

***Domestic Violence & Immigration:
Applying the Immigration Provisions of
the Violence Against Women Act***

**A Training Manual for
Attorneys & Advocates**

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**A Training Manual for
Attorneys & Advocates
September 8, 2000**

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APPENDIX C
Expert Testimony
Concerning Battering

BY

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September 8, 2000

THE USE OF EXPERT TESTIMONY CONCERNING BATTERING AND ITS EFFECTS ON IMMIGRANT WOMEN¹

This appendix will review research data and provide information about the dynamics of domestic violence in immigrant families on questions and issues that are relevant to fact finders who decide cases involving battered immigrant women. Attorneys and advocates representing battered immigrant women in VAWA cases are encouraged to include a copy of this material as supporting evidence in the VAWA case. This chapter will also be useful to help fact finders learn more about domestic violence in immigrant families and can be used as part of training for INS officers and immigration judges.

A review of research findings supplemented where appropriate by expert affidavits or testimony concerning battering and its effects can help fact finders more effectively assess evidence in immigration cases involving battered women. Research findings concerning battering also can dispel common myths and misunderstandings about domestic violence,² including stereotypes about battered women, batterers and immigrants that may interfere with the fact finders ability to assess the case fairly and effectively.

Immigration and Naturalization Service (INS) adjudicators and immigration judges should carefully review all research and expert information submitted with a VAWA self-petition, cancellation of removal or suspension of deportation cases or a battered spouse waiver request that present research data and findings on domestic violence and the dynamics of domestic violence as it is experienced by immigrant battered woman and abused children. This information will help adjudicators better understand and consider the evidence presented, against a background of the research on domestic violence and immigrants. This research and expert information will help answer questions the fact finder may have about the violence in the relationship, the abuser's actions, the abuser victim's demeanor, the abuse victim's needs and fears and the potential for ongoing violence and barriers that may force the victim back into the abusive relationship.

Fact finders should also know that battered women's advocates can provide valuable credible evidence of abuse and the effect the domestic violence has had on the immigrant victim seeking relief from the INS or the immigration judge. Battered women's advocates possess the expertise to provide the fact finder with general information based on research and experience on the dynamics of domestic violence as well as information specific to an individual case.

Affidavits and testimony of expert witnesses can be either generic or case-specific. Generic testimony explains the understanding of battering, its effects and relevant cultural aspects, from the perspective of the scientific and specialized³ knowledge in the social and psychological field. Generic testimony does not provide specific opinions or conclusions related to a particular case. On the other hand, case-specific testimony provides an analysis about a particular battered woman in the context of her life, her immigration and cultural status.

Case-specific testimony contextualizes the particulars of the case within the general state of knowledge in the field. Testimony of a specific nature requires face to face evaluation of the battered woman, often reviews of relevant documents, collection of information from collateral sources and specialized assessment measures.

Some studies have shown that expert testimony personalized to the particulars of the case is more effective and compelling than general information.⁴ Licensed mental health professionals like psychologists, psychiatrists, counselors, and social workers can provide the adjudicator expert testimony on the dynamics of domestic violence and more detailed case-specific evaluations of the specific battered immigrant woman including diagnosis and treatment. However, fact finders should know that many battered immigrant women will not be able to present this testimony as part of their case. The only battered immigrant women who will be able to submit affidavits from licensed mental health professionals will be those who can afford to pay for treatment, whose treatment is covered by health insurance or who live in a community in which licensed mental health professionals are willing to provide services for free or at low-cost. Access to assistance from licensed mental health professionals is also limited for battered immigrant women by the lack of significant numbers of mental health professionals who may be fluent in the battered immigrant's language and familiar with her culture. Battered immigrants who cannot obtain affidavits or assistance from licensed mental health professionals should not be penalized for this fact.

Congress specifically intended to assure that battered immigrant women would not be required or penalized for failure to include an affidavit from a licensed mental health professional as evidence in their case when Congress included in the Violence Against women act provisions which require INS and immigration judges in VAWA cases to accept any credible evidence. In VAWA cases, battered women's advocates who work at local shelters, coalitions and domestic violence programs are experts in domestic violence who can provide the fact finder with credible evidence including research data on domestic violence, evidence on the dynamics of domestic violence and valid support evidence of abuse in individual cases. Other professionals, such as, police officers, trauma technicians, emergency medical technicians, and emergency room staff, who are not mental health professionals can also provide valuable evidence to the fact finder in domestic violence cases.

WHAT KIND OF OBSTACLES PREVENT BATTERED IMMIGRANTS FROM LEAVING THE ABUSERS OR FORCE THEM TO RETURN TO ABUSERS AFTER THEY ATTEMPT TO LEAVE?

It is a mistake to assume that if a domestic violence victim does not take active steps to separate from the batterer she is reluctant to leave him. The erroneous belief is that violence would stop with separation and battered women who stay are responsible for their own predicament. This myth is often cited as proof that other help will be ineffective, as if the battered woman is not motivated or would not benefit from assistance.

The reality found by psychological and social studies is that most women in battering relationships take steps to stop the violence.⁵ Even when these strategies are not be understood

by observers, they have a logic of their own when viewed against the background of victim's mental and emotional state, her resources and the dynamics of abuse within the relationship. A significant portion of the help counseling and psychotherapy provide for battered women is assisting in identifying strategies most likely to be effective, and which are likely to produce further difficulties. This hastens her readiness to progress into more active or formal actions to reach a violent-free environment.⁶

Many battered women do leave their abusive partners but often after many attempts to do so.⁷ A battered woman may seek help from the legal system at different points in her process of response to abuse. If she prematurely turns to the legal system or if the system is insensitive to her needs, it may not help the woman identify the danger and permanency of the abuse, and may become counterproductive and ineffective. This may lead to further avoidance of detection and further entrapment in the cycle of violence, with subsequent aggravation of both the violence and the battered woman's ability to cope. If, for example, a battered immigrant woman calls the police for help and they arrive, speak mainly to the abuser and fail to arrest her abuser when there is adequate evidence to support arrest, the battered immigrant is unlikely to call the police again. When legal involvement is effective and sensitive, it can lead to further empowerment and lead to safety for the woman and the children. Women who become involved in legal maneuvers to stop the violence need services that are supportive and sensitive to facilitate the achievement of safety and following through effectively until the violence stops.

Battered women are particularly vulnerable victims because domestic violence is not like other forms of interpersonal violence. Domestic violence occurs within the context of an intimate bond, where trust and loyalty have been established and the expectation of protection and affection exists.⁸ The violence from the partner is usually part of a process of controlling behavior that includes also strong nurturant behavior. The abuse tends to build up progressively and take many different forms, including psychological, physical or sexual assault.⁹ In general, the effect on the victim of a single act of violence changes depending on the role and relationship with the offender. Differences between man and women's social power, role expectation, size and strength combine to make intimate violence a very powerful method of terrorizing and intimidating the victim. Victims of domestic violence encounter difficulties walking away from abusive partners, even when they desire to do so, due to the power the perpetrator holds over them and the strength of the relationship. Victims are caught in a complex set of circumstances that make the decision to escape a very difficult one to reach.

Although culture and stressful conditions have not been found to increase the rates of intimate violence,¹⁰ culture and stress have a significant effect on how a battered woman responds to the violence and affects her resources to escape the violence.¹¹ Immigrant battered women want as much as any other battered woman for the violence to stop, but culture, lack of support and immigration status limit their ability to deal with the violence and make them particularly vulnerable to failure in their attempts to escape a battering relationship. Battered immigrant women often live in conditions that tend to be more stressful and their options are often very limited.¹² These factors compound the difficulties battered immigrants experience when they attempt to end the violence and compound the psychological harm they suffer as a

result of the abuse.

Battered immigrant women and all battered women must overcome significant obstacles to leave an abusive relationship. When women attempt to leave, encountering obstacles they cannot overcome often forces them to return to their abusers. This next section outlines these obstacles in more depth.

Fear Of Retaliation From Batterer Against Self And Family Or Friends

The foremost important reason why women stay with batterers is their knowledge that separation from the abuser will not stop the violence and may actually make it worse.¹³ Research data suggest that separated women are more likely to be assaulted by an intimate partner than are married women,¹⁴ corroborating some women's fear and actual experience that their physical risks increase if they choose to leave the abusive relationship. Statistics reveal that when someone dies in a battering incident it is more likely to be the woman,¹⁵ a situation of common knowledge among battered women. Further, research has shown that extreme sexual jealousy and separation, in particular, are associated with domestic homicides. Battered immigrant women experience high levels of extreme jealousy in abusive relationships. Cultures which socialize individuals into rigid gender roles often make women responsible if other men perceives them as sexually desirable, a situation which breeds significant jealousy on her partner and a desire to control her. Fact finders considering cases where sexual jealousy is an issue should be aware that this is a sign of the heightened danger. Given that the outcome of domestic violence is sometimes lethal, battered women live in constant fear of such possibility. In particular, homicidal threats from the batterer feeds the battered women's fears.

Some women may delay terminating an abusive relationship because she can monitor the abuser's behavior and try to adjust her efforts at protection accordingly if she stays. Battered women often make this strategic decision in order to preserve their lives. Thus, it is extremely important that decision makers in domestic violence cases do not interpret failure to leave an abuser sooner as evidence that suggests that the abuse was not occurring. In fact, often the contrary is true. Staying with the abuser may have saved her life and the lives of her children. Battered women need to be able to plan when and whether is safe to leave.

Similarly, immigrant battered women may fear death or serious injury, particularly when others, including children, depend on her. For immigrant battered women who lack relatives in the U.S. or have limited social supports, fear of dying and leaving their children motherless can be a very powerful incentive to remain with the abuser. Traditional values of some cultures socialize women to consider children's well being as more important than their own.¹⁶ Some women may feel the need to withstand the violence rather than to risk being removed from the children's lives. Immigrant battered women who send money or help their family in other countries, may fear that death or disability could have grave consequences to her dependents overall well being. In addition to the danger to herself, many battered immigrant women fear that any action towards separation may produce violence against the children or family members as retaliation. Homicidal threats from abusers may not be limited to killing the battered woman and often include threats to children, family and friends, which are a very

powerful intimidation to women socialized to be caretakers.

Economic Factors

Immigrant battered women who must support children and who suffer from low income, unemployment or job instability, low employable skills and limited social opportunities are vulnerable to remain in violent relationships due to the economic dependence on the partner.¹⁷ Low socioeconomic status has been found to strongly affect coping strategies for battered women¹⁸ since it limits the alternatives for her and her children's survival. Working women who are being abused, usually do not have the energies and concentration to dedicate to their labor and obtain further job achievements. Work days may be lost when dealing with the injuries of recent abuse, filing police reports or court orders or trying to protect the children. The physical and psychological impact of abuse also leads to lower educational attainment and lower income levels than for those women who are not being battered by their partners.¹⁹

The vast majority of battered immigrants who qualify for VAWA relief or for battered spouse waivers are undocumented. They often remain undocumented after years of life in the U.S. because the U.S. citizen and lawful permanent resident spouses never filed or will not cooperate in helping them obtain lawful permanent resident status. Being undocumented contributes to diminished financial resources, as it prevents women from obtaining minimum wage jobs, or benefits such as medical insurance, paid vacation, sick leave, and pensions.²⁰ Immigration status may also limit their access to some types of public assistance or other public resources. In light of the fact that many immigrants live in immigrant communities in which they and their family members are economically disadvantaged in the U.S., often the likelihood of a battered immigrant obtaining financial support from relatives or friends can be very limited. Battered immigrants may be hesitant to ask for help for fear of becoming a burden to friends or relatives, or they may only have friends or family members in the United States who are connected to the abuser.

Additionally, there is often disparity between immigrant men and women in terms of command of the English language, with women having less access and opportunity to learn English than their partners.²¹ Limited competency with the English language prevents women from obtaining employable skills, better paying jobs, performing bank transactions, and communicating with the police, prosecutor, shelters and social service agencies. These problems render many immigrant women overly dependent on their partners for daily functioning. Further, a number of abusive tactics may effectively interfere with an immigrant battered woman's ability to successfully assimilate to our society and become more autonomous. For instance, social isolation and restriction of the abused from opportunities to learn English and interact with the community at large can effectively prevent her from developing a support network that is independent of her partner's influence. Control of financial resources, information, mail, and legal documents places an abused victim in a position in which she has few or no economic or other supportive resources. Battered immigrant women facing these difficulties may see themselves as incapable of accomplishing anything on her own or effecting changes in their lives. With the knowledge that a significant proportion of men fail to pay child support after separation,²² an immigrant battered women

may be realistically hesitant to abandon economic and social dependence on the abusive partner for fear of a significant decrease in the standard of living for her and her children coupled with no ability to envision how she can create a life with her children apart from her abuser. Anticipated fear of life as a single parent can be a powerful deterrent to battered immigrant women.

Immigrant battered women who have economic constraints, have not established savings and credit histories, have no reliable support system, do not speak the English language and/or are not versed in the social service or legal systems may face a real danger of becoming homeless when forced to flee violent home for their safety. Those that do leave are frequently forced into unsafe and overcrowded apartments.²³ Inability to speak English, lack of economic resources, lack of lawful work authorization and lack of access to domestic violence shelters exacerbate the problem and increase the danger that an immigrant battered woman will become frustrated in her attempts to leave the batterer and return to live with her batterer. Cultural issues, lack of basic knowledge of the system, limited knowledge of the English language and being undocumented may interfere with the woman's ability to rely on public assistance for herself for her children, compounding her economic dependence. These barriers make it very difficult for battered immigrant women with children to leave their abusers. To successfully assume economic independence a battered woman requires access to a strong support system, courage and an ability to attain lawful immigration status.

Fear That Danger To Children Will Increase Once The Mother Is No Longer Available To Protect Them

Research has found that a significant number of husbands who frequently abuse their wives also physically abuse their children.²⁴ The risk of physical danger to the children in abusive families is considerable. Many women passively withstand the violence inflicted upon them because it diverts their abusers from violence against the children.

Even though legal custody is granted in 83% of temporary and 80% of permanent protection orders, the respondent retains visitation rights in 60% of the final orders, with only 11 % of cases requiring supervised visitation.²⁵ Whether the father obtains custody of the children or just visitation privileges, his contact with the children separate from the mother usually increases. The risk of the batterer abusing unprotected children is a fear many battered women rightfully feel.

Further, the contact between father and the children tends to provide the primary forum for contact between the estranged batterer and the victim, once the parties have separated. The relationship with the children is thus often used by the abuser as a means of maintaining control over the victim. Whether it is caused by the desire to recover the lost relationship or by an injured self esteem and desire for retribution, the relationship with the children can become the conduit through which the abuser maintains control over his partner. The opportunity for continued abuse and control exists with visitation, unless there are clear provisions to minimize this possibility. Therefore, custody issues are an important component of the protection order or long term domestic relations relief after the battered woman separates from the abusive

partner. To be effective in protecting the victim and children from ongoing abuse custody and visitation orders must be carefully crafted to minimize ongoing contact between the parties. Once these orders are in place and working, any action that will undermine these orders (e.g. requiring a battered woman to travel abroad to obtain her lawful permanent residency or deporting her and/or her children) reopens possibilities for escalation of violence.

Immigrant battered women are often socialized to be the children's primary caretakers.²⁶ If they have young children or children with special needs, the risk of abuse to the children by a father untrained in their developmental needs and care will be of particular concern and will serve as a barrier that will prevent them from leaving the abusive relationship. This situation may in fact cause more problems for the children because witnessing violence in their homes tends to cause particular emotional and behavioral problems. Thus, these children are particularly vulnerable to further stresses.²⁷

Furthermore, a battered immigrants may be unwilling to leave because she believes that her abuser will be legally entitled to custody of the children. All of her information about legal rights in the United States is often based on information provided to her by the abuser. She does not know about the laws in most states that require judges to consider domestic violence in custody cases and awards custody to the non-abusive parent. They believe the father will win custody or that unsupervised contact with the father will alienate the children emotionally from them. Women culturally socialized to see family loyalty and attachment as central to family relations will be very susceptible to the abuser's efforts to control and emotionally abuser them by alienating the children from them.²⁸

Fear Of Losing Children Through Unsuccessful Custody Disputes Or Kidnaping

The American Psychological Association has issued the following statement regarding custody matters in relationships where domestic violence has been present: "In matters of custody, preference should be given to the non violent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety to the children and the other parent."²⁹

Without legal custody, the battered woman is in the untenable position of being required to negotiate child-related concerns with an abusive partner or she may run the risk of being viewed as an uncooperative, unfriendly parent by some courts. Due to psychological, physical and economic abuse, and social-cultural norms, an immigrant battered woman often lacks the bargaining power and the psychosocial strength necessary to negotiate an equitable agreement which could protect her and her children's well being. Her significant fear of future violence, separation from the children or financial devastation makes fair negotiations impossible. For this reason mediation is not recommended in domestic violence cases and thus, complex, highly contested litigation often results.

An immigrant battered woman with limited economic means, English language limitations, limited social support, housing and employment difficulties may be vulnerable to

pressure to give up custody of the children, or may be overpowered by advise from others or threats from the abuser to take the children. Threats of kidnapping the children by the batterer needs to be taken very seriously. If the batterer is from a foreign country, he may have familiarity and have contacts in another country which facilitate abduction. Many immigrant battered women may feel paralyzed to make any move towards separation when their abusers threaten child abduction. Studies have found that cases of kidnapping children tend to have certain characteristics in common: a significant portion of kidnaps are designed to hurt the other partner and domestic violence in the marriage occurred in over half of the relationships. International abduction has been found to be less likely to be fought within the court system and less likely to result in recovered children. Foreign born parents appear to be especially likely to abduct their children to another country and when they did so they were far more successful to evade detection and recovery of the children by the other parent.³⁰

Fear Of Deportation

Immigration status is a tool that exacerbates the threats of separation from the children. When a U.S. citizen or lawful permanent resident threatens a spouse with deportation and separation from her children, the threats can be a very powerful deterrent to her separation actions, including calling the police, obtaining a protection order, or cooperating in her partner's criminal prosecution.

An undocumented status heightens psychological distress due to the fear of detection and deportation, increases social isolation and leads to further entrapment in an abusive marriage. Undocumented battered immigrant women face the untenable position of increasing their risk if they are identified as such when they seek help. It could inhibit her willingness to seek shelter or other social services that might assist her, since she may incorrectly believe that seeking assistance will lead to her deportation. Furthermore, when a U.S. citizen or lawful permanent resident husband abuses a wife dependent on him to attain legal immigration status in the U.S. for the wife or the children, the threat that he will have her or her children deported if she calls the police or otherwise seeks help to tend the abuse is all the more powerful and effective. For battered immigrants married to U.S. citizens or lawful permanent residents this barrier is often the strongest deterrent to her leaving the abusive relationship and seeking help.

Deportation by its very nature is a stressful and even traumatic experience for anyone. Living with the risk of deportation for battered immigrant women complicates her already troubled life and significantly limits her options to escape the violence. A woman may fear deportation when she has migrated to escape poverty, civil war or natural disasters in her home country. The thought of having to begin a new life, perhaps without her children, with limited social support due to social ostracism, and sometimes being followed by the abuser, can be very a powerful deterrent to take actions which could exposed her as an undocumented immigrant.

Lack Of Social Support

It has been established that very often, a victim of abuse turns to a social support system to protect her against further violence and/or to help her recover from the effects of violence.³¹

In order to heal, the abused must first find safety and social support. For battered women, lack of interpersonal support has been associated with more desperate ways of coping and can lead to her taking the law into her own hands and murdering her batterer.³²

For battered immigrants, the establishment of this interpersonal support system can be difficult. Often, upon arrival to the U.S. immigrant women have few pre-existing social contacts. Those relatives and friends she does have in the United States she has often met through her abuser. When she has family members of her own in the United States her abuser may have isolate her from them or may threaten to harm them if they help her. Those who may wish to help may face cultural limitations or financial constraints.

Cultural values and social expectations may make the immigrant battered women embarrassed to reveal the occurrence of violence at home and may interfere with the establishment of meaningful, close and trusting social bonds within and outside the community. Some cultural groups tend to believe that the immigration to the U.S. will bring personal fulfillment and happiness by mere exposure to the economic and social richness of this country. Breaking this stereotype and admitting negatives can be a very shaming experience for some battered women who could be disbelieved and dismissed by members of the same cultural group.

The abuse and control cycle itself also interferes with the development of social relationships by decreasing contact independent of the abusive partner. For instance, abused women often become isolated and withdrawn as they or they partners try to hide the evidence of abuse from their friends and family. Often, the shame, enhanced vulnerability, sense of betrayal from a loved one and hopelessness contributes to the immigrant battered woman emotional and physical alienation from others in her family or community.

Ignorance Or Reluctance To Use Institutional Resources Available To Help

For the general population it is estimated that women subjected to violence by an intimate partner fail to report the crime to law enforcement agents six times more often than women experiencing violence by a strangers.³³ Immigrant battered women may be even more reluctant to report the violence due to the lack of understanding of their legal rights and their undocumented immigration status, resulting in fear of detection and deportation.

Battered immigrants do not know that they can safely seek help from shelters, police and the courts without risking being reported to immigration and Naturalization Services. Immigrant women frequently lack the knowledge and understanding of the various social and legal systems that can help them. Many come from countries in which police and courts offer no protection to battered women and when women do seek help those husbands who have more money and ties to the government can have the case dismissed. For instance, for those women fleeing civil war and social violence in their home countries, law enforcement and government agencies may evoke memories of torture, imprisonment or assault perpetrated by those institutions in their home country against their family or themselves. Thus, negative expectations about help that may be available and conflicting beliefs regarding help seeking

behavior may also limit immigrant women's utilization of services.³⁴

When battered immigrants surmount those barriers and ask for assistance prosecutors, courts and even shelters are often slow to respond and/or insensitive to the special needs of immigrant and refugee women, which leads to further frustration and early drop out.

Cultural, Religious And Social Norms That Make Women Responsible For The Emotional Health Of The Intimate Relationship

For some immigrants, cultural values that dictate gender specific roles and behavior may require conformity to male authority. In some cultures, women's suffering and perseverance in the face of adversity are highly valued virtues.³⁵ For battered immigrants in a relationship of gender inequality, attempts to obtain some parity in the relationship may lead in the short term to an increase in the abuse, due to the man's perceived loss of power and sense of incompetence.³⁶

Breaking up the family can be very difficult for immigrant women whose cultural mandates to keep the family together can be very strong.³⁷ Some immigrant women may hold cultural and/or religious values that reinforce tolerating the abuse. Some cultural communities will censure women who disclose abuse and escape from a husband by shaming her or her family members, through ostracism and social sanctions, regardless of the husband's violence and transgressions. Divorce as an option to escape an abusive relationship is often seen by the abused as a further complication. Divorce and remarriage are socially stigmatized in some cultural and religious subgroups, and these women and their children tend to be ostracized by their communities.³⁸ For some immigrant women cultural and religious values consider marriage as permanent and sacred. In other cultures divorce can only be initiated by the husband.³⁹ Immigrant battered women bound by these beliefs may find it difficult to break away and reach out for help.

Social expectations that women have to remain in the role of caretakers within their families are also barriers to escaping abusive relationships.⁴⁰ Religious beliefs and cultural mandates that censure divorce and mandate sacrificing for the reputation and union of the family may be used by relatives and friends of battered women to advise her to stay with her abuser. For many immigrant women who may come from cultures where women are expected to remain in marriage regardless of the negatives, acting contrary to those beliefs can have a serious impact and can increase danger to the victim.

In some cultures even the presence of relatives who witness the violence may not deter the batterer. Family members will ignore or condone the violence in some cultures.⁴¹ Cultural mandates to keep private matters within the family may limit the battered woman's access to support beyond the batterer and the extended family. Family members may place keeping domestic violence a family secret above the victim's safety and in doing so may reinforce the batterer's position of authority. The traditional disempowerment of women in immigrant and refugee families reinforces many women's hesitation to seek help as it involves taking a decisive action against a family member, often considered inappropriate for her role.

Interest In Protecting Partners From Legal Risks

Complaints of domestic violence and subsequent legal system involvement with the family can place the batterer under the scrutiny of the law. A battered immigrant woman may fear that the consequences to the abuser may extend to other spheres of his life, complicating the situation for him and by extension for her and for their children. If a battered immigrant's access to legal immigration status is tied to the abuser, she may be unwilling to seek help or cooperate in his criminal prosecution because then he will not help her obtain lawful status and she may not know that she qualifies for immigration benefits on her own. Additionally, loss of income or employment, social stigma, violation of probation from previous conviction can be long term consequences of legal system involvement for the abuser. These effects may compound his unwillingness to change his behavior or work things out with the victim in legal procedures. Finally, many battered immigrant women are reticent to seek assistance because they fear that the consequences of legal system involvement in the relationship will lead to the abuser's retaliation against the abuse victim and/or her family members.

Poor Physical And/Or Psychological Health Of Battered Women And Their Children

Intimate abuse leads to health problems for the victim, such as bruises, broken bones, cuts, miscarriages, internal injuries, scars, damage to joints, partial loss of hearing or vision among others. In addition, battered women often suffer from longer term health problems such as permanent injuries or organ malfunction, chronic headaches, recurrent vaginal infections, and unwanted pregnancies. In sum, living in a violent home has a profound effect on the physical and mental health of battered women.⁴² Poor health status or health concerns for themselves or their children can be a significant deterrent to a battered immigrant to leaving her abuser. In spite of their increased health risks, women and children in violent homes often receive less medical care than women and children living in a non-violent home.⁴³ Dependence upon a husband's medical insurance and fear that government health assistance will not be available for herself or the children can keep a woman locked in the violent relationship.

Aside from medical problems, short and long terms psychological effects of battering have been well documented in medical, psychological and social work literature. Older literature conceptualized the Battered Woman's Syndrome, a concept no longer considered appropriate.⁴⁴ The most extensive research of battering and its effects comes from traumatology studies and the Post Traumatic Stress Disorder literature.⁴⁵ Symptoms such as depression, anxiety, mood disorders, dissociation, substance abuse and suicidal attempts have also been found to be associated to the trauma of intimate violence.⁴⁶ In addition, repeated victimization progressively heightens a battered women's fears, terror and perception of intimidation, weakening her ability to act to stop the violence.⁴⁷ Multiple victimization across the life span has been linked to the battered woman's clinical presentation and response to the abuse.⁴⁸ In this sense, tolerance for stress is permanently harmed by the cumulative experience of trauma, and women who have been traumatized numerous times during their life time tend to be more vulnerable and respond in less adaptive ways to further victimization. Past trauma has been identified as a risk factor for women to remain longer in abusive relationships.⁴⁹ Thus, many battered immigrants who may have been exposed in their home countries to other forms

of victimization such as child abuse, torture, rape, warfare and natural disasters are more vulnerable to the effects of violence by their intimate partner than are battered women who have not had such experiences.⁵⁰ Women who have been subjected in their home countries to culture-bound practices designed to make them more acceptable and desirable to men, such as genital mutilation, child marriage, or pathological dieting, may have been emotionally scarred by such experiences.⁵¹ The immigration process also places women at risk of further traumatization since many women may experience rape and sexual assault during travel to the U.S. or by employers who take advantage of them in the U.S.

Whether the children are abused by the batterer or are merely exposed to the domestic violence, they may present symptoms related to the stress and traumatization. A battered woman's stress can be compounded when the children present symptoms and maladaptive behaviors which she needs to address. Separation from a battering partner does not guarantee removing the children from the violence when there will be ongoing contact through visitation. Thus, many battered women fearing that the legal struggles, relocation, financial uncertainty and the potential risks of a continued relationship with the batterer during visitation will prove to be more damaging to the children and worsen their children's psychological state, will choose instead to remain with their abusers.

Loss Of An Intimate Relationship That May Provide For Some Important Needs For The Victim

It has been established that in the cycle of domestic violence, affection and attention coexist with the violence and control. After an abusive incident the perpetrator may again treat the victim as he did during courtship.⁵² To lose this nurturant part of the relationship as well as the sexual gratification of a marriage is difficult for any woman. A woman's need for security, closeness and affection from her partner which is often met by the relationship despite the episodes of violence, may be central to her minimization of the danger and the decision to stay.⁵³ For battered immigrants, choosing to leave a partner who has provided the only familiar environment in the midst of a foreign culture with no social support can be very frightening, in spite of the negative conditions of abuse in the marriage. Immigrant women may be thus hesitant to add this loss to their already stressful circumstances.

Hope that the abuser will change can be a powerful factor keeping a battered woman in an abusive relationship. Batterers may promise to change and may tell the victim that he knows his abusive behavior was wrong. Batterers often ask for forgiveness. An immigrant woman who may think it is her duty to stay with her husband may choose to try to help him to change his behavior. This is, however, rarely effective because it assumes that it is under the victim's control to change her battering husband.

WHY WOULD A BATTERED IMMIGRANT WOMAN FIND IT DIFFICULT TO RETURN TO HER HOME COUNTRY, WHETHER VOLUNTARILY OR THROUGH DEPORTATION?

Many people who do not fully understand the dynamics of domestic violence, the

psychology of abusers, the effect of abuse on victims, and victim's needs to heal wrongly believe that a battered immigrant woman may be better off in her home country where she can find familiar surroundings, the protection of family and can be separated from the abuser once and for all. For many immigrant domestic violence victims returning home will actually increase the danger to her. Deportation does not necessarily stop the violence or insulate her from the abuser's ongoing control. Abusers of immigrant women often find many ways of continuing to abuse and control her. He may damage her reputation so that no one in her home country will help or employ her. He may use his own network of family and friends in that country to boycott her efforts at reintegration.

Abusers who are citizens or lawful permanent residents may follow her to the home country to continue the abuse. If the abuser is deported to her home country deporting her to the same country can pose significant danger to her. In many third world countries, domestic violence is only recently being identified as a social problem and legal and community services to protect victims are non-existent or still very much in their infancy compared with the U.S.⁵⁴ Lack of social services for abuse victims and lack of enforceable laws to protect them increase the likelihood that violence perpetrated in the victim's home country could be even more damaging as it goes undetected and unpunished.

Deportation by its very nature is an inherently stressful and anxiety producing experience. Deportation is a process forcibly removes an individual from his or her familiar surroundings and from the U.S. where laws can protect her to a country where political, social or economic circumstances may be adverse and unresponsive to the needs of battered women. If the battered woman fled her country to escape political turmoil, economic depression or domestic violence perpetrated there, the return to such unbearable conditions is very frightening. Even in a home country with the best of circumstances, the battered immigrant will have to start over again obtaining employment, building a social network, procuring housing and finding a support system that can help her survive the trauma of both the violence and the deportation. If the battered immigrant has a child with a U.S. citizen or lawful permanent resident abuser, deportation may result in loss of custody of the children and may sever her permanently from them. If she takes the children with her she may be forced to violate court ordered visitation and will risk parental kidnapping by the abusive father back to the U.S. where she can never see her children again.

Further, cultural values against a divorced or separated woman can make the return unbearably painful and can undermine her social reintegration. A woman who returns to the home country having lost her husband and children, may run the risk in some societies of having her own family turn against her. This is particularly true in cultures that value family unity and respectability at any cost.

Battered immigrant women who have established a life in the U.S. may fear losing her home, friends, social support group, and even her children, by virtue of the deportation process. Many battered women may have some or all of their family in the U.S., which makes returning to their home country an undesirable option as it will result in loss of family contact. For an immigrant battered woman who has developed a positive support network of family and friends

in the U.S., their shelter, their protection, their advise and support tend to greatly alleviate her stress and assist her to protect herself as well as her children. Given the difficulties in procuring positive social support, its loss can be devastating for the immigrant battered woman who faces deportation. Fear of losing their social support network through deportation could result in significant psychological harm and could hinder the abused's ability to escape from the abusive relationship.

The prospect of potential deportation could exacerbate a battered immigrant woman's feelings of depression, loneliness, and despair. Such an increase in depression and hopelessness may even increase the likelihood of suicide attempts. Deportation will in many instances significantly hinder a battered immigrant woman's ability to recover from the psychological impact of past abuse. If she believes that she may be deported if she leaves her husband, she may choose to stay with the abuser despite risks of further injury.

Deportation may also replicate the process of coercive control exercised by the batterer. Many, if not most, batterer's of immigrant women threaten their victims as one means of exercising power and control. In the immigration context, the batterer may tell his victim that she will be deported if she refuses to accede to his wishes or if she reports the abuse to authorities. A battered immigrant who has been subjected to such threats is likely to perceive deportation as an institutionalized implementation of the batterer's previous threats, which would only exacerbate the abused's feelings of helplessness and depression within the abusive relationship. This will significantly impede her ability to recover from the trauma of abuse.

When a battered immigrant has children who were born in the United States she may fear either losing them or moving them to a country where conditions can be very difficult and where she and they may be ostracized. U.S. citizenship provides her children opportunities in life and the possibility of greater societal protection than she encountered while growing up in her own country. Battered immigrants who contemplate deportation or voluntary return to their home countries must weigh the effects this move will have on U.S. citizen children who will be deprived of opportunities. They must also evaluate the dangers of leaving children behind in the U.S. where they are subject to ongoing harm from the abuser.

Finally, battered immigrant women from third world countries who have established a life in the U.S. often become very attracted to American values and culture which tends to give women more opportunities. Whether the abused woman or her daughters benefit from these opportunities, the fear of losing them and being forced to return to a society in which battered immigrant woman's life and that of her daughters is more constrained by virtue of gender alone can be very frightening. Even women who spend a short time living in the U.S. have wide exposure to the culture and achieve some form of intellectual acculturation to American society, and its tradition of justice and freedom. Deporting abuse victims back to a culture with strictly prescribed gender roles can be extremely stressful.

HOW MIGHT DOMESTIC VIOLENCE AFFECT A BATTERED IMMIGRANT WOMAN'S CREDIBILITY AND ABILITY TO DEMONSTRATE GOOD MORAL CHARACTER?

The psychological impact of physical, psychological, and sexual abuse can interfere with a battered woman's ability to present her case in an effective manner before the court. She may appear angry and hostile, socially withdrawn and passive, highly anxious and cognitively disorganized, terrorized, or numb and detached. Each of these presentations may be related to understandable and "normal" reactions to trauma.⁵⁵ A victim's overall demeanor and oral testimony in court, especially if she is again encountering the batterer in court, may be strongly influenced by these responses.

Victims use many strategies in their efforts to resist, avoid, escape, and stop the violence and abuse against them and their children.⁵⁶ Some of these strategies may later give the appearance of weakness of character, moral defect, or even colluding in the violent cycle. For instance, recent National Institute of Justice research indicates that approximately 40% of victims use physical force to fight back against their batterer's attacks.⁵⁷ It is important to remember that even when men and women use the same type of aggressive behavior, women are injured at much higher rates than are men. Women who resort to using physical force to defend themselves often do so because they perceive that there are no other options to stop the abuse. They may feel trapped in the relationship because previous efforts to seek help from the courts were unsuccessful. The use of physical aggression by a battered victim must be considered within the context of her attempts to protect herself and her children against even more serious violence from the batterer and her survival instincts. Battered women and battered immigrant women may be wrongly charged with domestic violence assault when they were acting in self-defense. This occurs when untrained police arrest both parties and when police and prosecutors do not take the time to determine which party is the primary perpetrator of abuse in the relationship.

Undocumented residency status, the batterer's threats of deportation, and continued threats of harm to her or to children may effectively keep her from seeking help. Her coerced involvement in illegal activities can, in turn, keep the battered woman from seeking help, often rightfully fearing that she, as well as her abusive partner, are at legal risk.

Another difficulty some battered immigrants may have in establishing good moral character may arise when the battered woman may abuse substances. It is not an uncommon occurrence for some battered women to use drugs or alcohol as self-medication of uncontrolled depression and anxiety because of the abusive relationship. The psychological effects of the abuse and control are numerous and usually fall within a diagnostic category of Post-Traumatic Stress Disorder.⁵⁸ However, some immigrant battered women may be hesitant to seek mental health assistance due to their fear that if they disclose the abuse they may be pressured into compromising decisions or situations. Conversely, if they seek counseling and the violence is not disclosed then the treatment could be ineffective, due to a lack of understanding of the root causes of the victim's psychological problems. Worse, it may serve to establish a record of mental problems which may later prove to be very damaging to the battered immigrant in a court battle.

For immigrant battered women often times the fear of deportation, language limitations,

economic constraints, lack of transportation and ignorance of the mental health system can lead to their inability to access mental health resources and not getting the help needed. Untreated, the effects of intimate violence and control tend to become aggravated and permeate into other spheres of functioning, such as work and parenting, which can be vital to a battered women's functioning and survival. To cope, some immigrant battered women may turn to mood altering substances.⁵⁹ When fact finders in domestic violence cases see evidence of substance abuse, they should review this evidence in light of the full history of abuse and the positive steps the abuse victim has taken to protect herself and the children, rather than automatically considering this as evidence of lack of good moral character.

When the battered woman has a criminal conviction, it is important to assess whether the battered woman was coerced to engage in acts that are illegal. In order to reduce the risk of increased abuse or even death, the battered woman may commit criminal acts under duress from her abuser. Sometimes those acts may represent desperate attempts to placate a controlling husband who may demand certain amount of financial contribution from her or hold her responsible for issues outside her control.

When charged with a criminal act, a battered immigrant woman may continue to operate under the batterer's coercive control as she follows his demands to assume the responsibility herself, perhaps protecting the abuser from more serious involvement. She may follow the counsel of an attorney who is unaware of the implications that specific actions in the criminal case may have for her immigration status. In both cases, the negative psychological effects of violence and abuse, especially passive helplessness and dependency on more powerful figures, depression and low self-esteem, high levels of anxiety, cultural values that mandate deference to authority and limited knowledge of the legal system, may increase the immigrant battered woman's inclination to rely unquestioningly on her defense attorneys advice. As a result, she may agree to proceed in the criminal case with an arrangement that may avoid trial but unbeknownst to her will cut her off from VAWA immigration relief or make her deportable. She will agree to do this upon her attorney's advice even when she could have won her cause if had gone to trial.

WHY IS IT IN THE BEST INTEREST OF THE CHILD TO BE PLACED IN THE CUSTODY OF THE NON-ABUSIVE PARENT EVEN WHEN THE PARENT HAS NOT ATTAINED LAWFUL PERMANENT RESIDENT STATUS?

In addition to the violence against the woman, often the batterer directs the violence towards the children.⁶⁰ Children who grow up in a household fraught with violence may become direct victims themselves, either as targeted by the abuser's desire for power and control or if they intervene in a battering incident to protect their mother. Children who are abused suffer physical harm and also significant harm to their developing personalities. These children tend to be often as traumatized as their battered mother by the violence in the family and are at high risk of permanent injury or death.

Even when the children are not physically victimized themselves, they often are witness to the physical, and even sexual, abuse of their mothers, and the strategies of control and

psychological abuse the batterer uses.⁶¹ Mere exposure to witnessing abuse perpetrated on their mother amounts to secondary traumatization, which has been found to produce consequences for children similar in type to direct abuse.⁶² Children exposed to parental violence suffer from negative effects on their emotional development and often suffer traumatization. Children tend to respond to witnessing the marital violence with internalizing symptoms such as depression and somatization; and externalizing behavior such as aggressive behavior, hyperactivity, impulsivity and even delinquency.⁶³

Additionally, children who witness abuse at home have poorer psychological and social adjustment over the long term.⁶⁴ A study comparing the effects of family discord to the effects of parental psychiatric illness on children found family conflict to be more detrimental.⁶⁵ It has been found that boys who witness marital violence are likely to become abusive husbands, underlining a theory of an intergenerational transmission of violence.⁶⁶ Not all children affected by violence in their homes grow up to repeat the abuse, but there is a strong connection between witnessing violence in childhood and later involvement in some form of interpersonal violence either intimate, child abuse or retribution on aging parents.⁶⁷

Moreover, children growing up in violent homes do not have a family who consistently provide the nurturance and security which are key to their psychological development. The sense of safety and nurturance necessary for normal developmental growth is often not present in relationships where control and violence are characteristic. Children may learn to lie to deal with their divided sense of loyalty and to protect their parents or themselves from undesirable situations. Children may become part of the "conspiracy of silence," characteristic of violent homes. Children often feel responsible for the violence; thus, they may behave "pseudo-mature" or change their behavior constantly in the hope that it will stop the violence.

Children can be harmed in other indirect ways, as the fear and confusion about the abuse interferes with their ability to profit from their education, makes them vulnerable to nutritional and sleeping deficits, and disrupts their social development. Aside from not having the mental energy to attend to those activities, children from violent homes are usually shifted between relatives, change schools frequently, miss school days, are kept socially isolated and may be overburdened with chores and responsibilities beyond their developmental maturity. Additionally, the stresses associated with domestic violence may decrease parent availability to the children and diminishes their ability to understand and respond to the children's needs.⁶⁸ These difficulties create further deficits and vulnerabilities to the children's already stressed lives.

When children are immigrants themselves they may have the added stresses of acculturation, assimilation to a new educational system, and learning a foreign language. Cumulative stresses that come from previous negative experiences in their home countries and/or current difficulties to adapt to a new environment places them at risk of poorer coping. Children who are U.S. citizens born of immigrant mothers or immigrant families may have also the added stresses of having to maintain two languages and two cultures, and struggle to understand the different set of values they face in a violent household. Children with immigrant mothers may have to deal with the new experiences of discrimination and social

ostracism by their own or their mother's race and social status. These situations add stress and complicate even further their ability to deal with the violence at home.

Selective child abuse, or abuse directed to some but not all the children in a family is extremely harmful.⁶⁹ This specific kind of abuse may occur during certain developmental stages (such as young childhood or adolescence), for children from previous relationships, for children of an unfavored gender, or those with whom the batterer have weaker bonds. Aside from these factors, immigrant families are also at risk when due to immigration patterns they have children who were separated from their parents due to delayed family reunification. The occurrence of selective child abuse may create a hierarchy of violence which breeds other forms of intrafamilial abuse, such as between siblings themselves or children to their parents.

Studies have shown that it is the quality of the family life, its level of nurturance and communication, rather than the structure of the family (e.g., having both parents), which is associated with the children's present and future emotional health.⁷⁰ The presence of a batterer, regardless of what positive relationships or parental skills he may have with the children, can present a strong negative influence on the children. When the abuser's models to the children the undesirable habits and values that underlie the abuse to an intimate partner, children learn and are harmed by his influence.⁷¹ They learn from the abuser inappropriate ways of resolving conflict, and may develop the belief that interpersonal problems are to be resolved by behaving either aggressively or passively, instead of assertively.⁷² Being afraid and confused by the violence the abuser is perpetrating in the family also undermines the trust and attachment children need to place in their caretakers.

Children who are growing up in homes with domestic violence are in need of legal protection, and social and mental health attention. If children who have suffered direct or indirect abuse are placed with the abusive father, the battered woman is doubly victimized and the children are at risk of being used for purposes of retaliation and control over their mother.⁷³ Children who are used by the abuser to get to the mother may believe that they are not loved or valued by themselves but that their father's obsession and anger with their mother is more important than they are.

The conjoint healing of abused women and their children has been considered the ideal therapeutic situation, because the attachment relationship with the mother is the most important context of a child's development.⁷⁴ Children who have witnessed violence in their home tend to believe that the mother has been unable to protect herself and thus will be unable to protect her children. To find safety and healing together gives battered mothers and their children the opportunity to dispel these wrongful beliefs, overcome trauma and repair their compromised relationship.

¹ Written by Drs. Giselle Aguilar Hass and Mary Ann Dutton.

² See Mary Ann Dutton, *Impact of Evidence Concerning Battering and its Effects in Criminal Trial Involving Battered Women*, in *THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: RESEARCH REPORT* (National Institute of Justice 1996).

³ Scientific knowledge is derived from scientific research and specialized knowledge is based on experience, skill or training.

⁴ See R. Schuller, *The Impact of Battered Women Syndrome Evidence on Jury Decision Processes*, 16 *LAW AND*

HUMAN BEHAVIOR 597 (1992).

⁵ VIOLENCE AND THE FAMILY: REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY (1996).

⁶ See L. Walker, ABUSED WOMEN AND SURVIVOR THERAPY: A PRACTICAL GUIDE FOR THE PSYCHOTHERAPIST, (American Psychological Association 1994).

⁷ See, e.g., VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 4 (Aug. 1995); FEMALE VICTIMS OF VIOLENT CRIME, BUREAU OF JUSTICE STATISTICS (1991).

⁸ S.F. Turner & C.H. Shapiro, *Battered Women: Mourning the Death of a Relationship*, SOCIAL WORK (Sept/Oct. 1986).

⁹ See Mary Ann Dutton, EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL OF ASSESSMENT AND INTERVENTION (1992).

¹⁰ See *supra* note 5.

¹¹ See S. Torres, *A Comparison Of Wife Abuse Between Two Cultures: Perceptions, Attitudes And Extent*, 12 ISSUES IN MENTAL HEALTH NURSING 113 (1991).

¹² A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services 1990). This study reported the following findings: 75% of the immigrant Latina and Filipina women living in the San Francisco Bay area surveyed had very low incomes (Latinas under \$750 and Filipinas under \$1000 a month), 55% of the women who worked, did so only part time. Of the Latinas who did not work 53% were supported by their husbands and 20% by other family members, 60% of Latina women had 1-3 children and 17 had 4-8 children.

¹³ Between 1995-96, 80 percent of women who were stalked by former husbands were physically assaulted by that partner. STALKING IN AMERICA: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY (Center for Policy Research 1997). See also *supra* note 5; B.E. Carlson, *Battered Women And Their Assailants*, 22 SOCIAL WORK 455 (1997).

¹⁴ In 1992, divorced or separated (legally or due to marital discord) women had higher victimization rates of violence by intimates (16 per 1,000) than women who never married (7 per 1,000) or married women (1.5 per 1,000). VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 4 (Aug. 1995).

¹⁵ In 1996 over 1,800 murders were committed by intimates, and nearly 3 out of 4 of these had a female victim. VIOLENCE BY INTIMATES, BUREAU OF JUSTICE STATISTICS (March 1998). See also ANGELA BROWNE, WHEN BATTERED WOMEN KILL (1987).

¹⁶ See "marianismo" concept in which women are socialized to imitate the Virgin Mary including such virtues as virginity, the sacrament of marriage forever, servitude to family, martyrdom, and subordination to males. O.M. Espin, *Cultural And Historical Influences On Sexuality In Hispanic/Latin Women*, in ALL AMERICAN WOMEN: LINES THAT DIVIDE, TIES THAT BIND 272 (J. Cole, ed. 1986).

¹⁷ DEANNA JANG, LENI MARIN, GAIL PENDLETON, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN (1997).

¹⁸ See M. FERNANDEZ-ESQUER, & MCCLOSKEY, MEXICAN AMERICAN AND ANGLO BATTERED WOMEN COPING STRATEGIES (1992). See also E.W. Gondolf, E. Fisher & R.J. McFerron, *Racial Differences Among Shelter Residents: A Comparison Of Anglo, Black And Hispanic Battered*, 3 JOURNAL OF FAMILY VIOLENCE (1988).

¹⁹ See the analysis of gender violence in a country's economic development. L. HEISE, J. PINAGUY, & A. GERMAIN, VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (1994).

²⁰ "Undocumented are non citizens who enter the U.S. without INS permission or whose legal immigration documents have expired since they entered. . . . Although being in the U.S. without documents is not a crime, INS try to remove undocumented individuals when they are identified often through their employment and work placement." DEANNA JANG, LENI MARIN, GAIL PENDLETON, DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN 53 (1997).

²¹ A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services 1990). This study also found that 48 % of the Latinas interviewed spoke no English, and 38% spoke only basic English.

²² See THE SOCIAL CAUSES OF HUSBAND-WIFE VIOLENCE (Murray Straus & Gerald Hotaling, eds. 1980).

²³ A NEEDS ASSESSMENT OF UNDOCUMENTED WOMEN (Coalition for Immigrant and Refugee Rights and Services (1990).

²⁴ See Murray Straus, *Victims and Aggressors in Marital Violence*, 23 AMERICAN BEHAVIORAL SCIENTIST 681

(1990).

²⁵ See SUSAN KEILITZ, PAULA HANNAFORD, & HILLERY EFKEMAN, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE (1997).

²⁶ See *supra* note 16. See also J. Perilla, R. Bakerman, & F. Norris, *Culture and Domestic Violence: The Ecology of Abused Latinas*, 9 VIOLENCE AND VICTIMS (1994).

²⁷ See A. Tomkins, S. Mohamed, M. Steinman, R. Macolirri, M. Kenning, & J. Aftank, *The Plight of Children who Witness Women Battering: Psychological Knowledge and Policy Implications* 18 LAW AND PSYCHOLOGY REVIEW 137.

²⁸ Although research to establish the reliability of the Parent Alienation Syndrome is considered insufficient (in APA, 1996, see *supra* note 5) the concept has been used by family courts to describe one parent's attempts to interfere with the children's attachment to the other parent, a situation found in highly conflictive separations or divorces.

²⁹ *Supra* note 5 at 99.

³⁰ In a study of 371 families, researchers found that 55% of abductors were men, 77% snatched the children in order to hurt the other parent, 31.8% of the children abducted were believed to be taken outside the U.S., foreign born parents were more than twice as likely as an American born to abduct a child, and were specially likely to take the abducted children to another country. Hegar & Greif, *Newsletter of the National Center on Women and Family Law*, vol. 13, p. 3.

³¹ Immigration status is a tool that exacerbates the threats of separation from the children. When a U.S. citizen or lawful permanent resident husband threatens a wife dependent on him for immigration status with deportation and separation from her children, his threats can be a very powerful deterrent to her separation actions, including calling the police, obtaining a protection order, or cooperating in her partner's criminal prosecution.

³² See M. O'Keefe, *Incarcerated Battered Women Who Killed their Abusers and those Incarcerated for Other Offenses*, 12 JOURNAL OF FAMILY VIOLENCE 1 (1997). See also Mary Ann Dutton, L. Hoenecker, P. Halle, & K. Burghardt, *Traumatic Responses Among Battered Women no Kill*, Paper Presented at the Seventh Meeting for the International Society for Traumatic Stress Studies, Washington, D.C. (1991).

³³ Also, only about half of the incidents of intimate violence experienced by women are reported to the police. VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).

³⁴ See P. Ruiz & J. Langrod, *Cultural Issues in the Mental Health of Hispanics in the United States*, 2 THE AMERICAN JOURNAL OF SOCIAL PSYCHIATRY 35 (1982). See also M.J. O'Sullivan, & B. Lasso, *Community Mental Health Services for Hispanics: A Test of the Culture Compatibility Hypothesis*, 14 HISPANIC JOURNAL OF BEHAVIORAL SCIENCES 455 (1992); R.F. Munoz, *The Spanish-Speaking Consumer and the Community Mental Health*, in MINORITY MENTAL HEALTH 362 (E.E. Jones & S.J. Korchin, eds.).

³⁵ See *supra* note 16. See also O.M. ESPIN, *LATINA REALITIES: ESSAYS ON HEALING, MIGRATION & SEXUALITY* (1997). See also C.G. Tran, *Domestic Violence Among Vietnamese Refugee Women: Prevalence, Abuse Characteristics, Psychiatric Symptoms, and Psychological Factors* (Unpublished doctoral dissertation, Boston University 1997).

³⁶ See Perilla, Bakerman & Norris, *The Ecology Of Abused Latinas*, 9 VIOLENCE AND VICTIMS 325 (1994); S. Torres, *A Comparison Of Wife Abuse Between Two Cultures: Perceptions, Attitudes, And Extent*, 12 ISSUES IN MENTAL HEALTH NURSING 113 (1991).

³⁷ See *supra* notes 16 and 35.

³⁸ See *Tran supra* note 35.

³⁹ See N. Kibria, *Power, Patriarchy, And Gender Conflict In The Vietnamese Immigrant Community*, 4 GENDER AND SOCIETY 9 (1990).

⁴⁰ See Lenore E. Walker, *THE BATTERED WOMAN SYNDROME* (1984).

⁴¹ See *supra* note 11.

⁴² Battered women are 4 to 5 times more likely than non battered women to require psychiatric treatment and 5 times more likely to attempt suicide, abuse may be the single most important precipitant for female suicide yet identified. E. Stark & A. Flitcraft, *Spouse Abuse*, in VIOLENCE IN AMERICA: A PUBLIC HEALTH APPROACH 14 (Rosenburg & Fenley, eds. 1991). For extensive description of physical effects of violence see M. Koss, P. Koss & J. Woodruff, *Deleterious Effects of Criminal Victimization on Women's Health and Medical Utilization*, 151 ARCHIVES OF INTERNAL MEDICINE 342 (1991).

⁴³ DIAGNOSTIC AND TREATMENT GUIDELINES ON DOMESTIC VIOLENCE (American Medical Association 1992).

⁴⁴ “The term Battered Women Syndrome does not adequately reflect the breadth or nature of the empirical knowledge about battering and its effects.” THE VALIDITY AND USE OF EVIDENCE CONCERNING BATTERING AND ITS EFFECTS IN CRIMINAL TRIALS: RESEARCH REPORT vii (National Institute of Justice 1996).

⁴⁵ This diagnosis was originally conceived to accommodate normal persons who develop psychological symptoms because of the nature of the trauma experienced, a no longer required criteria to be met in the newest revision of this diagnosis. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (American Psychiatry Association 1980 & 1994).

⁴⁶ See description of symptoms related to intimate violence in M. Koss, *supra* note 42.

⁴⁷ Mary Ann Dutton & K. Chrestman, *Multiple Victimization Across Trauma Groups*, Paper presented at the Seventh Annual Meeting of the International Society for Traumatic Stress Studies, Washington D.C. (1991).

⁴⁸ See *supra* note 33.

⁴⁹ See R.J. Gelles, & C. Cornell, INTERNATIONAL PERSPECTIVES IN FAMILY VIOLENCE (1983).

⁵⁰ Historically, women have been subjected to rape in wars. Mass rapes have been reported to occur recently in the civil wars of Bosnia, Cambodia, Liberia, Peru, Somalia, and Uganda. S. Swiss & J. Giller, *Rape as Crime of War: A Medical Perspective*, 270 JAMA 612 (1993).

⁵¹ See L. Herse, J. Pitanguy & A. Germain, VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (1994).

⁵² See *supra* note 6. See also LENORE E. WALKER, THE BATTERED WOMAN (1979).

⁵³ See *supra* note 8.

⁵⁴ See *supra* note 51 at 30. "Laws in other countries make it almost impossible to prosecute violence against women, especially violence perpetrated by an intimate partner." In Guatemala, for example, the Civil Code grants a husband the right to prohibit his wife from working outside the house; in Ecuador, a husband had the right to force his wife to live with him regardless of the abuse; in Chile divorce is illegal for any reason; in Pakistan the law considers a woman incompetent as a witness in cases of rape, which makes any conviction very hard to obtain.

⁵⁵ See *supra* note 2.

⁵⁶ Examples of strategies women use to avoid, escape or resist batterers: calling the police, calling shelters, leaving the home or scene, complying with the batterer's demands (apparently or superficially), talking to friends, hiding, avoiding the batterer, seeking professional help, "being nice" and not upsetting the batterer, keeping information from the batterer, avoiding conflict and keeping peace, "walking on eggshells", separating or divorcing the batterer, fighting back with physical force, obtaining a gun or other weapon. *Supra* note 5.

⁵⁷ Overall three fourths of female victims of non lethal intimate violence actively defended themselves against the batterer: 60% tried to escape, called the police or other help, or used other non confrontational means of self-defense, 17 % confronted the offender by struggling, shouting, chasing or other means without a weapon (15%) or with a weapon (2%). VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).

⁵⁸ DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (American Psychiatry Association 1994).

⁵⁹ Most battered women who drink begin drinking excessively only after the onset of abuse. H. Amaro, L. Fried, H. Cabral, & B. Zuckerman, *Violence During Pregnancy and Substance Abuse*, 80 AMERICAN JOURNAL OF PUBLIC HEALTH 575 (1990).

⁶⁰ VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS, BUREAU OF JUSTICE STATISTICS (1998).

⁶¹ See E. Blakely, D. Engehnan & J. Kolbo, *Children Who Witness Domestic Violence: A Review Of Empirical Literature*, 11 JOURNAL OF INTERPERSONAL VIOLENCE 281 (1996).

⁶² See M. O'Keefe, *Adjustment of Children from Maritally Violent Homes*, 75 FAMILIES IN SOCIETY 403 (1994). See also L.A. Mc Closkey, A.J. Figueredo, & M.P. Koss, *The Effects of Systemic Family Violence in Children's Mental Health*, 66 CHILD DEVELOPMENT 1239 (1995).

⁶³ See F. Blakely, D. Engleman, & J. Kolbo, *Children no Witness Domestic Violence: A Review Of Empirical Literature*, 11 JOURNAL OF INTERPERSONAL VIOLENCE 281 (1996). See also J.W. Fantuzzo et al., *Effects Of Inter-Parental Violence On The Psychological Adjustment And Competencies Of Young Children*, 59 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 258; A. Figueredo, M. Koss & L. McCloskey, *The Effects of Systematic Family Violence*, 66 CHILDREN'S MENTAL HEALTH CHILD DEVELOPMENT 1239 (1995); K. O'Leary, & A. Rosenbaum, *Children: The Unintended Victims Of Marital Violence*, 51 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 692 (1981).

⁶⁴ See J.L. Mathias, P. Mertin, & A. Murray, *The Psychological Functioning of Children from Backgrounds of Domestic Violence*, 30 AUSTRALIAN PSYCHOLOGIST 47 (1995).

⁶⁵ See R.E. Emery, *Inter-Parental Conflict And The Children Of Discord And Divorce*, 92 PSYCHOLOGY BULLETIN 310 (1982).

⁶⁶ See M.A. STRAUS, R. GELLES, & S. STEINMETZ, *BEHIND CLOSED DOORS: VIOLENCE IN AMERICA* (1980).

⁶⁷ See *supra* note 5.

⁶⁸ See A. Tomkins, S. Mohamed, M. Steinman, R. Macolini, M. Kenning, & J. Afrank, *The Plight Of Children Who Witness Women Battering: Psychological Knowledge And Policy Implications*, 18 LAW AND PSYCHOLOGY REVIEW 137.

⁶⁹ This is also known as scapegoating within the literature of child abuse. See D. Kolko, *Child Physical Abuse*, in THE AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN HANDBOOK ON CHILD MALTREATMENT 21 (J. Briere, L. Berliner, J.A. Bull-dey, C. Jenny, & T. Reid, eds.).

⁷⁰ Numerous studies cite effects of divorce as being rjild when compared with the effects of growing up in a violent home. Further, there is a strong body of research supporting the theory that adjustment to divorce and parental separation is like any other stressful life situation in which the outcome does not always have to be negative and it may well be strength and resiliency. See B. Long, *Parental Discord Versus Family Structure: Effects Of Divorce On The Self-Esteem Of Daughters*, 15 JOURNAL OF YOUTH AND ADOLESCENCE 19 (1986). See also R.E. Emery, *Interparental Conflict And The Children Of Discord And Divorce*, 92 PSYCHOLOGICAL BULLETIN 310 (1982). D. Mechanic & S. Hansell, *Divorce, Family Conflict And Adolescent's Well Being*, 30 HEALTH AND SOCIAL BEHAVIOR 105.

⁷¹ Studies have found that battered mothers tend to recognize the danger and negative influence on the children more readily than the batterer, and it is their perception of the children's needs which partially influence the decision to leave or stay. See A. Henderson, *Children Of Abused Wives: Their Influence On Their Mother's Decisions*, CANADA MENTAL HEALTH 10 (June/September 1990).

⁷² See M. Rosenberg, *Children Of Battered Women: The Effects Of Witnessing Violence In Their Social Problems Solving Abilities*, 10 BEHAVIOR THERAPIST 85 (1987).

⁷³ The Office of Women's Health reports that 30 to 70% of children who live in violent homes become victim themselves of abuse or neglect. S.J. Blumenthal, *Violence Against Women Fact Sheet*, Office of Women's Health (July 1995). See also P. Choice, L. Lamke, & J. Pittman, *Conflict Resolution Strategies and Marital Distress as Mediating Factors in the Link Between Witnessing Inter-parental Violence and Wife Battering*, 10 VIOLENCE AND VICTIMS 107 (1995).

⁷⁴ D. Douglas, *Intervention With Male Toddlers Who Have Witnessed Parental Violence*, in FAMILY IN SOCIETY: THE JOURNAL OF CONTEMPORARY HUMAN SERVICES 515 (Nov. 1991).