has been the failed civil remedy portion.<sup>212</sup> The civil remedy portion was supposed to give survivors of gender-motivated violent crimes a cause of action.<sup>213</sup> Many critics expressed concern that the civil remedy would be misused and that the courts would be flooded with cases brought under this cause of action.<sup>214</sup> Although the civil remedy portion remained intact when VAWA was passed in 1994, the Supreme Court later struck this portion down as a violation of the Commerce Clause.<sup>215</sup> Suggesting that this cause of action should be opposed because it has the potential to flood court systems should lead us to wonder if the patriarchy senses a very real problem with gender-based violence in society but

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during the marriage, (5) the self-petitioner is currently in the U.S., (6) the marriage was entered into in good faith, (7) the self-petitioner is still married to the abuser at the time that the self-petition is filed; (8) the self-petitioner has resided with the abuser at some time; (9) the self-petitioner has “good moral character;” and (10) either the self-petitioner or his or her child will suffer “extreme hardship” if removed from the United States”).

<sup>206</sup> Loue, *supra* note 8, at 24.

<sup>207</sup> Mariela Olivares, *A Final Obstacle: Barriers to Divorce for Immigrant Victims of Domestic Violence in the United States*, 34 *HAMLIN L. REV.* 149, 173–74 (2011).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*; U.S.C. § 1186a(c)(4).

<sup>211</sup> Cecilia Olavarria & Moira Fisher Preda, *Additional Remedies Under VAWA: Battered Spouse Waiver*, *LEGAL MOMENTUM* 1, 5 (2004) [http://www.legalmomentum.org/assets/pdfs/www3\\_5\\_battered\\_spouse\\_waiver.pdf](http://www.legalmomentum.org/assets/pdfs/www3_5_battered_spouse_waiver.pdf) (citing INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4)).

<sup>212</sup> Haugen, *supra* note 198, at 1052–54.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

does not wish to pursue solutions to the problem because it might endanger the existing patriarchy.

### ***2. Illegal Immigration Reform and Immigrant Responsibility Act***

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which made domestic violence grounds for deportation. As a result, immigrant women may be reluctant to report a legal permanent resident spouse to police for fear that he may be subject to a deportation hearing.<sup>216</sup>

### ***3. Marriage Fraud Amendments to the Immigration Marriage Fraud Act***

The Immigration Marriage Fraud Act of 1986 provides an undocumented immigrant married to a U.S. citizen or lawful permanent resident for less than two years with the right to conditional residency for two years if both parties petition that the marriage was made in good faith.<sup>217</sup> This two year waiting period puts many immigrant women at the mercy of violent abusive spouses. In 1990, Congress amended the Act to allow immigrant spouses to apply for a waiver in place of filing a petition indicating a good faith marriage.<sup>218</sup> Although the amendments alleviated some of the problems with the Act, they overlooked the fact that the Act still required an abusive spouse to submit the initial petition to grant the abused spouse's conditional residency.<sup>219</sup>

### ***4. Other Laws Affecting Minorities, Women, and Immigrants in an IPV Context***

Every IPV survivor has a constitutional right “to petition the Government for a redress of grievances” guaranteed by the First Amendment.<sup>220</sup> Even with the broad protections provided by federal law, IPV is still substantially underreported, especially among certain minority groups.<sup>221</sup> When the government through its laws, policies, or practices keeps a survivor from reporting IPV, its actions are unconstitutional.<sup>222</sup> The various ways in which the laws, policies, and practices of the government at the local, state, and federal level inhibit minorities and women from reporting are arguably violations of its constitutional obligations to avoid obstructing the First Amendment for everyone.

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<sup>216</sup> Deborah Weissman, *Protecting the Battered Immigrant Woman*, Fla. B.J., OCT 1994, at 81.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Crenshaw, *supra* note 3, at 1299 n.17.

<sup>220</sup> Tamara L. Kuennen, *Recognizing the Right to Petition for Victims of Domestic Violence*, 81 Fordham L. Rev. 837 (2012).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 839.

Even with the prospect of a domestic violence waiver under legislation designed to protect undocumented immigrant women, many choose to remain silent so as not to jeopardize the security of the entire family.<sup>223</sup> Furthermore, immigrant women who are socially, culturally, or economically marginalized are less likely to be able to satisfy the waiver requirements.<sup>224</sup> This means that cultural identity and class affect the likelihood that an abused immigrant spouse can take advantage of the situation to assert a proper measure of control in the relationship.<sup>225</sup> Intersectional subordination need not be intentional but spousal abuse against women combined with Congress' anti-immigration policies exacerbates the disempowerment of women that are often already subordinated by other systems of domination.<sup>226</sup> Attempts to respond to certain problems need to consider the intersectional location of all the people affected by IPV.<sup>227</sup>

Under federal immigration law, undocumented immigrant survivors of IPV may qualify for gender-based asylum if they are unable and unwilling to return to their country of origin, or if they have a well-founded fear of persecution by their government or a group that the government is unwilling or unable to control.<sup>228</sup> Persecution may be based on race, religion, nationality, political opinion, or membership in a particular social group.<sup>229</sup> This federal law has been instrumental in providing immigrant women with a means of avoiding another layer of subordination at the hands of an abusive spouse.

## **X. INTERNATIONAL LAW AS A POSSIBLE FORCE FOR CHANGE IN THE FUTURE**

International law provides an additional framework that has the potential to protect people of color, women, LGBT, and other disadvantaged groups from discrimination. Unfortunately, international law does not play a big enough role in the United States because the U.S. government has refrained from actually ratifying many important conventions. In those few instances where it has both signed and ratified a convention, it has almost always done so with

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<sup>223</sup> Crenshaw, *supra* note 3, at 1249.

<sup>224</sup> Crenshaw, *supra* note 3, at 1250.

<sup>225</sup> Crenshaw, *supra* note 3, at 1250.

<sup>226</sup> Crenshaw, *supra* note 3, at 1250.

<sup>227</sup> Sarah Rebecca Sullivan & Amy L. Cosentino, *Immigration, Domestic Violence, and What the Family Practitioner Should Know*, Fla. B.J., December 2007, at 47, 50.

<sup>228</sup> *Id*; See also *Overview of the Law of Asylum*, IPMII MA-CLE 31-1 (citing *Ortiz-Araniba v. Keisler*, 505 F.3d 39 (1st Cir. 2007); 8 C.F.R. §§ 208.13(b)(1)(iii), 1208.13(b)(1)(iii)).

<sup>229</sup> 8 U.S.C. § 1231(b)(3)(authorizes the attorney general to withhold removal of noncitizens whose life or freedom would be threatened because of their race, religion, nationality, membership in a particular social group, or political opinion if forced to return to their home country).

several reservations that ensure that the United States cannot be held to account for violations of a person's rights before the International Court of Justice or any other overseeing judicial body.

Women's right to be free from violence has been codified in several conventions. They are as follows: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was signed in 1980 but has not yet been ratified by the United States; the International Covenant on Economic, Social and Cultural Rights, which was signed in October 1997 but has not yet been ratified by the United States; and, the International Covenant on Civil and Political Rights, which was signed by the United States in October 1977 and was ratified in June 1992. A United Nations Special Rapporteur recently indicated that although legislation like VAWA has made significant inroads into the fight against intimate partner violence, "there is little in terms of legally binding federal provisions which provide substantive protection or prevention for acts of domestic violence against women."<sup>230</sup> Thus, policymakers in the United States should be urgently pressed to ratify all of the major international conventions granting rights to survivors of abuse and to implement legislation granting those rights at the federal level. Once a convention is ratified, policymakers will be legally required to at least comply with the "object and purpose" of each of those treaties under Article 18 of the Vienna Convention on the Law of Treaties.<sup>231</sup>

## **XI. HOW TO INVOLVE THE COMMUNITY IN RESPONDING TO INTIMATE PARTNER VIOLENCE**

### **A. Increasing Community Accountability**

Community accountability envisions the creation and maintenance of networks of people that engage in anti-violence/anti-oppression education and encourage relationships based on values of safety, respect, and self-determination. The community accountability approach is a proactive solution that seeks to address violence by nurturing a culture of collective responsibility.<sup>232</sup> This approach is probably most valuable for those activists that believe that the most effective way to combat white institutions of power is by creating ways to avoid them altogether.

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<sup>230</sup> Although the United States has not ratified the Vienna Convention on the Law of Treaties, it has recognized the VCLT as a codification of customary international law. Therefore, the United States still finds itself under an obligation to at least uphold the "object and purpose" of any treaty as outlined under Article 18 of the VCLT.

<sup>231</sup> INCITE! Women of Color Against Violence, *supra* note 11. See note 230 for a discussion about the applicability of the VCLT in the United States.

<sup>232</sup> Ellison, *supra* note 10, at 1106.



### **B. Religious Institutions As Violence Reducers**

Church attendance tends to directly correlate to a reduction in IPV.<sup>233</sup> Church attendance has a more pronounced effect on African American men and women and for Latino men than for any other category of people.<sup>234</sup> Frequent church attendance among African American men brings their odds of committing acts of violence against a partner in line with their non-Hispanic white counterparts.<sup>235</sup> This may be because involvement in a religious organization could reduce negative factors such as problem drinking, social isolation, and depression and serve as a source of support for its members.<sup>236</sup> In the absence of other institutions, these groups may also have stronger and more active religious communities and this may serve to increase the effect of support that these institutions can provide.<sup>237</sup> These findings suggest that religious involvement or religiosity works as a protective factor against IPV.<sup>238</sup> Even so, work should be done to educate religious communities about harmful attitudes that justify, protect, or even condone IPV.<sup>239</sup> More research should be done on the effect of places of worship in communities struggling with IPV in the context of a racist, misogynistic, and homophobic society.<sup>240</sup>

## **XII. CONCLUSION**

Institutional racism and systemic prejudice have a clear impact on rates of intimate partner violence among minority groups. These systems of power help foster and maintain ageism, classism, ableism, misogyny, homophobia, ethnocentrism, and social stereotypes, which in turn allows abusive spouses to use social entrapment, forced silence, and a lack of resources to control and perpetuate violence in an intimate relationship with impunity. Instead of focusing on combating the most offensive and violent examples of abuse, we should analyze the reasons why our society perpetuates an environment that permits abuse to continue to exist.<sup>241</sup> We should also recognize and implement empowering ways for battered women to expose and resist the intimate partner violence in their lives.

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<sup>233</sup> Ellison, *supra* note 10, at 1106.

<sup>234</sup> Ellison, *supra* note 10, at 1106.

<sup>235</sup> Ellison, *supra* note 10, at 1107.

<sup>236</sup> Ellison, *supra* note 10, at 1107.

<sup>237</sup> Ellison, *supra* note 10, at 1108.

<sup>238</sup> Ellison, *supra* note 10, at 1108.

<sup>239</sup> Ellison, *supra* note 10, at 1108.

<sup>240</sup> Ellison, *supra* note 10, at 1108.

<sup>241</sup> Ellison, *supra* note 10, at 1108.

Our health, criminal justice, police, legal, and social service institutions have all failed to provide comprehensive and effective ways in which to combat intimate partner violence in minority homes. Although many of these institutions are overrun by institutional racism and many of the –isms discussed above, those of us that operate in these institutions should work to recognize how intersecting identities can compound the systemic problems faced by everyone working in social justice. When one discourse fails to address the converging dimensions of a person’s identities, the oppressing systems of power are strengthened. For instance, when feminists ignore the role that race plays in IPV, feminism contributes to disproportionate punishment of Black men who abuse women. Likewise, antiracists that ignore gender miss that women in particular are most affected by IPV.<sup>242</sup> Therefore, it is clear that when formulating solutions to any social justice problem, activists increasingly need to look at how all systems of power converge to create compounding injustice. This has never been clearer than in the context of IPV.

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<sup>242</sup> Crenshaw, *supra* note 3, at 1260-61.