


Fall 2011

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Recommended Citation

Stein, Jessica H., "Coalition, Cross-Cultural Lawyering, and Intersectionality: Immigrant Identity as a Barrier to Effective Legal Counseling for Domestic Violence Victims" (2011). *Connecticut Public Interest Law Journal*. 6.
<https://opencommons.uconn.edu/cpilj/6>

Coalition, Cross-Cultural Lawyering, and Intersectionality: Immigrant Identity as a Barrier to Effective Legal Counseling for Domestic Violence Victims

JESSICA H. STEIN†

I. INTRODUCTION

If it is so hard to work together, if the gulfs in experience are so wide, if the false universals of the modern age are truly bankrupt, what need binds us? What justifies unity in our quest for self-knowledge? My answer is that we cannot, at this point in history, engage fruitfully in jurisprudence without engaging in coalition, without coming out of separate places to meet one another across all the positions of privilege and subordination that we hold in relation to one another.

-Mari J. Matsuda¹

This is a true story. It is the story of how the law punished a man for speaking about his legal rights; of how, after punishing him, it silenced him; of how, when he did speak, he was not heard. This pervasive and awful oppression was subtle and, in a real way, largely unintentional. I know because I was one of his oppressors. I was his lawyer.

-Clark D. Cunningham²

† J.D. University of Connecticut School of Law. B.A. Vassar College. I would like to thank Professor Karen DeMeola for encouraging me to write from my heart and for forever changing my perspective on the law. I would also like to thank Professor and Associate Dean Susan Schmeiser for her invaluable comments. Special thanks also go to Kira Schettino and Kate Wurmfeld for shaping my first experience with the practice of law and being tremendous role models for a young lawyer. Finally, I would like to thank Kim Susser, Director of the Family and Matrimonial Law Unit of the New York Legal Assistance Group for all of her guidance, insight and support. The views expressed herein, as well as any errors, are mine and mine alone.

¹ Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1188 (1991).

² Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1299 (1992).

Domestic violence victims face enormous obstacles in their struggle for safety and security. Immigrant domestic violence victims face even greater challenges because they have additional lethality factors and impediments.³ Many articles have discussed the “external” barriers to legal and social services. These articles note the hesitation that immigrants have in contacting the police due to a fear that the police are the same organization as the Immigration & Customs Enforcement Agency (“ICE”) or at least due to a fear that the police will report them to ICE.⁴ They also fear that police will not understand them because of their poor English language skills,⁵ that, based on past experiences in their native country, police will conspire with their abuser,⁶ or that police will arrest them instead.⁷ Some do not know that domestic violence is against the law in this country.⁸ They are afraid of going to family court if they are undocumented because they believe that discovery of their status will prevent them from receiving services.⁹ They are afraid of leaving their husbands because their husbands are the only people who can vouch for their status to ICE, or their husbands are in possession of their immigration or identification documents.¹⁰ They are also afraid because they may have no marketable skills and no means to support their children or themselves,

³ Lethality factors are those actions by the batterer that increase the level of danger for the victim, also referred to as “high risk factors.” Janet A. Johnson & Victoria L. Lutz, *Death by Intimacy: Risk Factors for Domestic Violence*, 20 PACE L. REV. 263, 282–83 (2000). General lethality factors for all victims include: the victim’s “gut level” feelings of danger, threats, use of or access to weapons, obsessiveness about victim or family, actual or perceived separation, stalking behaviors, depression, strangulation acts, access to partner, children, or family members, increase in degree of dangerous behaviors, upcoming symbolic or memorable days (such as an anniversary), personal risks taken by the abuser such as public exposure, alcohol and drug abuse, repeated calls to law enforcement, hostage-taking, and prior history of criminal misconduct. *Id.* at 282–83, 282 n.89.

⁴ See, e.g., Margot Mendelson, *The Legal Production of Identities: A Narrative Analysis of Conversations with Battered Undocumented Women*, 19 BERKELEY WOMEN’S L. J. 138, 179–180 (2004); Tien-Li Loke, Note, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INT. L. J. 589, 591 (1997).

⁵ See, e.g., Karin Wang, Comment, *Battered Asian American Women: Community Responses from the Battered Women’s Movement and the Asian American Community*, 3 ASIAN L.J. 151, 162–63 (1996).

⁶ Loke, *supra* note 4, at 592.

⁷ See, e.g., Mendelson, *supra* note 4, at 181; Wang, *supra* note 5, at 163.

⁸ See, e.g., Mendelson, *supra* note 4, at 182–83; Loke, *supra* note 4, at 592; Felicia E. Franco, *Unconditional Safety for Conditional Immigrant Women*, 11 BERKELEY WOMEN’S L.J. 99, 99–101 (1996).

⁹ Sometimes this fear is warranted. Many undocumented immigrants are not eligible to receive legal services from organizations that receive funding from the Legal Services Corporation. Sarah M. Wood, Note, *VAWA’s Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL’Y 141, 152 (2004).

¹⁰ See, e.g., *id.* at 142 (“The structure of immigration law, however, is the greatest barrier to reporting crimes of domestic violence. Women who are hoping to obtain legal status through their husbands inevitably fear that reporting abuse will jeopardize their chances for legal immigration, and undocumented women whose husbands or partners are themselves undocumented face the additional threat that their abusers will report them to immigration authorities, and that they will be deported as a result.”).

especially because their lack of documentation may preclude them from receiving government benefits.¹¹

Fewer commentators have noted the “internal” barriers that immigrant domestic violence victims face. These internal barriers apply specifically to the victim’s relationship with her attorney and counselors, or those from whom she seeks help and guidance in her struggle with external barriers.¹² Language in this respect can be as large an internal barrier as it is an external barrier. The attorney-client relationship is defined by a sense of trust and confidentiality.¹³ When an interpreter is required, even one who translates word-for-word, there is a strain on that relationship. When an interpreter seems to be influencing a client—or a yes or no question seems to take ten minutes with back and forth between the client and the interpreter—it is difficult to assess exactly what is going on and how to handle the situation. The second and larger issue, which seems to be intertwined with the first, is one of culture.

Cultural differences between attorney and client are the focus of this Note. These differences can be the most difficult barrier to overcome and the hardest to define when working with immigrant victims of domestic violence. This issue also seems to be the most puzzling and frustrating to attorneys. Many of the answers proposed can be uncomfortable and could offend a progressive, liberal sense of lawyering.¹⁴ For example, one author has suggested the idea of ethnic matching for attorneys and clients as the only means of solving this problem.¹⁵ Others have stressed the need for

¹¹ See Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 5–6 (2006) (“[U]ndocumented immigrants are barred from almost all government benefits, including food stamps, Temporary Assistance for Needy Families, Medicaid, federal housing programs, Supplemental Security Income, Unemployment Insurance, Social Security, Medicare, and the Earned Income Tax Credit (EITC). Generally, the only benefits federally required for undocumented immigrants are emergency medical care, subject to financial and category eligibility, and elementary and secondary public education.”).

¹² In no way do I wish to suggest that there are no male domestic violence victims or to denigrate the experiences of men facing family or relationship-based violence. This paper focuses on female victims of domestic violence because this is the population with whom I have experience working. I also do not mean to suggest that women who have women partners do not experience abuse in their relationships.

¹³ See, e.g., Kenneth P. Troccoli, *“I Want a Black Lawyer to Represent Me”: Addressing a Black Defendant’s Concerns with Being Assigned a White Court-Appointed Lawyer*, 20 LAW & INEQ. 1, 3 (2002) (“Trust is essential to establishing rapport [in the attorney-client relationship] Trust and rapport, in turn, enhance attorney effectiveness which, correspondingly, promotes justice”).

¹⁴ For instance, Naomi Cahn discusses the difficulties in addressing race and culture in the legal representation process. “[I]t is important for advocates to be aware of how race affects the representation process, and for advocates to use race to challenge the legal requirements placed on their clients. The difficult issues concern the relevance of race and deciding how to use it in the advocacy process.” Naomi R. Cahn, *Representing Race Outside of Explicitly Racialized Contexts*, 95 MICH. L. REV. 965, 988–89 (1997).

¹⁵ See Shani M. King, *Race, Identity, and Professional Responsibility: Why Legal Services Organizations Need African American Staff Attorneys*, 18 CORNELL J.L. & PUB. POL’Y 1, 6 (2008) (“Race, especially for African Americans, has a gravity that cannot be understood if taken out of its socio-political-legal and historical context. The experience of African Americans cannot be fully

cultural competency training and education for attorneys to enhance their understanding of their clients, to gain their trust, and to more competently advocate for their interests.¹⁶ Each suggestion is worthy of extensive discussion and thoughtful study, and can be integrated into a unified plan of action that will address the issues that hinder immigrant victims' access to and continued effective use of legal services.

In Part II of this Note, I present a narrative of my experience working with a particular immigrant victim. The story of Ms. H illustrates how culture can erect an internal barrier to effective legal counseling of immigrant victims of domestic violence. In Part III, I discuss the intersectionality of immigrant domestic violence victims more thoroughly, addressing some of the cultural differences that may lead to difficulties in the attorney-client relationship. Finally, in Part IV, I address several possible solutions, an amalgamation of which, if implemented, could break down some of the barriers that immigrant victims face and lead the way to improved access to effective and compassionate legal counseling.

I conclude that the problems faced by immigrant victims in seeking help can only be solved by the recognition of the intersectionalities apparent in immigrant domestic violence cases, by the use and encouragement of cross-cultural lawyering, requiring a sincere effort by attorneys to be culturally competent, and by the forceful coming together of a coalition of advocates ready to tackle and solve this problem. The term coalition traditionally has referred to coalition-building, or the coming together of different groups of people to engender discussion or to solve a problem. When discussing this type of coalition, I will refer to coalition-building. I use the term coalition in this Note as it is defined by Mari Matsuda in her groundbreaking article "*Beside My Sister, Facing the Enemy*."¹⁷

Coalition, as Matsuda sees it, is a deepened and expanded view of traditional coalition-building.¹⁸ Matsuda argues that coalition-building is "merely the beginning of the worth" of coalition.¹⁹ True coalition requires

communicated in books, documentaries, law school, or by cultural competence trainers—it is something that must be lived. Therefore, legal services organizations cannot improve their service delivery to clients by simply hiring cultural competence trainers.”).

¹⁶ See Leslie Espinoza Garvey, *The Race Card: Dealing with Domestic Violence in the Courts*, 11 AM. U.J. GENDER SOC. POL'Y & L. 287, 298 (2003) (“Lawyers need to develop cultural and race competencies. Other professions, such as psychology and medicine, recognize the need to train professionals to develop these skills.”); see also Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 229–30 (2002) (“In this new millennium, multicultural competence is an essential component of good legal practice. But acquiring multicultural competence requires facing discomfiting truths about ourselves and our society, especially for those of us who enjoy the privileges of the dominant culture.”).

¹⁷ Matsuda, *supra* note 1, at 1188.

¹⁸ See generally *id.*

¹⁹ *Id.* at 1184.

us to acknowledge the struggle of others while we struggle to end our own subordination and to recognize that our own subordination cannot end while others are still subordinated.²⁰ “Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.”²¹ It is in this context that I frame my discussion of coalition as a method of breaking down the barriers that prevent immigrant victims of domestic violence from seeking and obtaining help.

II. MY CLIENT DOESN'T TRUST ME BECAUSE I AM NOT KOREAN

When I arrived for my 1L summer internship in the Matrimonial and Family Law Unit (“FLU”)²² at the New York Legal Assistance Group (“NYLAG”), I thought of myself as the culturally sensitive, accepting, knowledgeable, educated product of a progressive upbringing and liberal arts education. I felt more than adequately prepared to deal with the diverse clients with whom I would be working and to understand their legal issues. I underwent the FLU training to understand the best way to work with domestic violence victims, how race affects domestic violence, how education and job skills can trap women in these situations, and how class identity can shift legal outcomes. I learned about working with immigrant victims by attending trainings on the Violence Against Women Act, self-petitioning, and applying for asylum.²³ Through my training, I acquired practical skills for helping these victims attain legal permanent residency and citizenship. I also was taught more generally about housing issues affecting domestic violence victims and about the laws affecting custody, divorce, visitation, and the termination of parental rights.

Additionally, I underwent cultural competency training as part of the Courtroom Advocates Project (CAP), which was provided by the organization Sanctuary for Families.²⁴ I also learned the proper

²⁰ For instance, when feminist scholars and critical race scholars come together to build a coalition, they must engage in coalition by acknowledging their own contributions to subordination and by acknowledging the intersectionality of sexism and racism. We must recognize that “all forms of subordination are interlocking and mutually reinforcing.” *Id.* at 1189.

²¹ *Id.*

²² I will refer to the Unit as the FLU, which is the acronym used within the department.

²³ The Violence Against Women Act (“VAWA”) was designed to prevent violence against women generally in the United States, but also it attempted to improve conditions for immigrant women victims of domestic violence, providing a path to citizenship through self-petitioning. Prior to VAWA, women had to be sponsored by their spouses in order to apply for citizenship. For a good outline of the legislative history behind VAWA and a historical look at immigration policies affecting victims of domestic violence, see Katerina Shaw, Note, *Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women*, 15 CARDOZO J.L. & GENDER 663, 666–73 (2009) (describing how even the most recent amendments to VAWA still leave out a significant portion of battered women, and concluding that current immigration law is still inadequate to protect victims).

²⁴ CAP is a program under the auspices of Sanctuary for Families and NYLAG, which provides

procedures with which to successfully advocate for my client in the system—how to request translation services in court, how to have a client report to the police in her native language—and all of the rights that must be provided to accommodate victims in New York. I learned how to interview victims and how to be sensitive to their needs. I learned how to develop trust with clients by listening to their stories and then by reconstructing their narratives. I learned to avoid asking certain questions and to make my goal the same as my client's. It was not my place to judge the client's feelings or decisions as long as those goals and decisions did not make her unsafe, in which case I was taught to ask her whether she would feel safe with the outcome. At that point, the decision was hers. I was not to be another patronizing voice in the victim's life. Ultimately, I was taught that it is the victim's decision and the victim's life. The victim's voice is the only voice to listen to and the victim knows the best way to keep herself and her children safe. With all of that in mind, I was still expected to accurately gather extremely private information from our clients so that I would be able to help represent them zealously and effectively.²⁵

The clients with whom I met at NYLAG that summer were from places as diverse as Ukraine and Guyana. They varied in religion, ethnicity, age, and country of origin. I felt in almost every case that I was able to relate to the client and to bridge the gap in understanding resulting from cultural factors that presented during my assistance in their representation. Most clients with whom I worked over the course of the summer appreciated the way that the FLU did business because the FLU required the unit to act sensitively and compassionately. It was often difficult to unravel the complicated stories of abuse from a client who was frightened, confused, and hurt. Generally, though, where I was charged with doing so by my supervisors, I was able to piece together a narrative of the client's life, documenting the first, most recent, and most violent episodes of domestic violence. I always asked the client what she considered the worst incident of abuse and many times that incident was not the type of incident that I would think of, as an outsider and as a law student not yet fully experienced in working with victims. For instance, one client discussed an incident which had taken place almost twenty years

learning opportunities for summer associates and law students in New York. The students assist domestic violence victims with petitions for Orders of Protection and follow the case by attending adjournment dates and advocating for the victims in Family Court or the Integrated Domestic Violence Courts. *Courtroom Advocates Project*, SANCTUARY FOR FAMILIES, http://www.sanctuaryforfamilies.org/index.php?option=com_content&task=view&id=78&Itemid=162 (last visited Oct. 1, 2011).

²⁵ All work that I completed at NYLAG was performed under the supervision of the FLU Staff Attorneys, as well as the Director and Associate Director of the FLU. I advocated for these clients utilizing a Student Practice Order.

earlier when her husband took her newborn son out of the house for over twelve hours without telling her and threatened that he would never bring the baby back. The child was still breastfeeding at the time and was not able to digest solid foods. In her history of abuse, the client suffered violent attacks at her husband's hands that would make most people cringe, but this incident represented the pinnacle of her loss of control and her fear for her child's life, and it remained with her. Even when I did not fully understand a client's mixed feelings or when it took several meetings over a number of weeks to establish the chain of incidents over a span of time, I was able to unfold my clients' narratives—with one exception.

That exception was a client, Ms. H, with whom my supervisor and I began working about a month and a half into my summer. Ms. H was the client to whom I felt closest, the client about whom I woke up in the night worrying, and the client whom I could least understand. With all of my cultural competence, my liberal education, and all of my experiences, Ms. H was inaccessible to me. Ms. H had moved to the United States only eight months earlier from South Korea. Her husband, a Korean-American, was in the United States Armed Forces and had been stationed in South Korea where the couple met, wed, and had a child. Unlike many immigrant victims of domestic violence, Ms. H was a United States citizen because of a program that allows military spouses a shortcut to citizenship.²⁶

Ms. H's case included the worst physical violence that I had encountered in my short time as an intern in the FLU, even though I had worked on some fairly extreme cases. Ms. H also was unusual in that she had more documentation of both her injuries and of the violent incidents she had experienced than any other client whom I had met. For example, a closed circuit camera in a South Korean indoor parking garage had captured Ms. H's husband running her over with his car at full speed. She had video footage of her husband playing with guns and knives next to the couple's then one year-old child. She had medical records and photographs documenting her broken ribs and arms and all of her fractures. She had a Domestic Incident Report from the police department documenting one of the recent violent incidents as well as her brother, who had partially

²⁶ See 8 U.S.C. § 1430(b) (2006) (“Any person . . . whose spouse is . . . a citizen of the United States . . . in the employment of the Government of the United States [and is] regularly stationed abroad in such employment, and . . . who is in the United States at the time of naturalization, and . . . who declares before the Attorney General in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no prior residence or specified period of physical presence within the United States or within a State or a district of the Service in the United States or proof thereof shall be required.”). Military spouses, however, are considered “within the United States” while still abroad if they marry abroad and their spouses are engaged by “official orders” abroad which keep them from returning to the United States. 8 U.S.C. § 1430(e)(1) (2006 & Supp. III 2009).

witnessed the event documented by the report and who was willing to testify on her behalf.²⁷ The images of Ms. H's abuse will probably haunt me for my entire life.

Despite the volume of evidence present in this case (which led me, perhaps naively, to initially believe it would be an easy victory), it proved to be the most difficult and emotionally taxing case that I worked on during my summer at NYLAG. NYLAG was retained initially only on Ms. H's divorce case. She had already been a complaining witness in the criminal case against Mr. H for which he had accepted a plea deal.²⁸ There was an ongoing neglect case against Mr. H initiated by the Administration for Children's Services ("ACS") in which Ms. H was considered the non-respondent mother²⁹ and was represented by what is called an 18-B, a court appointed attorney.³⁰ Ms. H was also represented by the 18-B in her family offense petition against her husband, as well as her custody and visitation cases. She had temporary orders of protection against him issued in both family and criminal court, which were renewed periodically and always expired on the following adjournment date.³¹

The fact that Ms. H wanted to reconcile with her husband was not what

²⁷ During the incident documented in the police report, Ms. H had been in her in-laws' adjoining apartment when her husband began screaming at her. She ran up the stairs to the bedroom she shared with her husband and locked the door. She immediately picked up the phone and called her brother. While she was on the phone asking her brother for help, her husband kicked the door down and began a storm of kicking, punching, and spitting on her after dragging her by her hair. Her brother was on the phone for the duration of the attack and called the police somehow, alerting them to the incident.

²⁸ During my entire summer, with one exception, I never witnessed a criminal domestic violence case end in anything but a plea bargain from which the batterer received a "Violation" and was ordered to enter "batterer's intervention" in conjunction with a full criminal order of protection. A violation is a lesser charge than a misdemeanor. See N.Y. PENAL LAW § 10.00(3) (McKinney 2008). Even for inflicting serious injuries, which if inflicted on anyone but an intimate partner would have resulted in a jail term for the batterer, abusers never once received jail time, or even pled to anything but a violation.

²⁹ Historically, in New York, neglect petitions were filed against domestic violence victim mothers as well as their abusive husbands. The idea was that the mother was not protecting her children and was neglecting them by staying with her abuser. This practice ended with the landmark court case of *Nicholson v. Scoppetta*, 820 N.E.2d 840 (N.Y. 2004). NYLAG filed an amicus curiae brief on behalf of the respondent mother. For a good article about Sharwline Nicholson's struggle with ACS and her court battle, see Wendy Davis, *Active Parenting: Her boyfriend beat her so badly she had to be hospitalized. Then the city took her kids because of it. Meet the mom who's turning a legal fight into a source of inspiration for other two-time victims.*, CITY LIMITS (May 13, 2002), http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=2773.

³⁰ N.Y. COUNTY LAW § 722 (McKinney Supp. 2011). The attorneys are referred to as 18-B because § 722 falls under Article 18-B: Representation of Persons Accused of Crime or Parties Before the Family Court or Surrogate's Court.

³¹ Unfortunately the 18-B assigned to her neglect and family offense cases, though a very nice man, was not particularly familiar with working with victims of domestic violence. He would leave her alone in the waiting area where her husband would also be waiting. He neglected to prepare her for a meeting where she would be required to discuss painful memories in front of the attorney for the child, the ACS attorney conducting the inquest into her husband's neglect of their child, myself, and some others. She was terrified. I met her at the courthouse early in order to discuss the meeting with her and assuage her fears. The 18-B attorney was mostly absent. The neglect case was coming to a head and as soon as there was a resolution to that case, NYLAG planned to take over Ms. H's representation on all of her various dockets.

was frustrating to me about her case. My supervisor and I saw many clients who openly wanted to reconcile or behaviorally seemed to indicate as much. For instance, in one case, a client accepted several daily phone calls from her abuser even though she had a full “stay away” order of protection from him prohibiting all contact, even via third parties.³² Many clients were comfortable with varying degrees of contact, or if they were not, they were comfortable with their FLU attorney dealing with the violation in a variety of different ways. For instance, technically these women could hang up the phone upon receipt of a phone call from their batterer and call the police, who would be required to arrest the batterer for violating the order. In my summer at NYLAG, I never encountered a client who thought this approach was the best way to handle the violation. Some of these clients would call the NYLAG office and tell us about the contact. NYLAG would file a violation petition with the court and personally serve it on the batterer. Sometimes the client would not even want NYLAG to file the violation petition at all. None of that was surprising to me. I was taught that victims know what they need to do to keep themselves safe and I was taught to respect their decisions on how to handle the situation safely. What was frustrating about Ms. H was not even that she would tell us her stories piecemeal or that she would leave out important facts in order to protect her husband. In all of these respects, Ms. H’s preferences and responses seemed typical.

What was strange and frustrating to me about Ms. H is best represented by the following incident. Until this incident occurred, I felt closer to Ms. H than I did to most other clients with whom I had worked that summer. The incident began when Ms. H neglected to tell my supervisor and me key information relevant to her case, her own personal safety, and the safety of her child. The most significant omission was that she had been bringing her child to see her husband on a regular basis, violating several court orders. Ms. H did feel comfortable, however, telling this information to the Korean interpreter at the courthouse whom she had known for only a few minutes. Ms. H also told this Korean interpreter every single event in graphic detail that she had been unwilling or unable to communicate to my

³² Several different courts may issue Orders of Protection. There are criminal Orders of Protection issued by criminal court and family Orders issued by family courts. A victim may be provided both types of order or just one order depending on whether criminal charges were filed against her batterer. The courts generally issue full or partial Orders. A “stay away” Order excludes the abuser from the home and includes prohibitions from any form of contact. Generally, the Order includes a specific distance that the abuser must keep from the victim. Phone, email, and all other contact is barred by the Order as well as third party contact, for example, having a friend or other person contact the victim on the abuser’s behalf. Courts also issue “refrain from” Orders which do not exclude the abuser from the home and simply instruct the abuser that he may not menace, harass, or stalk the victim. NYLAG attorneys almost always attempt to receive a stay away, unless in a particular situation a stay away Order would make the victim less safe. See KRISTEN KERSCHENSTEINER, CALLAGHAN’S FAMILY COURT LAW & PRACTICE § 3:11 (2011), available at Westlaw NYFCLP.

supervisor and me over the course of two months of our representation.

We were in court because the Civil term judge demanded that we proceed with the divorce case despite the unresolved dockets pending in family court. The judge had denied our request for a continuance. Instead, he allowed us a ten minute recess to confer with our client so that she could consider her options and come to a decision. The clock was ticking and Ms. H had no choice but to provide the court with an answer or she risked being held in contempt. Ms. H was not ready to make a decision regarding her future. She was crying and the flustered interpreter was telling us that she could not tell us what Ms. H had spoken to her about because it was “confidential.” After everything—all the time we had spent with Ms. H, holding her child, watching over her shoulder to be sure her husband was not coming towards her, meeting with her over and over again, being supportive, walking her back and forth to the subway, spending hours on the phone attempting to get her back into the shelter system, waking up in the night worrying about her safety—Ms. H did not trust me or my supervisor because we were not Korean.

After a hurried explanation of the nature of our confidential relationship with Ms. H, the interpreter finally informed us that Ms. H had been secretly meeting with her husband and their child. Two days earlier, they had gone to the zoo together. In fact, a week earlier when we had been in family court, Mr. and Ms. H had arrived within five minutes of one another. They were both late and when we had called Ms. H on her cell phone, she said that a “friend” had driven her. With usual battering cases, this type of behavior, if discovered by a judge, would simply weaken the family offense petition and might serve as a means to revoke an Order of Protection. In Ms. H’s case, it could have been disastrous. If ACS or the judge or any person associated with or knowledgeable about the case had seen the family together, Ms. H would have been subject to a neglect hearing herself and could have risked removal of her son into foster care. The interpreter also told us that Mr. H told Ms. H that he wanted to reconcile with her and that their families wanted them to reconcile. His mother had been calling her—in violation of the Order of Protection’s ban on third-party contact. Ms. H wanted us to tell the judge that they were stopping the divorce proceedings.

We tried to make Ms. H understand that we had no power to stop the divorce proceedings. Mr. H filed the divorce complaint and, therefore, there was nothing that we could do to stop it. In a very emotional discussion, one that left me feeling distressed, my supervisor and I had to tell Ms. H that the only person who could stop her divorce was her husband. We told her that if he really wanted to reconcile, he could advise his attorney at any point to withdraw the complaint, but since he had not done so, it seemed like what he told her must be a lie. We had to tell her that this was a scheme batterers often use in order to manipulate their

victims and to weaken both their court claims and their resolve.³³ Following this troubling conversation, we returned to the courtroom and provided the judge with Ms. H's answer.

The fact that Ms. H is a Korean immigrant influenced almost every aspect of our work with her.³⁴ Although the above incident represents a point in time when the cultural divide made our interactions particularly difficult, even exasperating, this was not the first time that an interpreter had come between us. When Ms. H left the marital home, where she lived adjoining Mr. H's extended family, she went to a shelter run by an Asian American social services agency. She stayed there for 135 days, the maximum allowed for a Crisis 1 center.³⁵ We began representing her while she was still living at the confidential shelter. She was assigned a caseworker from the social services agency. Her caseworker was not Korean; she was Japanese. Ms. H had attended university in Japan and had a degree in Japanese linguistics making communication fairly easy between them.³⁶ Her caseworker, L, would join her in meetings with us in order to facilitate translation.³⁷

While I believe that social workers are extremely important partners for attorneys in working with victims of domestic violence, and can be tremendous advocates for these women, my supervisor and I found it

³³ While writing this Note, I found out that after I left for the summer, Ms. H decided to drop all of her cases against her husband with the exception of the neglect petition which she had no power to drop because she was considered the non-respondent mother. She and her husband reconciled as much as they possibly could while there was still an order of protection associated with the neglect finding against Mr. H. They had a plan to fully reunite after the order of protection expired, which would have been in August 2010 at which point they would be free to associate with one another and with their child unencumbered. Ms. H's husband dropped the divorce complaint. As of the time of publication, I have been unable to find out if the family successfully reunited or how Ms. H has fared.

³⁴ I acknowledge that my own culture also influences every aspect of my work and, in turn, how I approach situations and how I interact with clients and the legal system in general. Leslie Espinoza Garvey notes that:

I indicate the complicated nature of contextual, cultural, and racial understanding. The narrative requires that we hold onto the individual story, with all its unique characteristics, and simultaneously embrace the cultural context and metamessage of the story. As we lawyer in a way that is always about our personal, cultural and social history, so too does the client present a legal situation that is set in a personal context and a cultural reality.

Garvey, *supra* note 16, at 303.

³⁵ Technically, a woman is allowed to stay only for ninety days in a Crisis 1 shelter, but there is a forty-five day extension period. N.Y. COMP. CODES R. & REGS. tit. 18, § 408.6(b)-(d) (2010).

³⁶ It is unclear why Ms. H was not assigned a Korean caseworker. I have speculated that perhaps there were fewer Japanese victims at the shelter at that period. While Ms. H was fluent in Japanese, she still found it more comfortable to communicate in Korean.

³⁷ There are two Korean-speaking attorneys at NYLAG but neither works in the FLU. Agencies like Safe Horizon make use of phone translation services where necessary, but these are expensive and inconvenient. Another problem with phone translation services is that they are not subject-specific so it can be cumbersome to attempt to explain legal terms or domestic violence related services to the interpreter who then has to understand competently enough to translate to the client, a process which can be enormously confusing.

particularly difficult to work with L. The problem we had with L was that since we could not understand when she spoke to Ms. H in Japanese, it became impossible to discern whether L was translating properly. Their exchanges made it seem like L was not only translating, but also advising Ms. H on how she should answer our questions. My supervisor and I would ask L to translate a straightforward yes or no question to Ms. H. After five minutes of back and forth communication, L would say something like “Ms. H agrees.” Garvey discusses a case where a student with whom she had worked had a difficult experience communicating with a Haitian client, which mirrored our interaction with Ms. H and L:

The student explained to the interpreter that he wanted to have a direct translation. He wanted everything that he said directly related to the client and then the client’s exact words back to him. Nevertheless, every time the student would ask a question, such as, “Do you want to stay in the apartment?”, he would hear the interpreter and the client speak back and forth, with great animation, for several minutes. Then the interpreter would turn to him and say, “No.” The student attorney did not know what to do. He felt that he was not understanding the client at all and he was worried that the client was not getting information from him.³⁸

In Garvey’s case, the student performed research which led him to believe that in the Creole pattern of discourse, it was not polite to ask certain questions directly to the client so that the interpreter felt bound to “tell a story” in order to respectfully uncover the needed information.³⁹

In our case, I admit that I did not look for cultural reasons as to why the interpretation was so slow, and why there was so much dialogue that I was not privy to, when in my mind, I had asked very simple questions. I came to believe, however, that L was inserting her own opinion while she was translating. I noticed in court that the Korean interpreters were able to, by all appearances, translate word for word. If the judge asked a question, it took the same amount of time for the court interpreter to ask that question. Likewise, when a Korean-speaking attorney in our office was available to help us during a meeting with Ms. H, the translation was smooth and my supervisor and I felt a genuine back and forth dialogue was taking place between us and our client. My hunch was further confirmed when my supervisor commented that she had not had the same problem

³⁸ Garvey, *supra* note 16, at 300.

³⁹ *Id.*

with Japanese interpreters in her other cases.

Worse than the fact that our dialogue with our client was frustrating and slow when we were forced to rely on L to translate for us, it seemed that the type of responses that we would hear would differ greatly when L was present and when she was not. My supervisor noted to me that she encountered this type of situation in the past when working with social workers from the particular center where L worked, which catered to Asian American women. She found that, while social workers from other organizations could empower clients while remaining respectful of their wishes, social workers from the center where L worked tended to placate and reinforce the cultural influences which led Ms. H to feel as if she was disrespecting her family and heritage. L's approach was passive and appeared disempowering at the very least.⁴⁰

My supervisor contrasted our frustration with Ms. H's case with a previous case on which she had worked with another client, Ms. M. Ms. M had a very positive outcome that my supervisor hoped to replicate with Ms. H. Ms. M was an immigrant from Japan. Unlike Ms. H, she was not a citizen and was on the path to legal permanent residency based on her marriage to a U.S. Citizen. When my supervisor first met Ms. M, Ms. M was skittish, nervous, and afraid. Though she spoke fluent English, she refused to communicate in English and did not want to say anything about herself or her case. The entire system frightened her and she was constantly in fear of being deported by ICE, as she had already experienced a negative encounter with the agency.⁴¹

Ms. M began working with my supervisor and another attorney at NYLAG. The other attorney is an immigrant from Belgium and has a striking and powerful presence both in and out of the courtroom. Ms. M also worked with an immigration lawyer from a Catholic organization who also was a Japanese immigrant, just like Ms. M. While the litigation was ongoing, Ms. M worked with a therapist. She was successfully able to

⁴⁰ Perhaps L is simply not a good social worker. In fact, I am fairly sure this is the case. For instance, L allowed Ms. H to be discharged from the emergency shelter and to move back in with her brother in a location known to her batterer. She neglected to secure any type of transitional housing for Ms. H or to make any attempt to help her obtain shelter housing after we repeatedly insisted that this was necessary for Ms. H's safety. I eventually had to try to find shelter space for her myself. It is my hope to avoid essentialism. I do not mean to hold L out as the archetypal Asian social worker. The evidence that the center was placating rather than empowering is purely anecdotal.

⁴¹ Ms. M's husband told Immigration & Customs Enforcement (then known as the Immigration & Naturalization Service) that she had forged an important document that elucidated her work history and which was integral to her citizenship application. In Japan, it is customary, with permission, to affix another person's "seal" to mark the authentication of a document. Ms. M had permission from her boss in Japan to affix his seal, which signaled that he had "signed" the document. Due to the fact that the INS believed her husband, the issue had to be litigated in court and with the INS. Ms. M did not want to involve her boss because in Japan, she said, it is considered shameful to entwine business with one's messy personal affairs.

self-petition under VAWA for citizenship.⁴² As she went through this process and worked with these strong women—two of whom were also immigrants possessing acumen, drive, and strength—Ms. M began to shift her response to what was happening to her. She became determined and empowered by those around her and the path she was beginning to take. She saw that the system was working to help her. Ultimately, Ms. M testified against her husband in near perfect English and felt empowered by the entire experience. She was able to get her green card, get away from her husband, and move on with her life.

III. INTERSECTIONALITY OF IMMIGRANT DOMESTIC VIOLENCE VICTIMS

Both Ms. H and Ms. M's stories represent the intertwining of different identities. Both are women, Asian Americans, immigrants, and domestic violence victims.⁴³ Intersectionality stresses the need to examine the interactions between these different identities.⁴⁴ For instance, being Asian may mean dealing with Asian-specific cultural distinctions and history, community, stereotypes, and racism. Being a woman may mean dealing with sexism and having a shared common female identity. Being an immigrant may bring with it cultural alienation, isolation, worries about citizenship, language concerns, job concerns, and close-knit immigrant communities. Being a victim of domestic violence may encompass feelings of fear, guilt, shame, worries about safety of self and children, and more. Issues of class and poverty can be pervasive in all of these categories.

Paulette Caldwell discusses the intersection of race and gender as a means to combat the oppression of both sexism and racism, specifically

⁴² See 8 U.S.C. § 1154 (2006).

⁴³ I hope to avoid engaging in essentialism. When I use the words Asian American, it is to denote cultural "commonalities" as Karin Wang describes them. See Wang, *supra* note 5, at 161 ("I do not intend to assert an essential Asian American identity, as there is no singular Asian culture or nation. 'Asian American' as an identity is socially constructed and created out of political and social necessity, in recognition of the need to embrace commonalities among diverse Asian Americans. It is in this vein that I discuss battered Asian American women. To effectively address barriers faced by Asian American women but not by battered white women, a recognition of commonalities among Asian American communities is critical.").

⁴⁴ I borrow Kimberle Crenshaw's apt explanation as a caveat to this section:

I should say at the outset that intersectionality is not being offered here as some new, totalizing theory of identity. Nor do I mean to suggest that violence against women of color can be explained only through the specific frameworks of race and gender considered here. Indeed, factors I address only in part or not at all, such as class or sexuality, are often as critical in shaping the experiences of women of color. My focus on the intersections of race and gender only highlights the need to account for multiple grounds of identity when considering how the social world is constructed.

Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244-45 (1991).

focusing on the treatment of African-American women.⁴⁵ She discusses the attempt to eliminate sexism and racism separately as admirable places to begin the struggle to end both forms of oppression.⁴⁶ Caldwell boldly asserts that theoretical analyses which fail to examine the intersectionality of race and gender, the point where the two meet, are problematic and incomplete.⁴⁷ In the experience of many African-American women, sexism and racism are inextricably linked.⁴⁸ The existence of the interactive relationship between race and gender “flows factually and logically from an examination of the structure of dominance—historically and contemporarily—and the stereotypes, myths, and images about race and gender, and in particular black women, that sustain it.”⁴⁹ Though the separation stems from the formation of disparate political movements, it is ultimately all activists’ failure to recognize intersectionalities that accounts for our own contributions to oppression.⁵⁰ “These stereotypes, and the culture of prejudice that sustains them, exist to define the social position of black women as subordinate on the basis of gender to all men, regardless of color, and on the basis of race to all other women.”⁵¹ Caldwell demands that we recognize that racism and sexism can act in concert to disadvantage African-American women as victims of both forms of oppression, and that advocates themselves will continue to contribute to oppression until this intersectionality is acknowledged.⁵²

This logic is illuminating when applied to immigrant domestic violence victims. Immigrant identity takes into account issues of cultural isolation, nativism, and xenophobia. Racism and stereotyping can also be major factors in the immigrant experience depending on the place from which the immigrant has emigrated. Female domestic violence victims are physically and emotionally battered by their husbands or boyfriends. Domestic violence itself is an implicit and debasing form of sexism

⁴⁵ Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 372–77 (1991).

⁴⁶ *Id.* at 373–74.

⁴⁷ *Id.*; see also Crenshaw, *supra* note 44, at 1242 (“In the context of violence against women, this elision of difference in identity politics is problematic, fundamentally because the violence that many women experience is often shaped by other dimensions of their identities, such as race and class. Moreover, ignoring difference *within* groups contributes to tension *among* groups, another problem of identity politics that bears on efforts to politicize violence against women. Feminist efforts to politicize experiences of women and antiracist efforts to politicize experiences of people of color have frequently proceeded as though the issues and experiences they each detail occur on mutually exclusive terrains.”).

⁴⁸ Caldwell, *supra* note 45, at 374.

⁴⁹ *Id.*

⁵⁰ See Crenshaw, *supra* note 44, at 1258 (“Not only do race-based priorities function to obscure the problem of violence suffered by women of color; feminist concerns often suppress minority experiences as well.”).

⁵¹ Caldwell, *supra* note 45, at 376.

⁵² See generally *id.*

including notions of domination, oppression, abuse, and categorization.⁵³ Immigration social and legal service agencies and those writing about immigration difficulties must directly acknowledge these issues and must pay attention to the ways in which domestic violence can be hidden amongst other immigration issues that may take precedence in the immigrant's presentation.⁵⁴ Domestic violence advocates, on the other hand, must be sensitive to the reality that domestic violence outreach efforts often exclude immigrant victims.

A. *The White Woman Paradigm*

The anti-domestic violence movement has been criticized for catering to a white middle class archetype of the domestic violence victim.⁵⁵ By recognizing domestic violence exclusively as a gendered issue, white privilege allows advocates and others to overlook the plethora of critical issues faced by immigrant victims.

By focusing on gender alone, the anti-domestic violence
movement falls into the same trap as other feminist

⁵³ See Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER SOC. POL'Y & L. 251, 251–52 (2003) (“Domestic violence occurs on a continuum along with other manifestations of sex discrimination, including inequality in the workplace, deprivation of reproductive rights, and inadequate access to welfare, child support, and child care. Every aspect of women’s oppression renders them vulnerable to violence, and in turn, violence makes women more vulnerable to other forms of disadvantage.”); see also Anat First & Michal Agmon-Gonnen, *Is a Man’s Car More Important than a Battered Woman’s Body? Human Rights and Punishment for Violent Crimes Against Female Spouses*, 12 NEW CRIM. L. REV. 135, 138 (2009) (“We prefer to use the term ‘patriarchal violence’ over the accepted term ‘domestic violence’ because the term ‘patriarchal violence’ is an inherent reminder that violence occurring in the home is connected to sexism, to sexist thinking, and to male dominance. The term ‘domestic violence’ had served as a ‘soft’ term, for too long, implying that this violence exists in an intimate context, and therefore is less brutal and threatening.”); see also Crenshaw, *supra* note 44, at 1241 (“Drawing from the strength of shared experience, women have recognized that the political demands of millions speak more powerfully than the pleas of a few isolated voices. This politicization in turn has transformed the way we understand violence against women. For example, battering and rape, once seen as private (family matters) and aberrational (errant sexual aggression), are now largely recognized as part of a broad-scale system of domination that affects women as a class.”).

⁵⁴ See Emira-Habiby Browne, Conference, *Issues in Representing Immigrant Victims*, 29 FORDHAM URB. L.J. 71, 74 (2001) [hereinafter *Issues in Representing Immigrant Victims*] (discussing the difficulties and experiences of the Arab American Family Support Center in recognizing and appreciating the Arab immigrant experience with domestic violence, “[w]e were not prepared to address these problems, which had been successfully covered up by the community. We found several cultural factors, combined with the destabilizing effect of immigration were causing increasing incidents of domestic violence.”).

⁵⁵ See, e.g., Wang, *supra* note 5, at 153 (“Women of color have gained less from the progress of the anti-domestic violence movement, which has been primarily ‘white-centered.’ And within communities of color, including Asian American communities, domestic violence has yet to become a priority issue.”); see also Crenshaw, *supra* note 44, at 1246 (“Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles.”).

movements: it ends up privileging white women. In American society and laws, gender and race both operate hierarchically. Men are privileged over women, and white is privileged over non-white. In a hypothetical world where gender is the only basis for oppression, the subordination of women to men might be the only battle women need to fight. However, in the very real world where race is also a basis of oppression, where oppressions are not discrete and insular, and where white is the privileged race, white women possess an “unearned advantage” and a “conferred dominance” over non-white women by virtue of being white. White privilege allows white women to examine gendered issues such as domestic violence from a color-blind perspective.⁵⁶

Immigrant victims face additional challenges that American-born women do not face. For instance, American-born victims may take for granted having public service announcements in their own language. Immigrant victims of color face even further difficulty. Women in domestic violence awareness campaigns might not look like them or have similar cultural markers, such as wearing headscarves—that is, if they are lucky enough to understand the message of the advertisement or have access to it in the first place.

More importantly, cultural norms regarding gender and violence can make the victim’s experience a completely unique one from that of a middle class American-born white woman’s. In fact, it is difficult to understand how it could be the same. The anti-domestic violence movement generally bases its outreach on certain underlying assumptions. For instance, it assumes that domestic violence is wrong and is considered wrong by family, neighbors, friends, police, and society in general.⁵⁷ While white American-born women may have concerns about a bystander’s reluctance to intrude into their personal affairs—as in the Kitty Genovese case⁵⁸—they may presume that even those overhearing a violent incident who would be unwilling to be good Samaritans would at least believe that what was happening was morally and legally wrong. These assumptions do not always apply to immigrant victims, or at least, the victims may not believe that they are true.

⁵⁶ Wang, *supra* note 5, at 158.

⁵⁷ *Id.* at 156.

⁵⁸ Kitty Genovese was murdered in her Queens neighborhood in 1964. Many neighbors apparently overheard Ms. Genovese’s screams and knew there was an attack taking place, but none did anything to help her. No one even phoned the police. See Joe Sexton, *Reviving Kitty Genovese Case, and Its Passions*, N.Y. TIMES, July 25, 1995, at B1.

B. *The Struggle of Arab-American Women*

At the Fifth Annual Domestic Violence Conference held at Fordham University School of Law, Emira Habiby Browne, Executive Director of the Arab American Family Support Center (“the Center”)⁵⁹, spoke about the experiences of Arab immigrants who are victims of domestic violence.⁶⁰ The information Browne shared illustrates the vast differences between American and immigrant views of domestic violence and highlights the “cultural factors, combined with the destabilizing effect of immigration [that] were causing increasing incidents of domestic violence.”⁶¹ It also shows that campaigns may need to be tailored to recognize the unique problems of each community’s struggle with domestic violence. Browne noted that the Arab community does not condemn internal domestic violence due to the fact that Arab immigrants come from societies that celebrate large patriarchal families in which men are “kings of their castles.”⁶² She also discussed how it is considered shameful for men to have “lost control” of their families.⁶³

Conversely, according to Browne, Arab-American women are expected to remain in the interior world of the household in the economic and physical care of their husbands and are not encouraged to think or act without permission.⁶⁴ Responsibility for the happiness of both partners falls on the woman. “Success of the marital relationship is her responsibility. Failure is viewed by the community as her fault, with serious social sanctions if she leaves the marital relationship.”⁶⁵ Further complicating matters for Arab-American victims is the fact that it is considered taboo for a woman to divorce or live on her own, so a woman forced to leave her relationship and home due to domestic violence would need to have the support of family in order to do so.⁶⁶ Arab-American women are expected by their community to stay with their husbands at all costs. “Women are expected to accept physical, emotional, and verbal abuse rather than break up the family.”⁶⁷ When family members believe

⁵⁹ The Center is “the first and only Arabic-speaking social services agency in the New York City metropolitan area.” Browne, *supra* note 54, at 72 n.1. Established in 1994, the Center is a non-profit organization that provides social services to Arab American immigrant families and children in the New York City metropolitan area including: “English as a Second Language and literacy classes; citizenship courses; legal services; afterschool, summer and weekend programs for children; violence prevention and intervention programs; and access to free and or low-cost health care.” ARAB AMERICAN FAMILY SUPPORT CENTER, <http://www.aafscny.org/aboutus/our-mission-history> (last visited Oct. 6, 2011).

⁶⁰ Browne, *supra* note 54.

⁶¹ *Id.* at 74.

⁶² *Id.* at 74–75.

⁶³ *Id.* at 75.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Browne, *supra* note 54, at 75.

⁶⁷ *Id.* at 75–76.

that domestic violence is the victim's fault, it seems unlikely that they will support her or allow her to live with them after she leaves her batterer.

Browne also discussed the difficulty the Center has had in placing victims in the shelter system. Many of these women have never lived apart from their family or their husbands. She noted that the Center "[has] never been successful in sending [victims] to shelters."⁶⁸ Almost all of the women that she has worked with at the Center eventually returned to their abusers, where they often faced further abuse in retaliation for their initial departure from the home.⁶⁹ Part of this retaliation is also due to the fact that the Arab community places enormous pressure on families to maintain reputation and standing, which is jeopardized when a woman leaves the home.⁷⁰

Browne explained how "family problems are not to be discussed or publicly displayed."⁷¹ The males in the family are ultimately held responsible for the family's reputation and honor and must maintain it. "Family violence, therefore, cannot be openly acknowledged and must be outwardly denied, eliminating the possibility of addressing it openly and honestly."⁷²

C. *The Latina Experience*

The Latina immigrant experience with domestic violence provides yet another divergent cultural context that differs from the dominant view of domestic violence. Jenny Rivera discusses the idea that the ideal Latina is a wife and mother, subservient to the patriarchal society around her, and bound by the traditional gender roles placed upon her.⁷³

For Latinas, cultural norms and myths of national origin intersect with these patriarchal notions of a woman's role and identity. The result is an internal community-defined role, modified by external male-centered paradigms. This

⁶⁸ *Id.* at 76.

⁶⁹ *Id.*

⁷⁰ *Id.* at 74–76

⁷¹ *Id.* at 77.

⁷² *Id.*

⁷³ Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 241 (1994) ("Those within the Latino community expect Latinas to be traditional, and to exist solely within the Latino family structure. A Latina must serve as a daughter, a wife, and a parent, and must prioritize the needs of family members above her own. She is the foundation of the family unit. She is treasured as a self-sacrificing woman who will always look to the needs of others before her own. The influence of Catholicism throughout Latin America solidifies this image within the community, where Latinas are expected to follow dogma and to be religious, conservative, and traditional in their beliefs."); *see also* Wood, *supra* note 9, at 151 ("Exacerbating these difficulties is an unwillingness to violate strong cultural norms of what a wife and mother should be, which represent another barrier to seeking help.").

intersection of gender, national origin, and race denies Latinas a self-definitional, experiential-based, feminist portrait.⁷⁴

Rivera contends that the anti-domestic violence movement and the system have failed when services cannot effectively help Latinas because of cultural and language barriers.⁷⁵

Rivera differentiates Latina immigrants from other immigrants by the fact that Latina immigrants are much less likely to contact others including friends, clergy, or other social service providers before entering the shelter system.⁷⁶ Since they are more likely to marry at a younger age, have large families, be poorer and less educated, and stay in relationships for a longer period of time, correspondingly, Latina victims suffer more extensive periods of abuse than other victims.⁷⁷ Rivera notes that movements within the Latino community have focused on the struggle for equality, ignoring domestic violence issues because these are regarded as “private.”⁷⁸ She also notes that there is a backlash in the community against raising awareness of domestic violence perpetrated by Latino males, because the community feels strongly that Latino males are characterized as “violent” and “macho” by whites and others. Rivera suggests that these stereotypes regarding Latino men are embraced within the community, despite activists’ attempts to dismantle them.⁷⁹ Though the goal of reducing stereotypes associated with the Latino community generally is laudable, Rivera argues that it must not be at the expense of Latina identity and victimization.⁸⁰

D. Asian American Victims

The Asian immigrant context is yet another example where culture serves as a differentiating factor for domestic violence victims. Ms. H’s case represents my own experience working with an Asian immigrant client and my experience, as outlined above, highlights the cultural differences between us which made representation very difficult. In our

⁷⁴ Rivera, *supra* note 73, at 241.

⁷⁵ *Id.* at 242.

⁷⁶ *Id.* at 232, 252. Rivera provides an anecdote that illustrates her explanation of a reason why Latinas may resist help-seeking behavior. *Id.* at 231 (“After about two months he started . . . hitting me again. This time I was going to do something, so I told Yolanda, my best friend. She said, and I’ll never forget it, ‘So what, you think my boyfriend doesn’t hit me? That’s how men are.’ It was like I was wrong or weak because I wanted to do something about it. Last time he got mad he threatened me with a knife. That really scared me.”).

⁷⁷ *Id.* at 252.

⁷⁸ *Id.* at 255.

⁷⁹ *Id.* at 240–41, 251, 255.

⁸⁰ Rivera, *supra* note 73, at 255.

case, Ms. H gave my supervisor and me some context for her experiences. She told us that in Korea, domestic violence is not only commonplace, but is an accepted way of life, albeit a secret one. She described to us how in the early morning hours, there are lines of victims waiting outside the hospitals. The women receive medical treatment and are sent directly home to their abusers. The police do not wish to be involved and would turn away a victim requesting assistance, because even mentioning the occurrence of domestic violence is shameful.

Karin Wang's discussion of Asian American victims of domestic violence correlates with Ms. H's narrative of life in Korea.⁸¹ Wang notes that there are important commonalities across Asian cultures. Asian women may be distinguished from white women due to "the overwhelmingly immigrant character of Asian American communities . . . the existence of similar cultural patterns across most Asian American communities, and . . . the existence of harmful stereotypes about Asian Americans collectively and Asian American women specifically."⁸² Wang explains that the idea of "keeping face" is evident in the sense that protecting the family honor is paramount to individual identity and concerns.⁸³ She provides the following wrenching, yet illustrative narrative from a news article to begin her discussion of Asian family and gender roles:

"I didn't sense the danger because I was so focused on the shame my daughter's actions would bring in the Cambodian community. And I was thinking about my daughter's children and the importance of their having a family." Kim Leang is remembering her daughter Kim Seng, killed by her abusive husband, Sartout Nom. A week before Kim Seng's murder, Kim Leang had organized a family meeting, where both sides of the family urged the young couple to stay together and asked Nom to stop beating Kim Seng. Says Kim Leang, "Sometimes because we value our cultural traditions, we try to get families reunited at whatever cost."⁸⁴

This description of the Leang family's reaction to the battering of their daughter and the Seng family's reaction to their son battering his wife matches the character of Ms. H's situation exactly. Wang argues that this

⁸¹ See Wang, *supra* note 5, at 169–70.

⁸² *Id.* at 162.

⁸³ *Id.* at 169.

⁸⁴ *Id.* at 168 (quoting Geeta Anand, *Mother's Regret Raises Abuse Issue*, BOSTON GLOBE, May 8, 1994, at 29).

behavior is representative of the strong emphasis on sacrificing for one's family as part of a group identity that is characteristic of Asian cultures.⁸⁵ To the extent that individual identity is present at all, male identity is prized over female identity.⁸⁶

Asian women in the traditional family structure are expected to "be dependent, to suffer, and to persevere."⁸⁷ The strong group identity and push to sacrifice for one's family deter women from choosing to leave their husbands or getting a divorce.⁸⁸ If they do attempt to leave home, they face shelters that are generally ill-equipped to handle the language and cultural concerns of Asian American victims.⁸⁹

Win Ha first sought help last year after her husband beat her three times during her first month in the U.S. A Vietnamese friend gave her the number of an advocacy group, and Ha was placed in a mainstream women's shelter. But she stayed only three days. "There was no Vietnamese food in the shelter," says Ha, and no one spoke Vietnamese, so when Ha's children became sick, she didn't know what to do.⁹⁰

These issues together serve to reinforce fears about the outside world that may prevent victims from leaving home. Issues with shelter, language, and food, for instance, cause victims to return to their abusers even if they were able to leave initially.

These are simply several examples of instances where an immigrant's culture intersects with her gender and her identity as a victim of domestic violence. There are many different ethnic and cultural experiences that are not represented above and which may be extremely different from the preceding examples. Lawyers and others who work to help domestic violence victims must take cultural identity into account because each woman's story is unique, and every case bears the imprint of the victim's cultural and personal experiences. Only through our understanding of her culture can the victim's story become accessible and, in turn, our help become meaningful.

⁸⁵ *Id.* at 169.

⁸⁶ *Id.*

⁸⁷ Wang, *supra* note 5, at 169.

⁸⁸ *Id.* at 170.

⁸⁹ *See id.* at 157.

⁹⁰ *Id.* (quoting *Battered Asian Immigrant Women Find Help at Shelter* (NPR Radio Broadcast, July 24, 1994), available at LEXIS, Transcript No. 1081-13).

IV. SOLUTIONS

As we engage in the struggle to end the subordination of immigrant victims of domestic violence, we must recognize and promote awareness of their intersectional identities. Solutions to both “internal” and “external” problems for these victims must take intersectionality into account.⁹¹ Similarly, in recognizing and dealing with this intersectionality, the only way that we can possibly appreciate and successfully approach all aspects of the immigrant victim’s struggle is by coming together in a coalition.⁹² Mari Matsuda’s idea of coalition provides a framework for the type of action that must be taken in order to begin peeling back the layers of subordination, subordination that is based on gender, on national origin, on language ability, and on race.⁹³

A. Coalition

Matsuda presents a revolutionary theory which proposes to end subordination through the formation of a coalition.⁹⁴ Coalition means an acknowledgment of our own biases and cultural influences, but it also encompasses the realization that we can only end our own subordination by ending all subordination. Coalition also means reaching out across all areas of subordination in order to recognize the parallels in our struggles, and to struggle together in an attempt to overcome what we cannot easily overcome alone. “This is the revolutionary theory of law that we are developing in coalition, and I submit that it is both a theory of law we can *only* develop in coalition, and that it is the *only* theory of law we *can* develop in coalition.”⁹⁵

If we fail to recognize intersectionality and if we cannot come together from our own places of subordination, whether it is as feminists, as civil rights advocates, or as immigrant advocates, we will have failed our clients because we will not understand who they are and what they face. As individuals working in the domestic violence context, we must reach out to immigrant advocates to understand the immigration laws as they relate to domestic violence. We must reach out to social workers, activists, and advocates through coalition-building. We must be involved in the struggle

⁹¹ See *id.* at 184 (“It is important to push both the battered women’s movement and the Asian American community towards an intersectional framework because battered Asian American women face certain unique obstacles which are rooted in both their gender and race. These obstacles must be addressed together, not in discrete and insular packages of race as separate from gender. Only within such an intersectional paradigm can the unique needs and concerns of Asian American women be adequately addressed.”).

⁹² There are very subtle, yet key differences between the idea of coalition and the idea of coalition-building. For an outline of the distinctions, see *supra* Part I.

⁹³ Matsuda, *supra* note 1, at 1188.

⁹⁴ *Id.*

⁹⁵ *Id.*

against subordination in all forms, rather than simply completing our small piece of the puzzle and patting ourselves on the back. While our job is to zealously advocate for our clients in the courtroom and beyond, it is also part of our charge to engage in active lawyering and to work towards ending subordination through coalition.

B. Cross-Cultural Lawyering

After we recognize our own role in the struggle, our own subordination of others, and the subordination we each face, we must take practical steps to alleviate that subordination. We must be culturally competent and we must engage in cross-cultural lawyering. Leslie Espinoza Garvey asserts: “I believe that lawyering can be conducted in a way that creates space for understanding outsider perspectives.”⁹⁶ I believe that we *must* create this space.

The stories we hear from our clients indicate two things. First, these stories demonstrate the power of narrative to yield contextual, cultural, and racial understanding. Second, they indicate the complicated nature of contextual, cultural, and racial understanding. The narrative requires that we hold onto the individual story, with all its unique characteristics, and simultaneously embrace the cultural context and metamessage of the story. As we lawyer in a way that is always about our personal, cultural and social history, so too does the client present a legal situation that is set in a personal context and a cultural reality.⁹⁷

We must be trained in how to recognize our own implicit biases and their relationship to the complicated histories and contexts of our clients. We must acquire and use that knowledge to be effective advocates. Cultural competence training requires us to conduct “a deliberate exploration of the deeply rooted cultural assumptions that claim us” and to face “discomforting truths about ourselves and our society.”⁹⁸

Though it might be uncomfortable to do so, by recognizing and appreciating differences in culture between ourselves and our clients, we can begin the process of understanding. Marjorie Silver notes that “[i]n the broad use of the term, all lawyering is cross-cultural, yet few lawyers

⁹⁶ Garvey, *supra* note 16, at 298.

⁹⁷ *Id.* at 303.

⁹⁸ Silver, *supra* note 16, at 230.

perceive it as such.”⁹⁹ What in fact makes a lawyer culturally competent is the recognition that we must act as cross-cultural lawyers, that we already engage in cross-cultural lawyering, whether successfully or not, and the subsequent realization that we require education in the art of doing so.¹⁰⁰ It is also a recognition of our limitations, which calls for further learning, or simply the realization that certain cultural ideas or racial understandings are beyond our ability to grasp. In my situation with Ms. H, I cannot think of anything that I could have done differently that would have made her feel comfortable. That feeling remains troubling to me.

C. *Ethnic Matching*

Shani King proposes a theory of ethnic matching¹⁰¹ in the attorney-client relationship, which I believe is a practical way of bridging the gap between attorney and client. There is a point at which the attorney-client relationship hits a wall due to a lack of identification or understanding, ultimately interfering with the client’s representation. The idea is that, if you have an African-American attorney at your legal services organization, then you should place African-American clients with that attorney. Similarly, if we had a Korean attorney in the FLU, we would have had the Korean attorney represent Ms. H. King describes the African-American experience with the legal system and the increased comfort level that African-American clients have with African-American attorneys, including the sharing of a group identity, increased trust, better communication between attorney and client, and a shared perception and recognition of a racist judicial system.¹⁰² She stresses that cultural competency trainers can only do so much and that despite the training an attorney has received, she will never be able to live the experience of being African-American without being born African-American.¹⁰³

The idea of ethnic matching is intrinsically disturbing, but I believe that King is correct when she stresses the need for us to let go of these feelings of discomfort and to realize the practical benefits of such a system.¹⁰⁴ “[W]e cannot afford for race-consciousness to be seen as an

⁹⁹ *Id.*

¹⁰⁰ See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 55 (2001) (“Thus, a competent cross-cultural lawyer acknowledges racism, power, privilege and stereotyped thinking as influencing her interactions with clients and case planning, and works to lessen the effect of these pernicious influences.”).

¹⁰¹ King, *supra* note 15, at 4–5 (proposing that matching clients with an attorney of their race would allow legal services organizations to better serve clients by helping to build trust and providing more effective communication between client and attorney).

¹⁰² *Id.* at 1.

¹⁰³ *Id.* at 6.

¹⁰⁴ The suggestion of intentional segregation by race is troubling to me based on its shameful place in United States history. My uneasiness is also due to the reminder that our society, even in 2011, has not progressed to the point where race is no longer a barrier between people.

arbitrary, irrational evil, irrespective of who is taking race into consideration and regardless of the context in which it is being used.”¹⁰⁵

The idea is particularly helpful with immigrants because, even if you discount King’s arguments regarding the cultural differences between African-Americans and whites—which I do not—you could still make the argument that whites and African-Americans share the culture of being born American, which provides at least some basis of understanding. With immigrants, there may be next to nothing shared culturally between attorney and client.

The problems with ethnic matching, like its benefits, are of a practical nature. One problem with instituting ethnic matching is that legal services firms are understaffed and underfunded. In cities like New York, it would be impossible for a small legal services firm like NYLAG to hire an attorney of every ethnicity, if one could even fathom every ethnicity. New York is one of the most culturally diverse cities in the world. Every single client with whom I interacted this summer was ethnically different from every other. Our department had seven attorneys. While NYLAG is incredibly diverse overall, it would be impossible for us to hand off a domestic violence case to an attorney in the Housing department just because she is Korean.¹⁰⁶ Another problem with ethnic matching is one that King herself notes; legal services organizations could run into trouble with Title VII of the Civil Rights Act based on hiring certain races.¹⁰⁷ King’s interpretation of *Grutter v. Bollinger*¹⁰⁸ ultimately leads her to believe that racially motivated hiring under a “diversity rationale” would steer legal services agencies into the clear.¹⁰⁹ I believe that ethnic matching should be encouraged where possible, but cannot solve the problems described above because it is impractical in the world of public interest lawyering.

D. Domestic Violence-Specific Outreach to Immigrant Communities

Solutions must entail breaking down the subordination and barriers that prevent immigrant victims from accessing legal services to begin with, no matter what the race or culture of their attorney is likely to be. This must be done by increasing immigrant victims’ awareness of the services that are available to help them. It is part of our duty, expanding our role as

¹⁰⁵ King, *supra* note 15, at 19.

¹⁰⁶ There was a Korean attorney working in the Housing department during my time working on Ms. H’s case. On two occasions, she was able to translate for us, which was enormously helpful. Having both a native speaker and an attorney as interpreter was immeasurably helpful. I could only notice, however, how much easier and more comfortable it would have been for Ms. H if a Korean attorney could have represented her.

¹⁰⁷ King, *supra* note 15, at 47.

¹⁰⁸ 539 U.S. 306 (2003).

¹⁰⁹ King, *supra* note 15, at 48.

part of a coalition. Marry Ann Dutton, Leslye Orloff, and Giselle Aguilar Hass surveyed Latina victims in Washington D.C. for Ayuda.¹¹⁰ They found that “educational campaigns about domestic violence and the relief available to help battered women escape, avoid, resist, or stop the violence aimed at women in immigrant communities may be the best route to reach battered immigrant women.”¹¹¹ The authors note that the campaigns should also be aimed at those who might be in the support network of a victim in order to expand the reach of the message and to avoid women thinking “well that isn’t happening to me.”¹¹²

These educational and public service campaigns must be ubiquitous and they must be multi-lingual and multicultural. “Additional funding for linguistically-compatible and culturally-sensitive shelters is a wasted expenditure if battered women fail to realize that the resources are available.”¹¹³ Women must see women in the advertisements that look like them and that speak their language. The public service messages must be clearly understandable and must be broadcast on foreign language radio stations and television stations where possible. Some have even suggested that ICE should bear the financial and distribution responsibilities of providing pamphlets to immigrant women when they enter the country.¹¹⁴ This solution, while promising, would not reach undocumented immigrants who make up a large portion of battered immigrant victims.¹¹⁵

E. Positive Outcome Outreach

Dutton and her colleagues’ survey results also indicated that grassroots involvement by victims who have had success with the legal system could enable other victims to engage in help-seeking behavior in order for more

¹¹⁰ Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL’Y 245, 256 (2000). Ayuda is a community organization which protects the rights of low-income immigrants in the District of Columbia metropolitan area specifically with immigration and family law issues. “We are the region’s leading provider of multilingual legal and social services for low-income immigrants in the areas of immigration, human trafficking, domestic violence and sexual assault.” AYUDA, <http://www.ayudainc.org/template/index.cfm> (last visited Oct. 3, 2011).

¹¹¹ Dutton et al., *supra* note 110, at 282.

¹¹² *See id.* at 282–83.

¹¹³ Franco, *supra* note 8, at 134.

¹¹⁴ *See id.* (“On the bureaucratic level, [ICE, formerly] INS should be required to distribute pamphlets that provide information about immigrant women’s legal rights. A special emphasis should be placed on reaching battered immigrant women.”); *see also* Loke, *supra* note 4, at 622–23 (“[ICE, formerly] INS should be required to distribute information about domestic violence and its impact on immigrant women. The law presently requires [ICE] to inform conditional residents of the joint petition requirements to adjust to permanent residency. Information about domestic violence could easily be distributed at the same time. Immigrant women should be made aware that laws are different in the United States. They can then make informed choices about their safety and the relative risks of behavior.”).

¹¹⁵ *See* Dutton et al., *supra* note 110, at 263, tbl. 2 (noting that 44.7% of survey respondents reporting abuse were undocumented immigrants).

successful outcomes.¹¹⁶ I think that this type of victim-survivor interaction is enormously helpful and must be encouraged at the grassroots advocacy level, extending to the legal interactions between attorney and client. I call this type of interaction “positive outcome outreach” where a survivor can coach a victim. In Ms. H’s case, both my supervisor and I felt that positive outcome outreach with another client of a similar background, like Ms. M, who became empowered by her interactions with the legal system, would have been extremely helpful for Ms. H in her struggle.

F. Solutions in Concert

Ms. H would have benefitted both directly and indirectly from each of the solutions mentioned above. Ethnic matching, if feasible, would have eliminated a number of the problems that my supervisor and I encountered in attempting to effectively represent her. It would have made her more comfortable and able to share the information necessary to build her case and to keep her safe. Attempting to recognize intersectionalities, to lawyer cross-culturally, and to achieve cultural competence is an ongoing process—one that we must strive to improve upon every day. We must strive to recognize our own contributions to our client’s subordination and also the ways in which we ourselves are subordinated.

V. CONCLUSION

Victims of domestic violence face daunting odds in attempting to seek help. They risk their safety and the safety of their children and may lose their entire way of life. They venture into the world often with no way to support themselves and no one on whom they can rely for help. Immigrant victims not only face these same problems, but they often do not speak the majority language, do not understand the legal system, and have no idea where to go for assistance. In fact, they may believe there is no one who will help them. Many immigrant victims have no documentation at all, but even those who possess some sort of conditional residency or U.S. citizenship may fear deportation, or that their husbands will report them to ICE or will rescind sponsorship of citizenship.

Many immigrants are so isolated that the only voice they hear is that of their abuser. They may not be aware that domestic violence is illegal in the United States or that the police may be willing and able to help them. They may justifiably fear that their husband’s superior English language skills will mean that police will listen to him and not to them. They may fear losing their children due to their undocumented status or might believe that, like in the country from which they emigrated, fathers always retain

¹¹⁶ See *id.* at 284–85.

custodial rights to children. Even if they are able to leave, immigrant victims may have no idea that there are resources available to them, if there are resources that will be able to fully accommodate them. For instance, there may be social service agencies and shelters that speak their language, know their culture, and provide sensitive services with both in mind, but these services are not available for every ethnic background and may be less available in suburban or rural areas.

If immigrant victims are able to access social and legal services, there still may be gaps in culture and understanding that prevent open lines of communication. Immigrant identity thus may act as a barrier to effective legal counseling. Interpreters often are required which can interfere with the development of a trusting relationship between attorney and client. Cultural cues, customs, and social norms can be vastly different between attorney and client. The client may feel more comfortable confiding in her interpreter than in her attorney and may feel a strain when trying to discuss what tend to be emotional, conflicting, painful, and trying issues with an attorney who figuratively and literally does not speak her language.

In order to alter the system in which we currently practice, we must recognize two important ideas. First, we must account for and appreciate the intersectionality of gender, culture, language, and other barriers that affect our clients. With immigrant clients, we must understand their pain as much as possible through the lens of *their* cultural experience, and not our own. We must attempt to facilitate an open exchange that extends beyond language barriers.

If these movements that seem to hold such promise of transforming law into a healing profession are to make a meaningful difference in the *status quo*, we who support them must self-consciously reach out across racial divides. We must both figure out why we have so far not succeeded in doing so, and how to overcome this failing. And we must be open to the possibility that the contributions of lawyers, psychologists, social workers, and clients from a multiplicity of racial groups may transform our understanding of what it means to practice law as a profession of healing. We must be open to the possibility that by embracing diverse perspectives, our very notion of transformation may be altered.¹¹⁷

The only way to accomplish these goals, to transform our profession and our practice, is by engaging in coalition. We must build a coalition of

¹¹⁷ Silver, *supra* note 16, at 237.

social workers, social services agencies, and governmental agencies, where safe to do so. We can deconstruct barriers between us by communicating, having meetings and organizing. We must also engage in coalition by recognizing our own contributions to subordination generally, and being aware of our cultural predispositions and assumptions.

As Mari Matsuda explains, we must create and participate in an active theory of the law, a “revolutionary” theory of law “taking sides.”¹¹⁸ We must step outside our limited legal universe, to forge partnerships, to attempt to understand where we go wrong, and to learn what others can teach us to help us get it right. “When we work in coalition . . . we compare our struggles and challenge one another’s assumptions. We learn of the gaps and absences in our knowledge. We learn a few tentative, starting truths, the building blocks of a theory of subordination.”¹¹⁹ We must find the means to end this subordination. Immigrant identity may be a barrier to effective legal counseling, but an active theory of law can break down this barrier brick by brick.

I propose that as attorneys and law students representing immigrant domestic violence victims, we must strive to be culturally competent, we must be aware of our status as cross-cultural lawyers, and we must embrace that role. We must encourage multi-lingual ethnically conscious education and public service messages that reach every community, in languages that are understandable, and in cultural contexts that provide victims with the means to self-identify. We must encourage positive outcome outreach by pairing victims with survivors to lessen fear, to guide victims through the process in a way that may be unavailable to them through their attorney or social workers, and to show them that the legal process can actually empower them. “Through our sometimes painful work in coalition we are beginning to form a theory of subordination; a theory that describes it, explains it, and gives us the tools to end it.”¹²⁰

¹¹⁸ Matsuda, *supra* note 1, at 1188 (“As lawyers working in coalition, we are developing a theory of law taking sides, rather than law as value-neutral.”).

¹¹⁹ *Id.*

¹²⁰ *Id.*