

WASHINGTON AND LEE UNIVERSITY

# The Responses of Legal Professionals to Impoverished Victims of Domestic Violence

Poverty and Human Capability Studies  
Capstone Paper

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*“‘Why doesn't she just leave?’ It's the first question people ask.*

*She stays because she hopes it will get better. Maybe they can get help. Maybe she will make him happy again. Maybe it will stop.*

*She stays because she is ashamed that they have come to this, that she has allowed him to treat her this way, that she has taken him back so many times before.*

*She stays because she doesn't have enough money to start all over again. She hasn't held a job before, or she doesn't earn enough to support herself and the kids. She's scared to try to make it alone.*

*She stays because she is afraid. He has told her that she had better never try to leave him. He says that he will find her no matter where she goes. He says that he'll take the kids and run. He says he will track her down and kill her. She knows that he means it.”<sup>1</sup>*

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<sup>1</sup> “Why Women Stay.”

The low socioeconomic status and means of intimidation experienced by female victims of domestic violence causes these women not to receive adequate attention and prosecution by police, lawyers, and judges. The failures of the legal system to properly punish perpetrators of domestic violence gives batterers more incentive to intimidate their partners into not cooperating with the legal process, leading to suboptimal outcomes for victims of domestic violence and the perpetuation of the cycle of violence.

### **Women as Victims of Domestic Violence**

There are many definitions used to describe violence between intimate partners. For this essay, domestic violence can be described as violence between intimates living together or who have previously cohabited. Although both men and women initiate violence, women are much more likely to be victimized by it,<sup>2</sup> as up to 95 percent of victims are female.<sup>3</sup> Most cases of domestic violence initiated by women are also far less severe than those instigated by men.<sup>4</sup> Due to the greater harm inflicted upon women in comparison to men through domestic violence, in addition to the acknowledgment that threats by males often precede a woman's initiation of violence, this essay focuses on women as victims of domestic violence.

Domestic violence is the number one source of injury to women in the United States, causing more injuries than rape, car accidents, and robberies combined.<sup>5</sup> Statistics show that two to four million women are abused every year, which translates into one incident of abuse every twelve seconds.<sup>6</sup> Male perpetrators of domestic violence abuse their victims as an attempt to control their partner's actions of choices. Unlike females victimized by random attacks, battered

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<sup>2</sup> Kaye and Knipps, 3, Note 5.

<sup>3</sup> "Domestic Violence in the Workplace Statistics."

<sup>4</sup> Buzawa and Buzawa, 13.

<sup>5</sup> Kaye and Knipps, 3.

<sup>6</sup> Margulies, 1076.

women often have compelling reasons—such as fear, economic dependence, or affection—to feel hesitant about implementing the legal process to end the violence that victimizes them.<sup>7</sup>

### **Male Perpetrators of Domestic Violence**

Perpetrators of domestic violence are often young, troubled, unemployed individuals who possess low self-esteem. Many of them have experienced some type of abuse during their lifetime. It is crucial to note that most men who have experienced trauma or other forms of significant stress do not resort to physical aggression. Although these factors do not justify their abusive behavior, they are important for understanding the cycle of domestic violence. Men may show violence when they feel threatened or attacked by some interaction with their partner that touches on an area of low self-esteem.

When abuse begins, it may take on three forms. The first form is cyclical emotional volatile violence. This type of abuse arises when perpetrators are emotionally dependent on their partner's presence. A pattern exists in which escalating tension is defused by an act of aggression towards the partner, followed by a period of repentance. This type of abuse often progresses from psychological abuse to increasingly severe physical abuse. The second form of abuse occurs when a perpetrator is overly controlling, more so psychologically than physically. The third form is psychopathic abuse, in which the perpetrator lacks emotional engagement or feelings of remorse. Psychopathic perpetrators also have a high likelihood of being involved in male-on-male violence and other criminal behaviors.<sup>8</sup>

### **Poverty and Domestic Violence**

#### *Introduction and Statistics*

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<sup>7</sup> Kaye and Knipps, 4.

<sup>8</sup> Romans, *et al.*

Although domestic violence happens at all levels of the socioeconomic spectrum, research shows that this type of abuse is most prevalent in relationships in which partners are of low socio-economic status.<sup>9</sup> Some reports show that families at or below the poverty line have a violence rate 500% higher than the most wealthy families.<sup>10</sup> Others show that when a battered woman separates from her partner, there is a 50% chance that she will fall below the poverty line.<sup>11</sup> Women who have experienced domestic violence are prevalent among caseloads for Aid to Families with Dependent Children (AFDC). A Massachusetts study of 40 welfare offices found that 64.9% of female clients had experienced physical abuse by a male intimate partner.<sup>12</sup> Domestic violence is also the cause of homelessness for 50% of homeless women. Shortages in affordable housing and desire to avoid homelessness can cause a woman to stay with an abusive partner, risking injury or even death. Welfare restrictions complicate this problem by reducing welfare receipts for those who have moved recently from state-to-state, including women fleeing domestic violence.<sup>13</sup>

It is possible that the poor may be overrepresented in statistics of intimate violence because they appear more often in social services departments, the criminal justice system, and in public hospital emergency rooms due to a lack of health insurance.<sup>14</sup> Approximately 37 percent of women seeking injury-related treatment in hospital emergency rooms were there because of injuries inflicted by a current or former spouse or partner.<sup>15</sup> People of higher socioeconomic status are more likely to have access to private means of intervention and have disputes settled out of the public realm, without an official record of abuse being filed.

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<sup>9</sup> Kakar, 144.

<sup>10</sup> Kakar, 145.

<sup>11</sup> Kaye and Knipps, 4.

<sup>12</sup> Buzawa and Buzawa, 40.

<sup>13</sup> Margulies, 1076.

<sup>14</sup> Kakar, 44.

<sup>15</sup> "Domestic Violence and Sexual Assault Fact Sheet."

However, it is likely that the impoverished suffer more greatly from extreme stress, worries, stigma, and relative deprivation than higher-income counterparts. It is likely that these stressors associated with low socioeconomic status trigger violence in intimate relationships.<sup>16</sup> The employment, education, and economic dependence of a woman on a man have been shown to be significantly correlated to whether or not she experiences incidents of domestic violence.

Domestic violence not only damages the capabilities of individuals who are victimized by it, but also damages the prospects for economic and social development of the entire country.<sup>17</sup> Many citizens faced with the dilemma of whether or not to intervene in what they perceive to be domestic violence withhold from becoming involved because they perceive the situation as the parties' "personal business." However, given the societal costs that result from domestic violence, it is important that the community face this serious ethical dilemma.<sup>18</sup> The Center for Disease Control and Prevention (CDC) estimated that in one year, domestic violence costs the United States 8.3 billion dollars in medical care, mental health services, and lost productivity.<sup>19</sup>

All victims of domestic violence lose nearly 8 million paid days of work every year, which is equivalent to more than 32 thousand full-time jobs.<sup>20</sup> Research has also shown that intimate partner violence costs a health plan \$19.3 million dollars per year for every 100,000 females it covers between the ages of 18 and 64 years of age. Despite the enormous costs of the needs that are being met, it is likely that many needs going unmet, making the demand for resources for domestic violence likely to be underestimated. Although domestic violence programs across the nation serve about 60 thousand victims per day, about 9 thousand victims who speak with a

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<sup>16</sup> Kakar, 144.

<sup>17</sup> "The Cost of Domestic Violence."

<sup>18</sup> Romans, *et al.*

<sup>19</sup> "Violence Against Women in the United States: Statistics."

<sup>20</sup> "National Cost of Domestic Violence."

program representative do not have their needs met due to a lack of resources. An estimated 29 thousand calls go completely unanswered due to a lack of staff and resources.<sup>21</sup>

Domestic violence also takes a significant toll on children in the homes in which it occurs, compounding the problems associated with this issue. An estimated 15.5 million children are exposed to domestic violence every year.<sup>22</sup> Exposure to violence affects the academic performance of children growing up in homes where domestic violence takes place, damaging their future productivity and the returns of national investments in education.<sup>23</sup> Witnessing violence between one's parents or caretakers is also the strongest risk factor for transmitting violent behavior from one generation to the next; boys who witness domestic violence are twice as likely to abuse their own partners when they become adults.<sup>24</sup>

The question of whether or not domestic violence is a cause or consequence of poverty is largely a "chicken-or-the-egg" debate. It is not clear which one causes the other, given that they are highly intertwined, frequently culminating in the perpetuation of poverty. The relationship between domestic violence and poverty may be noted by observing the employment and education levels of female victims and male perpetrators of domestic violence. Lower levels of employment and education amongst impoverished female victims of domestic violence often increase a victim's dependence on her abuser, leading to perpetuation of the cycle of violence.

### *Employment*

Employed victims of domestic violence may be in a better position than unemployed women to leave offenders because they are not completely dependent on their offenders for survival and therefore have greater potential for economic independence. Female victims of

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<sup>21</sup> "Domestic Violence and Sexual Assault Fact Sheet."

<sup>22</sup> "Domestic Violence and Sexual Assault Fact Sheet."

<sup>23</sup> "The Costs of Domestic Violence."

<sup>24</sup> "Domestic Violence Facts."

intimate violence are less frequently employed than non-victims. Perpetrators of domestic abuse may find ways of controlling the victim's ability to participate efficiently in the work place if their desire to control the abused partner does not extend so far as to prohibiting her from working outside the home at all.<sup>25</sup> Ninety-six percent of employed domestic violence victims in one survey stated that the domestic violence in their lives interfered with their ability to work. Abusive men who view the employment of their female partners as a threat to their masculinity may make it more difficult for women living in poverty to leave welfare for work by harassing their partners at work to the extent to which it is likely that the employment will be terminated.<sup>26</sup> A woman may be harassed by threatening phone calls at work or may need to miss days of work because of injuries or attempts to seek legal assistance for abuse.<sup>27</sup> In fact, abusive husbands and partners harassed 74% of employed battered women at work. Domestic violence also has significant other impacts on the quality of work that victimized females are able to produce. Domestic violence or harassment by partners caused 56% of female victims to be late for work at least five times a month and 54% to miss at least three full days of work a month. One-quarter of battered women say they had to quit work at least partly due to domestic violence.<sup>28</sup> Only about half of the states allow survivors of domestic violence victims to leave their jobs due to violence.<sup>29</sup>

Research has found that individuals with blue collar jobs are more predisposed to using violence as a means of expression in their intimate relationships than are their counterparts who

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<sup>25</sup> Kakar, 168.

<sup>26</sup> Margulies, 1076.

<sup>27</sup> Drew, et al., 394.

<sup>28</sup> Drew, et al., 394.

<sup>29</sup> Drew, et al., 395.



hold white collar jobs. Many clinical studies show that most violent offenders have low levels of education and blue collar jobs.<sup>30</sup>

### *Education*

Low educational attainment is frequently associated with low socioeconomic status. Low or no education leaves a woman with few marketable skills, leaving her susceptible to vulnerable situations that may lead to her developing economic dependence on a man. Many women resort to staying in violent relationships rather than choosing to attempt to find work with few skills in a job market where women usually receive lower wages than men, particularly when they have little education.<sup>31</sup>

A low level of education held by a woman's partner may also predispose him to the implementation of violence by making it more likely that he will have poor verbal and problem-solving skills. It is also possible that mental capacities, such as concentration abilities, may affect the educational attainment of a partner, therefore affecting his development of verbal and problem-solving skills.<sup>32</sup>

### *Dependence*

**Economic Dependence.** When an abused woman has low education, low socioeconomic status, and low skills, it is more likely that she will have no other economic means of survival than her abuser's job, leading to a high probability that she will risk staying in a violent relationship. This dependence puts women in a situation in which they become vulnerable to violence.<sup>33</sup> If they chose to reject financial security, they often are left homeless with little or no

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<sup>30</sup> Kakar, 145.

<sup>31</sup> Kakar, 169.

<sup>32</sup> Kakar, 146.

<sup>33</sup> Kakar, 30.

income. The financial control exerted over these women has been noted as “the strongest (form) of control” intimate abusers have over their partners, even more so than their physical force.<sup>34</sup>

**Social Dependence.** Dependence may also extend to the social aspects of a battered woman’s life. Victims of intimate violence may believe that they have no support from their families or society in general.<sup>35</sup> Many abusers essentially hold their partners hostage, limiting and monitoring their movements, leading to abusers frequently being unwilling to allow their victims to see friends and family.<sup>36</sup>

Female victims of domestic violence may lack social networks that could support them and even in cases where support networks are present, the only advice they are given is often along the lines of “work on the relationship.” These reactions may lead to abused women further isolating themselves from friends, family, and society, potentially increasing their dependence on their batterer.<sup>37</sup> When a woman feels that the only social connection that she has is to her abuser, attitudes of ambivalence frequently develop, causing her to not report her abuse. If a woman does report her abuse, it is highly likely that she will eventually decide not to press charges, leading to too few instances of domestic violence being addressed in a legal system that generally assumes a victim’s willingness to cooperate.<sup>38</sup> Failure to address problems of abuse often lead to no effective intervention being taken, leading to the perpetuation of abuse.

### **Domestic Violence and the Law**

After years of advocacy, education efforts, and reforms in law enforcement, an increasing number of domestic violence cases are making their way to the court. However, an increased number of cases of domestic violence being presented in court does not mean that victory has

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<sup>34</sup>Kakar, 170.

<sup>35</sup> Kakar, 162.

<sup>36</sup> Margulies, 1099.

<sup>37</sup> Kakar, 162.

<sup>38</sup> Kaye and Knipps, 4.

been won legally for victims of domestic violence. Society as a whole lacks a sense of mutuality with people living in poverty, who are more likely to be victims of domestic violence, particularly when that person is a woman. Mainstream discussion portrays people living in poverty as either an undifferentiated mass of victims who cannot be helped or who embody laziness and immorality.<sup>39</sup> These opinions make measures that truly address and resolve the hardships of the impoverished, including those victimized by domestic violence, unlikely to be developed. In light of more domestic violence cases being brought to court, we must now ensure that the intervention that courts provide is meaningful.<sup>40</sup>

### *The Role of Legal Professionals*

The power of government and legal professionals may be the most influential in dislodging generalized public opinions about the poor and the ingrained power of patriarchy that is manifested through domestic violence against women.<sup>41</sup> The legal system has great power to address the issue of domestic violence and intervene to stop it, although there are limitations as to how powerful it can be to completely stop it.<sup>42</sup>

**Police.** Domestic violence is one of the most chronically underreported crimes, as most cases of domestic violence are never reported to the police.<sup>43</sup> The police play a particularly important role in addressing the issue of domestic violence given that they are often the first legal professional notified of a dispute. Women call the police regarding domestic violence more frequently than they appear in court.<sup>44</sup> For many years police and other legal professionals have been aware of the battles taking place in our nation's homes and done little to intervene in these

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<sup>39</sup> Margulies, 1101.

<sup>40</sup> Kaye and Knipps, 3-4.

<sup>41</sup> Margulies, 1092.

<sup>42</sup> Hartman, 153.

<sup>43</sup> "Domestic Violence Facts."

<sup>44</sup> Ptacek, 6.

circumstances because of opinions that domestic violence is a private matter and that victims will drop charges against their abusers, allowing many cases of domestic violence to be dismissed and for domestic violence to continue unchecked.<sup>45</sup>

With the passing of the Violence Against Women Act in 1994, vast resources were dedicated to “pro-arrest” policies and effective court interventions. Police were encouraged to make arrests whenever probable cause existed, regardless of victims’ wishes,<sup>46</sup> as the police force is invested with the power of the State to stop or control behavior that is considered unacceptable by the society. Police actions have a strong impact on offenders in domestic violence cases, therefore putting them in a position to reduce the rate of recidivism.<sup>47</sup> Police are of the most important legal players in cases of domestic violence because their discretion in first response to violence often affects whether or not a case will be prosecuted, giving them power to greatly impact rates of recidivism.

Unfortunately, even with the passing of the Violence Against Women Act, police frequently still do not offer victims of domestic violence adequate protection from their offenders. Critiques of the state of police involvement in cases of domestic violence believe that police underestimate violence and dismiss some appeals for help because they do not think there is sufficient evidence for intervention. Some studies have also shown that police dispatchers do not always assign the same priority to reports of wife assault as they do to other calls.

Police may be reluctant to intervene in domestic disturbances because they place greater value on privacy and family rights than they do on a domestic violence victim’s right to freedom from assault or fear of assault. These beliefs may be caused by a belief that a domestic violence

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<sup>45</sup> Busching, 392.

<sup>46</sup> Busching, 392.

<sup>47</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 26.

victim provoked an attack in some way.<sup>48</sup> Police have tended to ignore a woman's request to arrest her husband unless the violence is visibly very severe or if there is some other important variable impacting the situation, such as drunkenness, belligerence towards the police, or complaints from neighbors.<sup>49</sup> It is also possible that police chose not to become overly involved in cases of potential domestic violence because they do not want to be put at risk of violence themselves.<sup>50</sup>

In cases in which the police do respond, they often attempt to mediate or counsel parties and achieve reconciliation rather than to enforce the law.<sup>51</sup> Preference for mediation further may promote the imbalance that already exists between a victim and the accused, making mediation an inadequate tool in addressing the problem of domestic violence. Mediation, rather than criminal prosecution, suggests that domestic violence is not a crime or is a less serious crime.

Mediation does not ensure that the accused takes responsibility for the violence, making it more likely that the victim will suffer from repeated violence. Mediation may require that a victim change her behavior, implying that she shares responsibility for the violence or is at least somewhat deserving of violence. Requirements for a woman to change her behavior from that which is potentially "provoking" behavior makes her partially responsible for ending the domestic violence from which she suffers. This approach unfairly assumes that equality exists between the offender and the victim, when by the virtue of the act of violence, the victim has been treated unequally and therefore may not be able to advocate for herself. Ultimately, police

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<sup>48</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 26.

<sup>49</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 27.

<sup>50</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 26.

<sup>51</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 27.

cannot enforce mediation agreements, making it unlikely that violence will end and that any fair solutions arising from the mediation will even be upheld.<sup>52</sup>

**Lawyers.** Intervention in domestic violence by police is rarely followed by prosecution.<sup>53</sup> Domestic violence is almost invisible in poverty law and law practices<sup>54</sup> despite the fact that poverty lawyers have a major role to play in fighting domestic violence. The lack of major institutional commitment in poverty law to the struggle against the abuse of women by intimates seriously hinders the potential impact that poverty lawyers could have on this moral issue.<sup>55</sup> Part of the reason why lawyers do not focus on domestic violence is because gender issues are often approached as “private” concerns; poverty law and poverty law advocates instead focus attention on arbitrary administration of public benefits.<sup>56</sup> Through this public/private dichotomy, poor people may be seen as a homogenous group with homogenous needs, therefore neglecting subpopulations such as domestic violence victims.<sup>57</sup>

Survivors of domestic violence encounter significant barriers to legal assistance. Only 0.8% of cases of the Legal Services Corporation,<sup>58</sup> which fund Legal Service programs for low-income clients at or near the federal poverty level,<sup>59</sup> concern domestic violence. Although the prevalence of domestic violence cases may be underrated because domestic violence may be a smaller part of cases that are centered around other issues, it is likely that this possibility would not significantly increase the percentage of domestic violence cases accepted by Legal Services Corporation.<sup>60</sup> The number of low-income individuals eligible for Legal Services continues to

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<sup>52</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 46.

<sup>53</sup> Sherman, 264.

<sup>54</sup> Margulies, 1072.

<sup>55</sup> Margulies, 1103.

<sup>56</sup> Margulies, 1072.

<sup>57</sup> Margulies, 1083.

<sup>58</sup> Margulies, 1078.

<sup>59</sup> Drew, et al., 15.

<sup>60</sup> Margulies, 1078.

rise, forcing Legal Service programs to deny assistance to thousands of qualified applicants, including victims of domestic violence. The shortage of Legal Service help is so great that more than 80% of eligible, low-income individuals currently have no access to needed legal services in civil cases.<sup>61</sup>

Two types of poverty law practice. There are two different types of poverty law practiced directly by lawyers.<sup>62</sup> The first type of practice is referred to as instrumental lawyering. This term refers to “efficient” lawyering techniques that process as many cases as possible. This type of lawyering results in prioritizing cases that can be turned over quickly, such as those involving benefits and housing, which strains legal services commitments to family law practice.<sup>63</sup> Family issues are overlooked because they distract attention from issues of wealth distribution.<sup>64</sup>

Domestic violence’s association as a family issue therefore leads to few poverty lawyers taking on fewer cases pertaining to domestic violence.<sup>65</sup>

Instrumental lawyering usually results in the lawyering of cases in which success or failure is easily calculated numerically based upon the number of cases closed per year. The presentation of numerical statistics is important to lawyers because it contributes to the establishment of the success and legitimacy of their practice. Statistics are also particularly important in establishing legitimacy with federal, state, and city governments, as well as foundations, which are major funders for legal aid.<sup>66</sup> Therefore, the main goal of the lawyer is to maximize the number of winning claims, which can be produced more quickly in areas of law

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<sup>61</sup> Drew, et al., 15.

<sup>62</sup> Margulies, 1072.

<sup>63</sup> Margulies, 1073. You can use *ibid.* See a guide.

<sup>64</sup> Margulies, 1080.

<sup>65</sup> Margulies, 1087.

<sup>66</sup> Margulies, 1086.

such as housing and benefits, in order to be granted more funding.<sup>67</sup> After statistics are developed, they are reviewed in categories of the various types of cases a poverty law office takes on according to the number of cases closed.<sup>68</sup> They are then analyzed to determine the priority level of various types of cases and whether or not dealing with certain cases is meeting a clearly demonstrable need. However, these statistics do not measure the quality of the outcomes reached or the quality of the interactions involved between lawyer and client arising around those outcomes. The importance of statistics in evaluating a poverty law office's success and funding discriminates against domestic violence cases because these cases are commonly seen as never ending, they may be closed, reopened, and closed again in a given year.<sup>69</sup> Success in domestic violence cases is also more commonly assessed in terms of quality, rather than quantity of rewards.

The second type of practice is affective lawyering. Affective lawyering entails time, self-disclosure, and attention to interpersonal relationships. It also resists quantification and measures outcomes more upon private outcomes, such as love, intimacy, and the family that can be assessed through narratives. Even if a poverty law office does take on cases of domestic violence, caseloads may be so high that the potential for cultivating an attorney-client relationship is hindered,<sup>70</sup> which may lead to suboptimal outcomes.<sup>71</sup> Although focusing on impoverished families when combating the problem of domestic violence may contribute to increased stigmatization of the poor by linking them to domestic violence<sup>72</sup> and may lead to

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<sup>67</sup> Margulies, 1073.

<sup>68</sup> Margulies, 1090.

<sup>69</sup> Margulies, 1091.

<sup>70</sup> Margulies, 1087.

<sup>71</sup> Margulies, 1073.

<sup>72</sup> Margulies, 108.



more punitive measures being placed on offenders,<sup>73</sup> it still may be more important to risk this possibility than to leave the problem of intimate abuse unaddressed.

Service Allocation. Two facts underlie the priority-setting process of legal services: caseloads are high and poverty lawyers are scarce. Poverty law offices follow a model of service allocation similar to a doctor's office when decisions about who to treat are taking into consideration. The model requires the input of a board of directors— which includes community representatives, who may or may not represent the positions of the majority of a community, the degree of poverty of the client in question, and the likelihood of the case being successful, or being won. This formula seeks to discourage cases that involve a lot of work with uncertain returns, which include cases with a high level of interpersonal contact clients such as domestic violence. Clients often require a great deal of attorneys' time; when clients are afraid and hesitant about their situation and using the judicial system, which victims of domestic violence frequently are, resources are more likely to be wasted. Fear often makes it necessary for a domestic violence victim to have the counsel of an attorney to help them understand the consequences of their prosecution choices and for handling related issues, such as child custody, disruption in public assistance, housing that may stem from violence, and possible divorce. The help of poverty lawyers is also often needed by victims of domestic violence to help them negotiate nondiscriminatory hiring and promotion. Without professional legal assistance, impoverished female victims of domestic violence must organize on their own, hindered by resource-deprivation and the stigma of poverty, or must remain at the mercy of those with power. Fear also makes it more likely that domestic violence victims may return to their abusers and drop charges, therefore wasting the time of lawyers.<sup>74</sup> A victim's reluctance to be a witness against

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<sup>73</sup> Margulies, 1082.

<sup>74</sup> Margulies, 1088.

her husband in a trial is also a major obstacle in the successful prosecution of offenders.<sup>75</sup> The larger range of challenges and risks associated with counseling domestic abuse victims may lead to many lawyers not taking on these cases of domestic violence.

Lawyers may also resist taking on domestic violence work because it is a form of individual representation that only helps one client at a time.<sup>76</sup> Given that victims of domestic violence each have very unique circumstances and are comparatively less likely to reappear in the court system later on, they may be seen as one time players<sup>77</sup> in the court of law, making it seemingly inefficient to use a great deal of time and resources on a case that will only have a strong impact on one victim.

Some lawyers also resist the prosecution of domestic violence because they see it as inefficient in that it does not redistribute resources from the rich to the poor, but instead only involves interclass transactions from poor men to poor women.<sup>78</sup> Poverty lawyers who take on the cases of poor female domestic violence victims may feel that they also have a duty to represent poor men who may be abusers. When the decision whether or not to represent is approached in this way, conflicts of interests arise because arguments in the favor of female domestic violence victims may be used as precedent in future cases in which a poverty attorney may need to defend a poor perpetrator of domestic violence. A solution to this dilemma may be to completely avoid representing either side of such a dispute.<sup>79</sup> Conflicts of interests may also arise when Legal Services is contacted by batterers before they are contacted by victims,

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<sup>75</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 40.

<sup>76</sup> Margulies, 1089.

<sup>77</sup> Bonsignore, et al., 82

<sup>78</sup> Margulies, 1089.

<sup>79</sup> Margulies, 1090.

possibly leaving the victim without appropriate assistance in the case that the sought after attorney does not help her find alternative referrals.<sup>80</sup>

**Judges.** Surprisingly, there has been little social scientific research on the role judges play in women's efforts to escape domestic violence.<sup>81</sup> It is possible that domestic violence cases rarely make it to court given women's fear about possible repercussions for pressing charges or because of police discretion in filing reports of domestic violence. A limited number of cases making it to court relevant to the potential prevalence of domestic violence therefore may provide a very narrow perspective of how judge's respond to female victims of domestic violence, as women who do seek legal protection from abusers may share personality traits that are not representative of all domestic violence victims.

It is known that civil restraining order hearings or court orders of protection are the most commonly sought after judicial intervention in which a woman's freedom from violence is pursued. These orders of protection are available in all fifty states,<sup>82</sup> but are commonly viewed by abused women, judges, police officers, lawyers, and offenders alike as merely a piece of paper. The lack of validity which the judge's most commonly implemented means of intervention in cases of domestic violence may show that judges remain largely unattached from the hardships endured by victims of domestic violence and the power they could have in ending those hardships.<sup>83</sup>

The indifference and mistreatment women experience in courts may mirror the abuse that women suffer from at the hand of their partner.<sup>84</sup> Women often experience condescending and

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<sup>80</sup> Drew, et al., 17.

<sup>81</sup> Ptacek, 7.

<sup>82</sup> Ptacek, 6.

<sup>83</sup> Ptacek, 7.

<sup>84</sup> Ptacek, 173.

harsh judicial demeanors and are further isolated from society by not being connected with available resources, which are free.<sup>85</sup>

However, judges may also fear that whatever they do, or don't do, may inspire an abusive man to commit more violence. Therefore, they may allot less severe punishments to abusers in hopes that this will decrease anger that could be taken out against domestic violence victims in the future. Judges may also ration the harshness of their punishments out of fear for their own safety. They may also lack the training, resources, and coordination with other areas of law enforcement, shelters, and batterers' programs to offer meaningful remedies to women.<sup>86</sup> In situations in which a judge does not possess the time and community referrals needed to get all background information on a case, the restraining order process is merely a token display of authority, particularly given that there are minimal penalties for violating restraining orders.<sup>87</sup>

Nonetheless, there are victims of domestic violence who have cited positive experiences with judges in the courts. Particularly positively received responses of judges included creating a safe space in courthouses for abused women to wait for hearings, asking about women's fears, and recognizing the effects of battering on children. However, even when a judge does the "right thing" in a hearing, the violence in a woman's life and the harm which it inflicts on her can often not be reversed in a five-minute hearing.<sup>88</sup>

### **Improving the Handling of Domestic Violence Cases**

#### *Increasing Capital for Legal Professionals*

Preventative programs and services need to be provided for the previously described decision makers in domestic violence cases to educate them about the nature of abusive

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<sup>85</sup> Ptacek, 175.

<sup>86</sup> Ptacek, 14.

<sup>87</sup> Ptacek, 170.

<sup>88</sup> Ptacek, 175-177.

relationships and the methods that can be implemented to process these cases.<sup>89</sup> The current state of responses of legal professionals to domestic violence may be reflective of implementation problems and uncertainty about the role of the criminal justice system in the issue of domestic violence, despite the fact that the legal system has unique clout in victim protection and power in forcing batterers to face the consequences of their actions.<sup>90</sup>

**Police.** Police need training to help them understand the dynamics of domestic violence. This training must inform police officers about the dynamics of abusive relationships and improve their awareness of the feelings of dependency, fear, and possibly even guilt of taking children away from their father if any children were born from the union.<sup>91</sup>

Police also need to be provided with policy guidelines for approaching cases of suspected domestic violence in order to facilitate their decision making and reduce the guilt that may result from their own discretion.<sup>92</sup> These policy guidelines should include a definition of what domestic violence is, set out clear expectations of police behavior in handling incidents of potential domestic violence, outline procedures for protecting the victim, and emphasize police responsibility in linking victims to appropriate support services, indicating the necessity for police to collaborate with other community service agents.<sup>93</sup>

**Lawyers.** Lawyers should receive training regarding the psychological conditions previously described that make it difficult to work with victims of domestic violence. Such training would help them to better understand the aspects of domestic violence that can make victims difficult to work with and can help them understand how to better connect clients with other necessary services.

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<sup>89</sup> Hartman, 152.

<sup>90</sup> Harman, 153.

<sup>91</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 27.

<sup>92</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 28.

<sup>93</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 31.

In terms of addressing the hesitance of many lawyers in addressing the legal needs of domestic violence victims, federal, state, and city governments need to develop a set of criteria that can be used to assess the quality of guidance provided by legal aid agencies to victims of domestic violence. Evaluations of these criteria need to be compared equally to cases in which results are more easily quantitatively analyzed.

Some states today have mandatory prosecution policies when a case of domestic violence is identified. In these jurisdictions, the State, rather than the victim is the complainant, leading to more cases reaching trial. This decreases the rate of violence recidivism, as well as the possibility that a victim will drop charges, therefore wasting the resources of legal aid offices. Mandatory prosecution policies are advantageous because they send a strong message about the criminality of behavior and protect victims by reducing the affect that they have upon the decision making process and therefore making them less vulnerable to threats and harassment that could convince her to withdraw her complaint.<sup>94</sup> However, these policies may also put abused women at risk of being criminally charged as well if they retaliate against their attacker,<sup>95</sup> in addition to leaving little room for the treatment of perpetrators of domestic violence.

Because victims of domestic violence often have little access to money because there is very little to begin with or because the abuser does not provide the victim with access to it, lawyers should inquire deeper into a domestic violence victim's financial situation before rejecting the woman as a client, considering alternative payment options that may work for the victim. These options could include multiple smaller installment payments, rather than fewer larger payments.<sup>96</sup> Battered women's access to Legal Services may also be severely hindered if their batterer controls the family's finances or vehicles. Therefore, these women may miss

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<sup>94</sup> *Strategies for Confronting Domestic Violence: A Resource Manual*, 42.

<sup>95</sup> Ptacek, 14.

<sup>96</sup> Drew, et al., 9.

appointments with attorneys because they cannot afford gas, parking costs, and bus tokens or because they have no access to a car. Attorneys must be aware that clients who miss appointments or seem to be uncooperative about scheduling appointments may have monetary concerns that may be able to be circumvented by arranging a more convenient meeting place or a telephone interview.<sup>97</sup>

More resources need to be provided to increase the number of prosecutors of domestic violence cases. If more resources were made available to prosecute domestic violence, perpetrators of domestic violence would have less of a chance at having their case dismissed. When prosecutors of domestic violence cases have so many cases that they are unable to manage their caseload, there are often significant negative outcomes for victims. These negative outcomes increase the risk of the victim continuing in an abusive situation and leading to the perpetuation of the cycle of violence.<sup>98</sup>

**Judges.** Social science research needs to expand to further investigate the ways in which judge's attitudes and actions impact the legal consequences of a woman taking a case of domestic violence to court. Some judges have criticized the legislature for not providing sufficient funds to support the overburdened and understaffed court system. State legislatures need to increase the budgetary commitments that they make to judges to facilitate teamwork between them and other areas of law enforcement. Increasing money allotted to the courts would help in collecting more information about each case and would reduce the severe time constraints that judges currently face by making it possible to hire more judges so that each case could be given sufficient time to be heard.<sup>99</sup>

### *Therapeutic Responses to the Handling of Cases Involving Domestic Violence*

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<sup>97</sup> Drew, et al., 17.

<sup>98</sup> Hartman, 157.

<sup>99</sup> Ptacek, 170.

**Addressing Fragmentation Among Legal Professionals.** There is little communication between police, lawyers, and judges that have been described regarding their involvement in domestic violence cases, as well as between other professionals who impact the outcomes of domestic violence cases, such as victim advocates and social workers.<sup>100</sup> There have been case studies in courts that specialize in domestic violence whose goals include to promote victim safety and increase defendant accountability by encouraging better coordination among all the institutions in the criminal justice system that deal with domestic violence. Although it may be unjust for various levels of government to create courts that deal specifically with issues of domestic violence and not create courts that deal specifically with other important issues, such as disability claims, this may be an approach to the problem of domestic violence legal practice that could be considered.

Courts specializing in domestic violence actively try to improve communication and collaboration within the legal system as a whole by creating a team of judges, lawyers, and officers who handle a case from start to finish. By establishing a professional's involvement of the case in the long term, there is reduced opportunity for cases to fall between the cracks.<sup>101</sup> Such an approach to the problem of domestic violence places the judge in a potentially controversial position by establishing the judge as an active case manager, administrator, and community leader, which some may argue should not be the responsibility of a judge.<sup>102</sup> Nonetheless, when the unique ability that the legal system has to ensure that victims of domestic violence receive justice that is fair and effective and can save lives, it seems that this may be a crucial step.<sup>103</sup>

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<sup>100</sup> Kaye and Knipps, 5.

<sup>101</sup> Kaye and Knipps, 8.

<sup>102</sup> Kaye and Knipps, 12.

<sup>103</sup> Kaye and Knipps, 13.



Coordination between the various professional actors in a domestic violence case in a court specializing in domestic violence would be facilitated by a new court professional, the Resource Coordinator, who gathers information from all outside agencies involved in a case before every court appearance to ensure that the best information is available for prosecution. The Resource Coordinator would also assist judges in the establishment of monthly meetings between him or herself, attorneys, and police, as well as victim advocates, professionals who may be dealing with the same family in Family Court,<sup>104</sup> schools,<sup>105</sup> and representatives from the Departments of Health, Probation, Parole, Corrections, and Social Services.<sup>106</sup> In courts that have implemented such a collaborative approach, the quality of applications for protective orders has improved, reducing the number of cases dismissed for lack of formal sufficiency and enhancing the court's ability to craft orders that are comprehensively tailored to the parties' circumstances.

This system has also provided anti-domestic violence advocates with a more in-depth knowledge of the various aspects of domestic violence issues.<sup>107</sup>

**Uniting Victims of Domestic Violence.** Central to improving outcomes for impoverished victims of domestic violence is fostering allegiances, coalitions, and a sense of mutuality among this commonly overlooked group of society, particularly in light of the segmented and self-concerned attitude of society at large in the United States today.<sup>108</sup> More needs to be done to ensure that victims of domestic violence have the opportunity to create bonds with other victims of abuse. Although relationships between legal professionals and domestic violence victims are essential, there is usually a class barrier that limits the ability for the two sides of this legal team from wholly understanding one another. Therefore, those in legal

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<sup>104</sup> Kaye and Knipps, 8.

<sup>105</sup> Kaye and Knipps, 12.

<sup>106</sup> Kaye and Knipps, 8.

<sup>107</sup> Kaye and Knipps, 10.

<sup>108</sup> Margulies, 1101.

positions have a professional responsibility to help facilitate the introduction of clients to their peers so that this void can be filled and a connection can be made that will further help victims sort out their feelings with someone with a similar experience.<sup>109</sup>

*Improve Tactics of Prosecution in Cases in Which Victims are “Uncooperative”*

In states where mandatory prosecution policies are not in place or are not going to be put in place, alternatives may need to be created to intervene in cases of domestic violence when victims are unwilling to prosecute their offenders. These alternatives may even replace mandatory prosecution policies if they are found to be more successful. Such measures are particularly important, given that 80% of professionals involved in domestic violence work acknowledge victim resistance to prosecute their batterers.<sup>110</sup> Although many battered women may want to stop their abuse and cooperate with the state, some may not want to see the batterer punished for his behavior. A battered woman may not want to directly influence the expansion of her abuser’s criminal record, fines, punitive results, or jail time. Contributing to these results may also increase the risk that she will be harmed again through retaliation or hurt her financially through decreased financial means caused by a decreased household income as a result of the incarceration of the abuser. If processing of domestic violence cases relies solely on victim participation, batterers will continue to circumvent the law at a high rate.<sup>111</sup> It may also be paternalistic to require a certain degree of involvement by a female victim of domestic violence in the prosecution of the perpetrator.

Prosecutors achieve better results for their clients when they are sensitive to the needs and wants of victims and use specific techniques to introduce evidence in a domestic violence case in the absence of a victim. These techniques may include the use of police testimony,

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<sup>109</sup> Margulies, 1100.

<sup>110</sup> Hartman, 154.

<sup>111</sup> Hartman, 153.

photographs taken at the scene of a crime, copies of medical records, and 911 tapes. With the presentation of such evidence, rather than merely a testimony by a witness, conviction rates may be as close to 90 percent.<sup>112</sup>

However, victim testimony may still be important in the prosecution of domestic violence cases. Improvement in the quality, not merely quantity, of victim advocate programs could result in making victims more comfortable working with the criminal justice system by better preparing them for court appearances, helping them understand the legal process, and providing the victim with support during court appearances. Victim support projects could also help lawyers match victims with agencies that will assist them on the road to recovery from abuse.<sup>113</sup>

**Increased Focus on Programs for Male Perpetrators of Domestic Violence.** Much less has been done for male perpetrators of domestic violence than has been done for female victims. The lack of services to them results from a popular lack of compassion or understanding for their behavior. It is a challenge for law professionals, as well as professionals in other fields, to deal effectively with perpetrators of violence without being pessimistic about the challenge of changing their behavior. Failing to provide services that could help perpetrators of domestic violence control their emotions in an attempt to remain neutral in a domestic dispute may unintentionally portray an act of collusion with the behavior of the perpetrator.

Because it is more effective to prevent a problem, rather than try to stop it once it has arisen, the legal profession needs to be proactive in helping to avoid future occurrences of domestic violence. The intergenerational and social transmission of violence can be avoided. Many men become motivated to change their violent behavior when they recognize that it has a

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<sup>112</sup> Hartman, 154.

<sup>113</sup> Hartman, 156.

destructive impact on their children, not only by causing them potential harm in the future, but also by causing behavioral, emotional, cognitive, and social stigmas during child development.

Today, courts frequently direct perpetrators to attend rehabilitation programs. However, the low success rate of court referrals is disheartening. Even these low success rates, which are based upon whether participants remain non-violent for an extended period after attending the program, are derived only from those who complete treatment programs, which less than half of enrollees complete. Perpetrators who do end physical violence may resort to increased verbal or psychological abuse, which can often be more damaging. Such programs operate after the violence has occurred and aim at secondary, rather than primary violence prevention. Couple's therapy is typically not recommended if violence is an important issue in the relationship.

Cognitive behavior therapy and "pro-feminist" educational programs are the most commonly used treatment methods, although they both contain serious weaknesses. Cognitive behavior therapy addresses the perpetrator's implementation of abuse as a way to cope with difficult emotions and places responsibility for the violence on the perpetrator alone. This therapy technique is often criticized for not addressing one of the most common causal factors of domestic violence: the issue of unequal power between men and women in a relationship. This method has also received criticism for giving perpetrators new management skills that could be used as weapons for abuse. The "pro-feminist" approach aims to change men's discriminatory and controlling attitudes towards women, and makes safety of the victim paramount, even over confidentiality.<sup>114</sup>

**Increased Utilization of Restorative Justice.** As previously mentioned, when prosecution does take place for cases of domestic violence and perpetrators are actually convicted, the penalty they pay rarely involves more than an order to stay away from the victim.

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<sup>114</sup> Romans, *et al.*

The only other benefit sometimes given to the victim is restitution, which is less likely to be sought or granted when family resources are minimal.<sup>115</sup> Research has shown that what most victims really want, other than to stop the violence itself, is a chance to talk about what has happened to them, as well as acknowledgement of wrongdoing and an apology from the perpetrator,<sup>116</sup> which is not required by mediation. Most of the current legal approaches fail to address these wishes of the victim, as well as the likelihood of the continuance of the relationship, in addition to the violence. Although the legal handling of cases that are actually prosecuted today does tend to take a good account of the physical harm done to victims, they take little notice of the psychological and emotional harm that is experienced. This emotional neglect often lasts longer and is more traumatizing than physical injuries. Although this approach has not commonly been implemented in response to violence against adult women,<sup>117</sup> one possible legal approach to the issue of domestic violence that meets the need of the individuals is restorative justice.<sup>118</sup> When it has been implemented, restorative justice has resulted in significant reductions of domestic violence in homes where this violence occurred in the past.<sup>119</sup>

Restorative justice focuses on repairing emotional harm and involving the community in addressing domestic violence crimes. In the restorative justice approach, the power disparity that often exists in relationships that include domestic violence is addressed through community conferencing.<sup>120</sup> Community conferencing involves the coming together of family and other supporters of both the victim and the perpetrator in a meeting often facilitated by a police officer

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<sup>115</sup> Hopkins, *et al.*, 290.

<sup>116</sup> Hopkins, *et al.*, 291.

<sup>117</sup> Hopkins, *et al.*, 300.

<sup>118</sup> Hopkins, *et al.*, 292.

<sup>119</sup> Hopkins, *et al.*, 307.

<sup>120</sup> Hopkins, *et al.*, 294.

to discuss the wrongdoing and harm that has been done.<sup>121</sup> This system is reflective of the jury system, which entrusts that any fair minded citizen can participate in full. No lawyers or judges are present during this process.<sup>122</sup> Restorative justice puts a unique emphasis on the victim's opportunity to give an account of the emotional, material, and physical harm she experienced.<sup>123</sup> Those close to the victim, including employers, are also given the opportunity to elaborate on the ripple effect of the domestic violence and explain how even those who are not the direct target of the violence were affected by the assault.<sup>124</sup> Cultivating an understanding within the offender of the nature and extent of the harm induced may have a significant impact on the prevention of future assault.<sup>125</sup> Together the parties discuss what the perpetrator is going to do to make the wrong right.<sup>126</sup> Many victims leave the process with a much greater sense of closure and reduced levels of overall fear.<sup>127</sup>

This mode of restorative justice may also be more economically feasible at a time when court dockets are frequently overloaded and incarceration rates are increasing. If the prosecution in court of cases of domestic violence were promoted, the amount of resources that would be needed to properly adjudicate these cases would be unattainable.<sup>128</sup> As the number of cases on court dockets increase, all cases, including those pertaining to domestic violence, are treated in less time with less attention to detail. On the contrary, in the handling of cases through restorative justice, a large amount of time can be allotted for multiple feelings and opinions to be expressed.<sup>129</sup>

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<sup>121</sup> Hopkins, *et al.*, 296.

<sup>122</sup> Sherman, 272.

<sup>123</sup> Sherman, 270.

<sup>124</sup> Sherman, 271.

<sup>125</sup> Sherman, 278.

<sup>126</sup> Hopkins, *et al.*, 296.

<sup>127</sup> Sherman, 282.

<sup>128</sup> Sherman, 264.

<sup>129</sup> Sherman, 266.

Offenders come out of the restorative justice model with not only more satisfaction than they do in the court process, but also a sense of wrongdoing, making them less likely to perpetrate in the future.<sup>130</sup> Not only does the victim benefit from a sense of empowerment, the perpetrator also benefits by making reparations and going through rehabilitation, rather than punishment.<sup>131</sup> The restorative approach assumes that the greatest good to the community would result from a full restoration of the offender to a law-abiding citizen. It is believed that a perpetrator can become law-abiding through acts and relationships rather than through incarceration. Repairing the harm to victims and those close to the victim, as well as to the perpetrator, is the most important kind of act offenders can commit to restore themselves.<sup>132</sup>

In the rare case that an offender, or the victim, is not in accord with the general consensus of the group, he has the opportunity to request that the situation be reconsidered. A second conference can be called or the case may move to the court. The latter option is more likely to occur if the offender rejects the consensus that is reached by the rest of the group.<sup>133</sup> The restorative model also focuses more on the condemning acts, rather than offenders, which is more likely to occur in a court system.<sup>134</sup> Equal respect is also enjoyed by all participants in the restorative justice model, which extends dignity and respect to the offender as well as to all other participants. This positive experience may make perpetrators more likely to comply with the law in the future.<sup>135</sup>

Although the restorative justice approach appears promising, it is important to acknowledge its setbacks and the fact that it may not be an appropriate response to all cases of

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<sup>130</sup> Sherman, 282.

<sup>131</sup> Hopkins, *et al.*, 294.

<sup>132</sup> Sherman, 269.

<sup>133</sup> Sherman, 273.

<sup>134</sup> Sherman, 277.

<sup>135</sup> Sherman, 279.

domestic violence. The face-to-face interaction between the victim and perpetrator in community conferencing may leave the victim pressured to return to a potentially dangerous relationship. The psychological impact which violence has had on her may also lead a victim's ability to present and protect her interests and wishes. The use of an apology may also empower a perpetrator with a coercive mechanism, rather than a healing remedy.<sup>136</sup> Also, if incarceration and fines remain the norm for male-on-male violence, the use of restorative justice in cases of male violence against women may convey the message that violence against women is a less serious crime in which justice is more lightly implemented.<sup>137</sup> The responsibility that is put on the networks behind the parties, if they have one, may also be one that they are not prepared for or are not eager to take on, which could affect the quality of results of restorative justice. Finally, the ongoing surveillance by those involved in the conference, as well as the goal to have the offender adopt the values of the majority of the conference, may also be paternalistic.<sup>138</sup>

### Conclusion

Impoverished women are the most likely people to be victims of domestic violence. This form of abuse also has a significant effect on pushing women into, or further into, poverty. Female victims of domestic violence receive inadequate response from police and lawyers, and may also receive inadequate response from judges. The treatment programs commonly prescribed to perpetrators also often fail to have significant outcomes, therefore prolonging the cycle of abuse and the disproportionate effects it has on the impoverished. Improved training of legal professionals to cope with the complexities related to the problem of domestic violence, as well as more and better integrated services for both domestic violence victims, as well as the perpetrators of this violence. Given the fact that 50% of homeless women become homeless due

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<sup>136</sup> Hopkins, *et al.*, 303.

<sup>137</sup> Hopkins, *et al.*, 304.

<sup>138</sup> Sherman, 274-296.



to domestic violence and the significant effects that these crimes have on the economy through wasted jobs and education money, it is crucial that legal professionals rethink their approaches to this issue while working with professionals in other disciplines to decrease the prevalence of the phenomenon of domestic violence.

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