

Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*

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ABSTRACT

Battered immigrant women face tremendous barriers to using the U.S. criminal justice system to respond to the violence in their lives. These include various social, economic, cultural, and legal restrictions as well as hardships, which deter immigrant women from seeking relief. For those women who overcome these barriers and do access the system, there are additional problems to solve in order to obtain help. The multifaceted obstacles can create anti-therapeutic effects for these women, thereby reducing their current and future use of the system. Using a therapeutic jurisprudence framework, we propose a series of policy recommendations and interaction strategies for working with battered immigrant women in culturally appropriate, empowering ways. The recommendations call for changes to criminal justice system procedures and require collaborative working relationships among legal practitioners, the professionals, and advocates who work with immigrant women and populations. We argue that a therapeutic jurisprudence approach endorsed by all parties involved may enhance battered immigrant women's willingness to access the justice system, minimize the system's anti-therapeutic effects, and maximize its therapeutic impact on this vulnerable group.

KEYWORDS: cultural competence; domestic violence; empowerment; judicial response; immigrant abuse; immigration status; interpreters; policing; prosecution; therapeutic jurisprudence.

The fall of the Iron Curtain, persistent regional conflicts, repression and political unrest, the opening of borders by previously closed societies, and a variety of trends related to globalization have marked the world at the end of the twentieth century. This worldwide phenomenon has led to the migration of large numbers of people from one place to another in all parts of the world. The United Nations Population Division and the UN High Commission for Refugees (1993) estimate that at a minimum two percent of the world's population are migrants. Furthermore, the rapid globalization of the world's economies and political environments will ensure that the number of migrants, at least half of whom are women (in some countries women account

for the overwhelming majority of migrants), will increase substantially in all of the world's major geographical regions well into the 21st century (Teitelbaum and Russell 1994). The U.S. has been one of the most desirable places for migrants to settle.

In 1990, the number of immigrants in the U.S. surpassed 1.5 million. According to the 2000 census, immigrants have increasingly become a large portion of the population, and they now can be found in substantial numbers in all regions of the country. According to the Census Bureau in 1997, the foreign-born population of the United States numbered 25.8 million persons or 9.7 percent of the total population. In March 1997 only one third (about 35%) of the foreign-born were naturalized

citizens, and about 65 percent were not citizens. Additionally, there are many undocumented immigrants who reside within the U.S. The INS estimates that for the year 1996, about 5 million undocumented immigrants were residing in the United States, with a projected growth of about 275,000 undocumented persons each year.

Migration exacerbates the gender-linked vulnerability of women. It makes women further dependent on, and at times puts them at the mercy of, husbands, intimate partners, sponsors or employers, nuclear or extended families, and their own ethnic/racial communities (Erez 2001). Violence against women, or gender violence, has been recognized as a special risk for immigrant or refugee women (Erez 2001; Kelly 1999; Perilla 1999). Recent research in the U.S. has confirmed that violence against women is one of the most common victimizations experienced by immigrants (Davis and Erez 1998). Yet, there has been little attention directed toward the legal system's response to the victimization of immigrants in general, and women immigrants in particular.

Considering the high level of violence in women's lives, for immigrants and non-immigrants alike, their appeals to the justice system and the degree to which the system's response holds itself answerable to immigrant women's special needs deserves closer attention. The complex dilemmas battered immigrant women face in deciding to invoke the justice system must also be understood in order to respond in an appropriate, sensitive, and culturally competent manner. A productive and empowering response requires an understanding of the subtle interaction between the law and legal responses and battered immigrants' inactions, actions, and reactions to the violence in their lives and the legal system attending to their plight. This may determine whether immigrant women's appeals for help may backfire or further compromise their ability to resist the violence. Conversely, the legal responses may prove to be helpful or create opportunities for victims/survivors to rebuild themselves and attain safety and security in their new country.

This article addresses the way justice officials, in the course of enforcing the law, can provide valuable therapeutic benefits to battered immigrant women and avoid or reduce anti-therapeutic effects of the law. The study applies a therapeutic jurisprudence approach to the law, which addresses the law as a therapeutic agent (Wexler 1996; Winick 1997). Therapeutic jurisprudence posits that legal rules, procedures, and agents of the legal system (police, lawyers, judges, etc.) act as social forces. As such, they can produce positive therapeutic effects or negative anti-therapeutic effects (Wexler 1996; Winick 1997) for the mental health of the non-agents (victims, defendants, witnesses) participating in legal proceedings (Stolle et al. 2000).

Therapeutic jurisprudence examines the way the law or criminal justice interventions can be applied in such a way as to support, or at least not harm, the psychological well-being of those it affects (Wexler 2000). In the case of battered immigrant women, a therapeutic jurisprudence approach to addressing violence in their lives must include two critical components: first an understanding of the context of immigration, and second a culturally competent therapeutic response. Appreciating the legal implications of the immigration context and status related concerns of battered immigrants may help criminal justice agents understand the women's behavior and choices in legal settings, which in turn will assist them in responding with culturally competent therapeutic interventions.

Cultural competence in the legal context would have legal actors adopting a set of behaviors, attitudes, and policies that enable them to effectively interact in cross-cultural situations (Cross et al. 1989; Isaacs and Benjamin 1991). Since most legal actors (police, prosecutors, judges) working in the criminal justice system are not familiar with the immigration experience, there is great need for training and policies that can assist these agents in competently responding to the needs of battered immigrant women. Using available literature on violence against immigrant women and data from in-depth interviews of 137 immigrant battered women from 35 different countries regarding their experience with justice agents (for details see Erez, Ammar, Orloff, Pendelton and Marin 2003), this article discusses the multifaceted ways in which the immigration experience interacts with battering and with immigrant women's appeals to the justice system. The article makes recommendations and suggests approaches to working with battered immigrant women in culturally appropriate, empowering ways, with the goal of assisting these women in resisting the violence.

IMMIGRATION CONTEXT AND DOMESTIC VIOLENCE

Economic, Cultural, and Psychological Factors Associated with Immigration

The immigration context of battered immigrant women presents unique and intricate problems vis a vis the justice system. It involves a complex set of interacting cultural, legal, and practical concerns, making immigrant women remain in battering relationships, reluctant to report their abuse, and unwilling to participate in justice proceedings (Erez 2000, 2003; Raj and Silverman 2002).

Battered immigrant women are often economically dependent and financially insecure. They frequently do not have linguistic and occupational skills or gainful employment, and they view their primary role as that of

wives and mothers. The husband is the breadwinner who typically conducts all communication with the outside world. Immigrant women commonly rely on their husbands, regardless of how abusive they are, as their sole means of support.

Battered immigrant women are highly isolated due to their immigration circumstances (e.g. Abraham 2000). In the new country they often lack extended family (e.g., parents, siblings) or other support networks. Immigrant women often move to follow their husbands, leaving behind their own familial and social support systems (Erez et al. 2003). Furthermore, immigrant women often live with or are close to their husbands' families due to cultural dictates and economic considerations (Abraham 2000; Raj and Silverman 2002). Proximity to the husband's family leads not only to increased support for the abuse, but also to increased likelihood of abuse by in-laws (e.g. Erez et al. 2003; Huisman 1996; Supriya 1996).

Despite severe and extended abuse, battered immigrant women tend to remain in abusive relationships for a long time. There are social pressures on all women to remain in a marriage. In some cultures, however, divorce leaves such a stigma that a divorced woman may never be accepted by her cultural community or may never be able to remarry. In cultures where lineage, family integrity, and strict adherence to role obligation are highly valued, the risk of disgrace or losing face is serious enough to prevent a woman from leaving (Erez 2000; Erez et al. 2003). Further, memberships in churches, mosques, temples, or other religious institutions provide women an amplified sense of community, much needed continuity, and support. At the same time, cultural norms and religious prescriptions may not offer battered women the kind of support and encouragement they need to escape from violence in the home (Kelly 1999; Okin 1998).

If the woman leaves, she is typically deemed responsible for the end of the marriage even if she has been abused. Her family of origin oftentimes will not accept her back, because such an act brings shame and disgrace on the family name and mars the collective perception of the family's honor (Narayan 1995; Supriya 1996). Research confirms the experiences of counselors and social workers that work with minority or immigrant women: families will not support a battered woman's decision to leave, even if she has suffered serious injuries (Ciurak 1985; Erez et al. 2003). In many cases, the women fear retaliation by their husbands' families (and sometimes their own families) if they return to their country of origin (Orloff 1995). Leaving an abuser to return to the home country also presents the women with tremendous difficulties in terms of providing economic support for themselves and their children. In many countries, gender is a barrier to adequate employment (Orloff, Jang and Klein 1996).

Women who leave their husbands are commonly subjected to severe stigma and isolation, endure significant economic hardship, and have very low chances of a remarriage (Erez 2000).

Immigrant women themselves feel they must live up to their roles as wives and mothers, demanding the sacrifice of personal autonomy and freedom (Erez et al. 2003). They have well internalized traditional expectations and the cultural modeling of appropriate social behavior (e.g., Narayan 1995). As a woman is considered the pivotal point of the family, regardless of the physical or verbal abuse she may endure, her primary responsibilities are to care for and safeguard her family (Maglizza 1985) and steadfastly remain at her husband's side (Surpriya 1996). The ideal of a "good wife" is strongly linked to its antithetical notion of the "shameful wife" -- one who violates normative expectations, such as revealing the abuse or leaving the abuser (Maglizza 1985). The "shameful wife" image acts as powerful self-discipline, militating against abused women's attempts to disclose the violence or leave their abuser (Currie 1995; Erez et al. 2003). Proscription to reveal to outsiders unbecoming or improper behavior of family members (whether from their children or from their husbands) is also included within the cultural script for many immigrant women (Erez et al. 2003).

Leaving her husband usually also means relinquishing both financial resources (such as her home and personal effects) and vital practical services she needs to obtain work or maintain her job (Currie 1995). These services include childcare, which is commonly provided by her extended family or by her community. Immigrant women's social relationships are also often confined to those who share their language. Lack of linguistic skills thus contributes to the isolation of immigrant women, maintaining their dependence on the family, which in turn reinforces familial and cultural interpretations of assault (Erez 2000). Members of the linguistic community are often linked to the husband and, thus, unlikely to support the woman against him.

Immigration also negatively affects immigrant communities' predilection to exposing abuse in their midst for fear of directing attention to their community. This tendency for secrecy and denial of abuse results in a weaker system of supports and aid for abused immigrant women, who in the same situations may have received assistance in their home communities. Attempts to raise issues of violence against women in immigrant communities are often deflected by the community leadership as an imposition of irrelevant "Western" agendas, and insistence that "our tradition" or "our families" do not suffer from these problems which are endemic to "Western" marriages (Narayan 1995). Religious leaders in many immigrant communities are quick to point out that women who

disclose domestic violence are a very small contingent of “deviant, rebellious women,” and that abuse does not really occur among their followers (Erez 2000). Religious values and institutions often reinforce traditional responses to woman battering and act as disincentives to reveal the abuse or contact the justice system (Okin 1999).

Immigrant Battered Women and Reporting the Violence

Immigrant victims in general (Davis and Erez 1998), and battered immigrant women in particular (e.g. DasGupta 2000), are reluctant to report crime and cooperate with authorities due to an intricate combination of cultural, social, and legal reasons. Within immigrant communities there is a preference to treat interpersonal conflicts as private matters to be resolved internally, even in the extended family network (e.g., Erez et al. 2003). Immigrant battered women therefore exhibit strong reluctance to reveal the abuse to social service agencies, religious leaders, or any outside family members as it will bring shame upon themselves, their husbands, and their children (Erez et al. 2003).

A woman who violates social and gender norms may also be disowned by her family and harassed by her community. Although there are many positive and practical aspects of extended families, in circumstances of abuse its very self-sufficiency paradoxically works against the needs of battered women (Erez 2000). Fears of being shunned by her family or ostracized by her community are among the strongest inhibitors of reporting violence to officials (Erez et al. 2003). Appeals for help to outsiders (including police and social or welfare agents) are therefore not perceived as an option for many battered immigrant women (e.g., Haile-Mariam and Smith 1999; Wachholz and Miedema 2000).

Immigrant women often do not know that battering is a criminal offense in their new country, nor are they aware of any social, legal, health, or other services available for women in their predicament. If they do recognize the battering as a criminal offense, immigrant women are reluctant to call the police. In addition to aversion from involving outsiders in private family affairs, prior negative experiences with the police and the justice system in their own countries often color battered women’s willingness to call the police for help in their new country (Davis, Erez, and Avitabile 2001; Erez et al. 2003).

The overriding rationale for many immigrant women to stay in abusive relationships and to not report their battering is the prospect of losing their children (Erez 2000; Erez et al. 2003). More specifically, many immigrant women fear that deportation or loss of resident status will lead to their losing legal custody of their children (Orloff et al. 1995; Raj and Silverman

2002). In fact, return to their own country often means never seeing their children again and loss of custody rights in favor of the father. Battered immigrant women sometimes believe, often because their abusers have told them so, that separation or divorce in the host country will have the same result. In the U.S., however, the contrary is often the case, as the courts are likely to award custody to the non-abusive parent even when she does not have legal immigration status (American Bar Association 2000).

Immigrant women who have managed to overcome cultural incentives to remain silent are still wary of requesting help from law enforcement agencies (Erez 2000). They may have had negative experiences with authorities in their country of origin (Davis et al. 2001) or fear unpleasant experiences with legal institutions in their new country (Erez et al. 2003; Pogrebin and Poole 1990). They may also hold legitimate concerns that they will be subjected to differential treatment because of their ethnicity, gender, and immigration status. Language and communication barriers further add to their reluctance to contact the justice system (Davis and Erez 1998).

Some battered immigrant women are afraid that official action will lead to the deportation of their abusers, which they believe could mean loss of their own dependent immigrant status (Erez et al. 2003). Few women are aware of recent U.S. laws that can offer many abused immigrants an avenue to attain legal immigration status independent of their abusers through the Violence Against Women Act (VAWA) (1994; 2000). Deportation is an omnipresent weapon for abusers to threaten their immigrant partners, regardless of their partners’ immigration status. Batterers often use lawful immigration status to intimidate and coerce their partners to stay or comply with their demands (Anderson 1993; Erez et al. 2003). Abusers of undocumented immigrant women routinely threaten to call immigration authorities if the victim reports the abuse (Dutton, Orloff, and Hass 2000). Even for documented women, the threat of deportation is powerful enough to prevent them from leaving. Distrust of the government, ignorance of immigration law, and deception by abusers often combine to keep immigrant women in abusive relationships and prevent them from reporting the battering (Erez 2000; Orloff et al. 1995).

More informed abused immigrant women sometimes hesitate to call authorities because they are afraid that the batterer’s probable arrest record resulting from reporting the abuse may hinder his attempts to gain lawful immigration status. Current criminal justice practices, expressed in many states’ laws concerning mandatory or presumed arrest, have been challenged by feminists and advocates of all battered women (e.g. Miller 1989; Stanko 1995), but they have been particularly criticized as harmful to battered immigrant

women (Erez 2003; Wachholz and Miedema 2000). Battered women who call the police often do not want to have the abusers arrested, as they are economically and/or emotionally dependent on them. They merely want to stop the violence. Arrest of the batterer is an even less desirable outcome for immigrant battered women who believe that they are dependent on their abuser for their immigration status. Further, the dual arrest practices that often take place under mandatory/presumed arrest policies (i.e. police arresting both the perpetrator and the female victim rather than the primary aggressor, e.g. Miller 2001) may result in a criminal record for the parties, which in turn may adversely affect prospects for immigration status adjustment and related outcomes.

Access to information has always been a major factor impeding women's utilization of appropriate support services or appeals to justice. Through their employment and education opportunities, men are more likely to have superior language skills and better access to information. Typically, it is the man who negotiates family affairs with the outside world. As the primary conduit of information to the women in the household, men can maintain control, and this power is often a part of the domination characteristic of abusive relationships (Erez 2000). Further, the control tactics abusers often use against their immigrant wives exploit and perpetuate the very same vulnerabilities that immigrant women need to overcome in order to escape the abuse and end their isolation or dependency on the abusers (Erez et al. 2003).

For recently arrived immigrant women, the language barriers exacerbate their isolation (Orloff et al. 1995). Inability to communicate has been a major obstacle when police are called to the house by concerned relatives or neighbors (Erez 2000). Frequently, immigrant women are pre-literate in their own language. An inability to read, combined with other language problems, reinforces barriers to accessing information and communicating effectively. Lack of fluency in the mainstream language precludes useful searches for information on remedies, resources, and services available through the justice and health care systems. For undocumented women, leaving is more difficult, because without immigration papers they cannot work legally and, in the U.S., may not be entitled to welfare assistance, including housing. Few know, for instance, that if they qualify for immigration benefits in the U.S. because they have been abused by a citizen or legal resident spouse, they can receive permission from the INS to access the welfare safety net. Nor do they know that their citizen children can receive benefits even if the mother cannot.

Interpreters, Immigrant Battered Women and the Justice System

As already noted, many immigrant women are not versed in the language of their new country and often lack literacy skills in their own language. This means that when they need to convey complaints about abuse to officials, they must rely on friends, neighbors, relatives or community members to translate their grievances (Erez et al. 2003). Family and community members may not be informed about options to combat woman battering or may collude with the abuser to mislead the victim (Erez 2000). Children, who are often versed in the language of the new home country, are sometimes asked to translate. Such requests may endanger the children as the abuser may view them as colluding with their mother against him. The children may also not approve of their mother's resorting to official channels for assistance, and may be uncooperative in translating her wishes or communicating in her name (Erez 2000). Asking a child to translate for the mother may also impose baffling and oftentimes traumatic fissures of loyalty for the child, exacerbating his or her own difficulties of adjustment to the new home country.

Reliance on official interpreter services may not be sufficient to counter communication problems with officials. Interpreters are still not routinely available in encounters with the justice system (Erez et al. 2003). Further, the degree to which interpreters act professionally and are unbiased, particularly if they are drawn from newly arrived communities, remains problematic (Erez 2000). If the woman or another interested party calls the police, unless the officers are versed in the immigrant woman's language or have interpreters employed by the police department (neither of which are common occurrences), the officers are likely to gather necessary information from the husband or even the children (Erez et al. 2003; Wachholz and Miedema 2000). The husband, with his greater proficiency in English, can easily dictate the sequence and nature of events to the officers and, hence, control the outcome of the incident.

With interpreters rarely available in crisis situations, police frequently act on incomplete information, often mediated through scared or unsympathetic family members, or the husband himself (Erez 2000). Family members may be unfamiliar with legal terms and meanings, or may directly or inadvertently convey their disapproval of a woman seeking outside help to deal with sensitive family matters. Communication difficulties can undermine even the justice system's best efforts to assist battered women. Immigrant women in such situations can often be persuaded to accept inappropriate or second-best legal remedies or solutions. They often waive their rights or sign documents that are not in their best interests based on unsound and

unsympathetic partisan advice (Erez et al. 2003).

Battered immigrant women either do not know about services for battered women or do not regard the justice system as an appropriate avenue for seeking assistance (Erez et al. 2003). Many women have a fear that they will be turned over to immigration authorities if they make contact with the police (Orloff et al. 1995; Wachholz and Miedema 2000). For immigrant women who overcome these obstacles, existing crisis intervention services and legal options are often not geared to meet their needs (Erez et al. 2003).

Review of this immigration context suggests that to respond in a therapeutic, culturally competent way, the combination of cultural, legal, and practical concerns that underlie battered immigrant women's behavior and decisions need to be considered. Legal agents need to be sensitive to the special meaning and ramifications of various available legal options, remedies, or actions for abused immigrant women. These circumstances, or the battered immigrant women's perceptions thereof, render the intricate task of empowering battered immigrant women a challenge. Particularly complex are balancing attempts to help the women extricate themselves from the violence while exercising their rights to preserve ties to their family, community, and the support systems that they may call upon for help. In the next sections we provide specific suggestions to respond to this challenge, using examples from Erez, et al.'s (2003) interviews with battered immigrant women about their experiences with the criminal justice system to illustrate these points.

EMPOWERING BATTERED IMMIGRANT WOMEN

Empowerment is a key feature of therapeutic interventions with battered women (Herman 1992; Mills 1999; Parsons 2001). Empowerment encompasses receiving acceptance and validation in interactions with professionals (Parsons 2001). One of the essential components of empowerment for battered women entails giving battered women "voice," or an opportunity to tell their story (Parsons 2001; Winick 2000). Other empowering beliefs used in practice with battered women involve helping them feel like survivors, rather than victims; demonstrating that they are not alone, that there are support systems available; and communicating that they are not responsible for their batterers' violence against them (Busch and Valentine 2000).

A feminist approach to intervention with battered women often involves empowering the victim to understand that she has a choice about how to deal with her situation (Brown 1997; Rimonte 1991). She can choose to leave her abuser, choose to go to shelter, choose to file charges against her abuser, or choose none of these options. Embedded in this notion of

choice is the belief or recognition that she has "a right to a life of her own, defined the way she likes it" (Rimonte 1991:1322). This feminist perspective is based on a Western concept of rights in which individuals are encouraged to differentiate from their parents and families and to make decisions about and seek out a life on their own.

However, for many immigrant battered women, particularly those from collectivistic cultures, this notion of choices and rights may contradict the accepted view about the appropriate lifestyle of women in these cultures (Adelman, Erez, and Shalhoub-Kevorkian 2003; Blagg 2002; Rimonte 1991). For example, in Pacific Asian cultures the aim of the family structure is to control the behavior of the individual in order to protect and preserve the group. When the group is seen as most important, individuality or individual choice is de-emphasized. Thus, a person's identity in many immigrant groups comes from belonging to the group, not from separation from the group (Rimonte 1991; Shalhoub-Kevorkian and Erez 2002). Given this group orientation, interventions that encourage battered immigrant women to take action based on a perspective of individual rights might be culturally incongruent and subsequently ineffective for many of these women.

Advocacy work with battered immigrant women requires greater attention to the *process* battered immigrant women go through in addressing the violence in their lives. This process includes both internal changes and external actions. For many battered women, the most important factor enabling them to end the abuse was deciding they had "had enough" (Bowker 1983:123). When women reach this decision-stage they are ready to act. Getting to this stage of action requires women to change internally, to begin to think about and define their situations differently. Much of this internal change can occur through dialogue, through talking about how they experience the violence in their lives, how the violence is affecting them and their families, how they would like things to be different, and how to explore the potential benefits and risks of various alternatives. Such a dialogue does not require action. It does not put battered immigrant women at behavioral risk, because they are not changing anything externally for a time. They are not violating cultural norms if they are not behaving differently.

With regards to external action, battered women often progress over time from personal or informal (i.e., talking to friends) to formal (i.e., going to shelter) strategies to end the violence in their lives (Bowker 1983; Dutton et al. 2000). According to Dutton et al. (2000:248), the successful use of these strategies contributes to the women's perception of control and feelings of self-esteem, whereas "when a battered woman's strategy is unsuccessful, her perception of control is diminished."

For battered immigrant women, their process of addressing the violence will likely begin with the personal or informal contacts they have with other members in their cultural community. Research confirms that abused women, whether immigrants or not, first discuss their problem with close female relatives and friends (Bowker 1983; Haas, Dutton, and Orloff 2000). However, the use of informal supports from their cultural community may not operate in the same way for immigrant women. Many of the immigrant women described attitudes about domestic violence and about a woman's role in the marital relationship that are shared by many members of her community. Thus, in turning to these personal supports in their cultural communities, immigrant women may not receive messages that domestic violence is wrong and may actually be discouraged from seeking out more formal domestic violence services in the community. The women interviewed in Erez et al.'s study (2003) commented that many in their surroundings at first discouraged them from disclosing the abuse, reporting it, or leaving the relationship. As some women stated,

My mother and father told me to go back and be a better wife, otherwise I would be shaming them.

They [my family] used to say 'it all comes with the package.' Others used to say 'try to please him, try not to make him mad.'

It is common in my country if you marry a man you must work out your own problems. I have been emotionally tormented and that is not recognized in my family.

Improving Informal Community Supports

Addressing this barrier to internal support would require intervention at the community level through culturally congruent education that reaches both battered women and the community members they turn to for help. Rimonte (1991) suggests a culturally congruent approach using a low key and non-threatening profile that avoids a direct challenge of the "evils of patriarchy." According to this approach, instead of blaming men for violence against women, the education focuses on the characteristics of the culture "that produce abusive men and abused women" and identifies with the community's emphasis on family. Rimonte (1991) also acknowledges the importance of winning the support of non-abusive men as an entrée into the community.

Increased community education will both increase the likelihood that a battered immigrant woman will encounter a helpful response when she turns to personal supports in her community and generally increase her knowledge about domestic violence laws and services

available. For many of the battered immigrant women in Erez et al.'s (2003) study, knowledge that women had more rights and freedoms in the U.S. compared to their countries-of-origin was a significant learning experience. Knowledge about these additional freedoms meant that women were entitled to and could get help, or count on support, in dealing with the violence in their lives. The immigrant women perceived there to be more services for battered women in the U.S., although they also saw U.S. women as more free to seek out these services on their own. As several women stated:

In the U.S. there is more support and protection for the victims, more services.

A woman in [the] U.S. has her say, can make her own decisions, and the government helps her to have the kids. In our country there are no welfare benefits.

While many immigrant women felt they could not contact a social service agency without their partners' consent, some of these women shared that they became aware that domestic violence was recognized as a social problem because of the services available in the U.S. Knowing there was help for domestic violence actually made it possible for them to define domestic abuse as a problem which may entail legal sanctions, thus moving the internal dialogue. Knowledge about the availability of services made battered immigrant women aware of possible choices for addressing the violence in their lives and was a source of empowerment for many of them.

Positive personal responses may then encourage women to seek out information and assistance from formal support systems. While this is an encouraging step, we must still consider the cultural barriers women face in their contacts with the social service and criminal justice systems. The battered immigrant women interviewed were influenced by their cultural and religious views on domestic violence as they struggled to make decisions about contacting the criminal justice system. The women reiterated the cultural beliefs that family problems stay in the family, and exposing the violence would bring shame. In the words of the women:

Yes, we feel ashamed to involve strangers in our personal lives. We don't like publicity.

It is a shame to expose private decision to the public.

Your honor and your family's honor were at stake-shame and fear. I have daughters, and when they are grown, what will the community say about

them? Their marriage chances will be less, because I would be labeled as the liberal woman.

The immigrant women expressed concerns about being embarrassed or cut off by their community. Many women were reluctant to contact the police, in part because of a fear of not knowing how the system in the U.S. would respond to the violence. One woman spoke of contacting the police as “a last resort, a matter of life and death.” There were also fears of being deported, losing custody of their children, and confronting or being harmed by their abusers.

Culturally Competent Police Responses

The battered immigrant women described numerous circumstances in which their cultural traditions influenced their decisions to access the justice system and their experiences with the criminal justice system regarding the violence perpetrated against them. Their experiences clearly indicate the importance of culturally competent therapeutic responses by criminal justice personnel. Such a response to battered immigrant women requires changes in criminal justice procedures at a variety of system levels. Some of these changes are common to all battered women’s needs, while others are unique to battered immigrant women’s experiences.

The most important change needed is an increased understanding of cultural issues. As the women interviewed in this study described, many come from a culture or country that does not define domestic violence as a crime, does not have criminal justice or social service systems to respond to this violence, and in which there is the very real risk of further abuse or alienation from the family and community by disclosing the abuse. Battered immigrant women have to overcome tremendous cultural barriers in order to engage the criminal justice system.

Women in this study commented most frequently on the need for police personnel to better understand their cultural issues.

More knowledge of immigrant women and domestic violence because even the police there’s many of them who are not too familiar with us.

Translators need to be available. Also, to understand that we women sometimes don't tell the truth because we are ashamed of our husband's bad behavior.

Teach the police officers more about our culture/women and why they refuse to talk.

[The police need] to understand why the women don't report details - police need to be trained about our culture.

Police officers need basic cultural competency training to increase cultural sensitivity generally, and culturally competent interactions more specifically. Cultural sensitivity is defined as an *awareness* of cultural differences that may affect interactions between parties. Cultural competence is defined as the *translation of this awareness* into behaviors that lead to more effective interactions. Thus, culturally competent practice involves integrating and transforming knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used to increase the quality of responses (Davis 1997). For example, increasing police officers’ understanding of a woman’s cultural pressure to “save the face of the family” may help officers avoid misguided and counterproductive attempts to convince her to press charges and/or to penalize women who are reluctant to provide information or recant an allegation of abuse.

Another important change needed is for police and other criminal justice personnel to understand that for many battered women (immigrant and non-immigrant), their use of the criminal justice system is likely to be a cyclical process (Brown 1997), in which they often have gradually increasing contact with the criminal justice system over time. How much contact they have and how far they are willing to take the process (for example, testifying at a trial) will no doubt depend on how positive previous contacts with the criminal justice system were. Police, who may be the first formal support battered immigrant women contact, can help empower these women to view the criminal justice system as a resource and their ally (Ford 1991), provided they are aware of her internal ever-present conflict about engaging the system and her need to take the process one step at a time. This is particularly important for immigrant women, many of whom are not used to viewing the police or other criminal justice agents as their allies.

The police should think of their interactions with battered women as assisting them in a kind of *process of acculturation*, in which immigrant women’s knowledge and beliefs about domestic violence would change over time based on the information they receive and the positive experiences they have when they encounter the system. As many of the women described, information about the laws against domestic violence in the U.S. and resources or services available for battered women were crucial in helping these women begin to define the violence in their lives. While a battered immigrant woman might refuse to cooperate with police, officers should still use this encounter as an opportunity to provide the woman with information about domestic violence laws and available services. This information can assist women in their decision-making process about contact with the criminal justice system in the

future, or once they decide that “enough is enough” (Fischer and Rose 1995).

The collectivist view of many women in immigrant communities also has implications for police response. For many immigrant women, choosing to leave family, with all its intricate embedded ties of responsibility and obligation, connection with country, culture and related support network, is not an option (Blagg 2002; Erez 2000). Police intervention strategies need to respect, rather than problematize, immigrant women’s cultural and family obligations. Police should not consider women non-cooperative if they refuse to admit abuse, sign statements to this effect, or choose to remain in the abusive home. Yet women obligations should not be used by the police or other justice agents to subject women to abuse or to relinquish responsibility for their safety.

Police who respond to violence against immigrant women can overcome resistance to their intervention by mobilizing internal community resources that denounce such violence. As Adelman et al. (2003) suggest, police should activate internal minority/immigrant community resources that support and defend abused women’s rights for safety, whether these are formal or informal indigenous feminist and human rights organizations, victim assistance grassroots movements, or nongovernmental organizations. As communities are not monolithic, police should seek out and galvanize nontraditional community leaders and organizations that challenge rather than reinforce stereotypical beliefs and myths about minority women and men. Cultural sensitivity training for police should consist of a bird’s-eye view of the community, including such internal resources that can be mobilized to support abused immigrant women in their attempt to resist or escape violence (Adelman et al. 2003).

The ability to communicate effectively with battered women is also necessary in order to receive and provide relevant information. Police need to have access to professional translators; not children, relatives, neighbors or community members; in order to effectively communicate with battered immigrant women. From a policy level, this may require police to modify the procedures for investigating domestic violence against battered women. If a translator is not available when officers initially respond to a domestic call, follow-up investigation may need to occur with the necessary personnel available to speak with the immigrant woman.

Connected to these follow-up investigations should be consideration of providing greater confidentiality to women disclosing abuse. Battered immigrant women likely live in neighborhoods with other members of their immigrant community. This community provides an important mechanism of support for women. If she is seen as going outside the community to disclose the

abuse, she may lose this valuable support. Police need to identify places women can be interviewed that will arouse minimal suspicion within her community. Police should also be careful not to recruit translators that are familiar with the family or community-involved, who may disclose details and compromise her confidentiality.

Another recommendation for police responses pertains to the timeliness and nature of police response. Many women interviewed by Erez et al. (2003) requested a faster and tougher response to the batterer’s violence. A jurisdiction’s laws and legal procedures constrain the range of police responses. Police cannot arrest an offender unless the offense circumstances fit their state’s domestic abuse statutes, and they do not have any control over prosecution outcomes or sentencing. The police can, however, provide a consistent application of the laws that prohibit violence against women (Rimonte 1991). This consistent application of laws will communicate to the offender that violence against women is a criminal and punishable offense in the U.S.

Prosecution Responses and Battered Immigrant Women

With regards to the prosecution of the abuser, no-drop policies and a state-controlled approach to prosecution have the anti-therapeutic effect of disempowering victims participating in the process because of the loss of choice they experience (Mills 1999; Winick 2000). Empowering battered women interpersonally includes giving women choices (Busch and Valentine 2002). Giving women choices, however, also involves respecting her choices. A battered immigrant woman has to make choices that address her need for safety from the abuse *and* her need to belong to her cultural community. Coercing an immigrant woman to prosecute takes her choice away. Taking this choice away is similar to what she is already experiencing, a situation where someone else is making her choices for her (Mills 1999; Rimonte 1991). For battered immigrant women, then, it may be even more important that they be included in the decision making process regarding the prosecution of their batterer. As Rimonte (1991) notes, the decision-making process alone can be therapeutic for the woman. It may be the first time in her life that someone has listened to her and respected her ability to make her own choices.

At the same time, some of the immigrant women in this study complained about having to *make the decision* to prosecute, or bearing the responsibility for putting the system in motion, while still expressing a wish that the prosecution process move forward. As one woman stated:

I didn’t like being asked to charge my husband. I thought they were responsible for him.

In a candid admission, several women interviewed by Erez, et. al. (2003) expressed a desire for the police to understand that women from their own group or culture would not publicly admit that their partners were abusing them and would not present their husbands in a negative fashion. Instead, they preferred the police address the abuse and take action on their own initiative, without involving the women.

The police and prosecutors, then, need to find the golden path of making the women feel empowered, but at the same time not requiring their involvement if they wish to stay outside the process. Mills (1996) recommends a “flexible remedy menu and time line” in the criminal justice response to domestic violence. Such a response would empower battered women to decide on their own course of action in a way that “respected the uncertainty generated by conflicting loyalties” and allow them to move at their own pace through the criminal justice system (Mills 1996:267).

The use of a flexible remedy menu and timeline, and resort to creative criminal or civil justice system remedies, including protection orders, would also help battered immigrant women address another perceived barrier to engaging the justice system – their immigration status. Battered immigrant women often fear deportation or have concerns about undocumented immigration status. Information on immigration options for battered immigrants, including preventing the loss of legal immigration status that may be tied to her abuser's status, and about forms of immigration status she can file for directly without her abuser's knowledge or cooperation, may be crucial to a battered immigrant woman's willingness to report the abuse or cooperate with authorities in her abuser's criminal prosecution. If she fears that her involvement will trigger her own deportation she is likely to remain reluctant to invoke or participate in the criminal justice process.

Battered immigrant women need to be informed about their immigration status options. If her abuser is her spouse or parent, and is a U.S. citizen or lawful permanent resident, she may self-petition for legal immigration status through the VAWA 2000 amendments. Battered immigrant women whose abuser is not her spouse or parent and/or whose abuser is not a citizen or lawful permanent resident can potentially qualify for a new crime victim visa (U-visa) created by VAWA 2000. These remedies are available to the immigrant victim even when her abuser is convicted and deported, if the criminal sanctions are related to the abuse. The U-visa however, requires that the victim be willing to cooperate in the criminal prosecution of her abuser.

It would be therapeutic for the battered immigrant woman to think about prosecution as a multi-stage process. After her batterer's initial arrest, she needs to work with a trained domestic violence advocate to

develop a safety plan to determine whether she would be at risk of further abuse or other negative consequences if she participates in her abuser's prosecution. If being prosecuted for domestic violence could lead to the abuser's deportation, each battered immigrant woman needs to determine whether the deportation will enhance her safety or increase the danger to her and her family members. This should be a case by case decision (Orloff and Little, 1999) and it is absolutely essential that the immigrant victim consult with an immigration expert who has experience working with battered immigrants to determine whether she qualifies for a VAWA self-petition or a U-visa. If she can apply for immigration relief as a battered immigrant, the arrest documents can provide credible official documentation to support her immigration case (Orloff and Kaguyutan, 2002). For many, once the battered immigrant can access legal immigration status on her own and receive legal work authorization based on that status, significant barriers will be removed and she will be willing to pursue criminal prosecution of her abuser. For some, however, deportation could lead to serious harm to family members living abroad. In these cases, creatively using the criminal justice system to hold the batterer accountable without triggering his immediate deportation may be the best prosecutorial approach (Benson and Rolling 2001). Adopting such an approach in cases involving battered immigrant women is essential to achieving a culturally competent prosecutorial response.

Judiciary Response and Battered Immigrant Women

As already suggested, prosecutors and judges could also improve their responses to battered immigrant women by increasing their cultural sensitivity and general cultural competence through training. Many women interviewed by Erez et al. (2003) reported positive experiences with the court system, with the most common feedback regarding being treated with respect and kindness by judges as well as feeling the judges were on their side. However, they did have several important suggestions for improving the court process. Some women were uncomfortable facing their husband in court:

We don't like to stand in front of the judge and face our husbands with their attorneys. I really liked the fact that my husband wasn't present and in these cases it would be nice to know that other women wouldn't have to face their abuser in court either. The abuser's presence can be very intimidating.

Other women did not feel at ease in having the hearing in such a public arena:

It was undesirable because it was public. There was a judge and jury.

Many women expressed concerns about the process being time consuming and confusing, about justice agents who do not understand them, about a greater need for information, and about victim advocates who are familiar with their cultural concerns:

Victim advocates need to be from our culture so that we can give more information.

There should be someone from my community to assist me through the system, because there are things we don't feel at ease to talk about or some concerns.

They [criminal justice agents] should be more considerate [and realize] that immigrant women don't know about the laws and they should provide us with more information.

The women expressed satisfaction when they received help:

They [victim advocates] oriented me, I went to a domestic violence clinic and they helped me with my case, advised me, the counselor was very helpful.

The immigrant women also expressed concerns about an inequity in legal resources between themselves and their abusers:

[My experience with the court was] not very good. This is my first time in court, and he (my husband) has money and power.

Courts take too long to settle a dispute; every single issue goes to court. Spouse uses this and drags you to courts. It is costly, too, and we need free victim's representation as good as the spouse's representation.

More free legal access to courts, especially in cases of emergency. [We also need] to be updated and explained about the chances for success. I feel there is always an imbalance between spouse's attorneys who are paid well and ours who don't do their best.

The battered immigrant women's suggestions to improve the court process -- for instance, being treated with respect; providing them with information about the court process and a cultural advocate to help both explain the court process to the women and to educate

the court about cultural issues; and a greater sense of equity with regards to legal resources -- all have a potentially empowering and positive healing effect for battered immigrant women. Attention to such concerns may be therapeutic through giving them voice, validating their experiences, and equalizing their perceptions and experiences of the abuser as the more powerful party in the marriage.

The court process may also have significant therapeutic effects on the abuser. Wexler (2001) suggests that judges can play an important role in contributing to offender rehabilitation and reform through guaranteeing offender compliance with court ordered treatment and assuring that offenders make good on their promises to change. A batterer who does not perceive woman abuse as behavior that is outlawed may benefit from the judge ordering him to cease his abusive behavior. An authoritative body such as the court may bring home to the abuser that the behavior is not tolerated, regardless of his cultural background or country of origin.

Another important way in which judges can contribute to the rehabilitation of batterers of immigrant women is to exclude the use of cultural testimony to rationalize or explain the abuser's behavior. Such cultural testimony might include arguments that the violence or physical discipline is an acceptable way to handle dispute in their home country (Maguigan 1995) or resulted from stressors men experience because of their own difficulties living in a new culture (Rimonte 1991). Such cultural testimony portrays abusive immigrant men as victims rather than perpetrators, allowing abuse against women to become a victimless crime decriminalized by a cultural defense (Rimonte 1991; Vo lpp 1994, 1996). In this regard, it has been proposed that batterers be challenged to look at their choices. Even though an immigrant man's beliefs are shaped by his native culture, he can choose not to act on those beliefs. If he chooses to act, the court should hold him accountable for the consequences of his choice (e.g. Maguigan 1995). Understanding a defendant's culture may provide a context for his actions. However, "accepting his defense, especially as it relates to certain features of his culture that are oppressive of, or dangerous to other people, is equivalent to complicity" (Rimonte 1991:1324).

CONCLUSION

Battered immigrant women face tremendous barriers to using the U.S. criminal justice system to respond to the violence in their lives. The isolation due to their immigration context, fear of jeopardizing their immigration status, culturally prescribed role obligations, and social pressures to remain in the marriage create significant barriers for immigrant women in addressing the abuse they experience. A lack

of family support, the shame associated with disclosing abuse, lack of independent economic support, fear of losing their children, lack of linguistic skills, and obstruction from family and community create additional barriers to battered immigrant women in accessing the criminal justice system.

For those women who overcome these barriers and do interact with the system, the current structures of investigation, lack of translators, criminal justice actors' misunderstanding of cultural issues, and concerns about immigration status require battered immigrant women to engage in culturally incongruent activities in order to obtain relief. Such culturally conflicting interactions can create anti-therapeutic effects for these women, thereby reducing their current and future use of the system.

Using a therapeutic jurisprudence framework, we propose a series of policy recommendations and interaction strategies for working with battered immigrant women in culturally appropriate, empowering ways. Our recommendations require changes to criminal justice procedures at all system levels. As many of the suggestions come from advocacy and intervention work with battered women, such system changes would best be facilitated by developing collaborative working relationships among legal practitioners, clinical practitioners (social workers, domestic violence advocates), cultural consultants, and nontraditional community leaders and organizations. A therapeutic jurisprudence approach endorsed by all parties involved may enhance battered immigrant women's willingness to access the justice system, minimize the system's antitherapeutic effects, and maximize its therapeutic impact. As battered immigrant women are one of the most vulnerable populations in our midst, adopting interaction strategies that empower them would serve us all.

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