

Introduction

Tahirih Justice Center: Training Manual on VAWA and U Visas

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Promoting Justice
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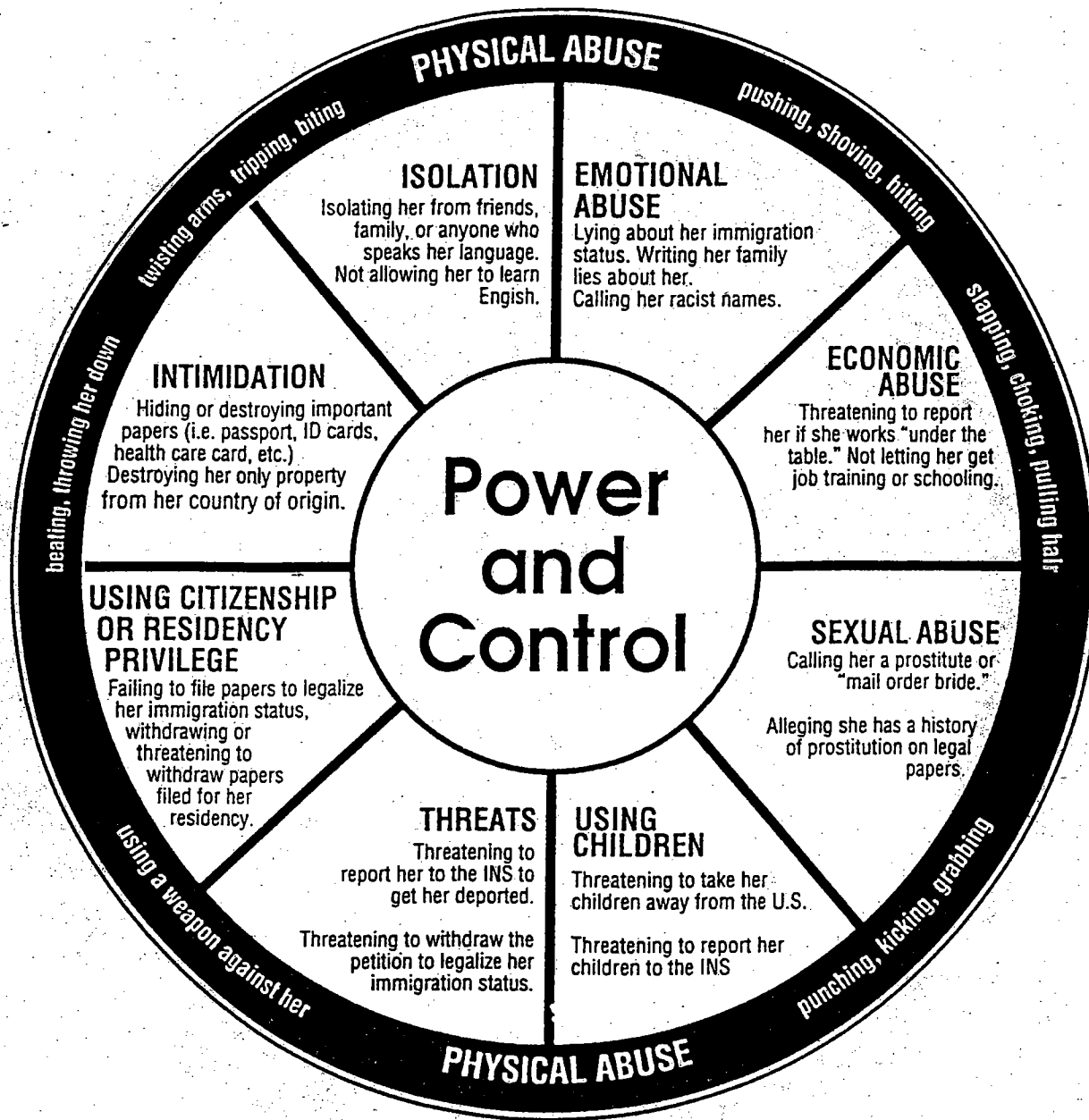
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The Power and Control wheel developed by the Domestic Abuse Intervenion Project in Duluth, Minnesota shows the various tactics of abuse that batterers use to control their partners.



This version of the Power and Control wheel, adapted with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota, focuses on some of the many ways battered immigrant women can be abused.

Resource for challenging
use of immigration
status in family court

The Impact of Domestic Violence on Children

A Report to the President of the
American Bar Association

August 1994

Second (Revised) Printing, October 1994

The ABA Steering Committee on the Unmet Legal Needs of Children
The ABA Young Lawyers Division, Children and the Law Committee
The ABA Section of Family Law, Domestic Violence Committee
The ABA National Conference of Special Court Judges, Domestic Violence Committee
The ABA Litigation Section Task Force on Children
The ABA Criminal Justice Section, Victims Committee

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ABA Center on Children and the Law
A Program of the Young Lawyers Division*

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Children's art work contained in this report has been provided courtesy of the Hawaii Family Court's divorce education project, located on the islands of Hawaii and Maui.

The Interaction of Domestic Violence and Immigration Concerns

A. Introduction

While advocates working with victims of domestic violence are knowledgeable about the dynamics of woman-abuse, they may be unfamiliar or unaccustomed to working with immigrant populations. This section discusses the particular experience and obstacles faced by immigrant women who are battered, and provides important advocacy tips for those who regularly assist battered immigrant women in obtaining restraining orders and a guide for what to do if a woman is detained by the INS.

B. The Experiences of Immigrant Women Who Are Battered¹

Although domestic violence affects all communities in the United States and cuts across race, ethnic, religious and economic lines, undocumented battered women face greater obstacles to escaping violence. This is primarily because immigration status is a factor that exacerbates the level of violence in abusive relationships when batterers use the threat of deportation as a tool to hold undocumented battered women in violent relationships.

Battered immigrant women are vulnerable to an abuser's manipulation due to their lack of knowledge about the United States and their fear of deportation. For undocumented immigrant women, the fear of deportation plays a major role in their failure to seek help. One study of undocumented immigrants found that for 64% of Latinas and 57% of Filipinas, the primary barrier to seeking help from social service agencies is the fear of deportation.² Immigrant women often know little about the U.S. legal system and customs, or about social service agencies in their area which might offer them assistance.

Battered immigrant women who seek help from the legal system to stop domestic abuse must overcome significant barriers. Those barriers include distrustful expectations about the legal system, language and cultural barriers, and fear of deportation.

1. Distrust of the Legal System

The reticence of many immigrants and refugees to turn to the legal system for help grows out of their experience with legal systems in their home countries. Many immigrants come from countries whose legal system works very differently than ours. In countries which use a civil law system, the primary form of evidence accepted in court is signed, notarized, and sealed affidavits. Immigrant litigants in the United States often have great difficulty understanding our common law system where oral testimony is not only valid evidence, but the primary form of evidence presented.

¹ Large portions of this section are adapted from L. Orioff and C. Klein, "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law," 21 Hofstra Law Review 801 (Summer, 1993).

² C. Hogeland & K. Rosen, *Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity* 17 (1991).

Further, many immigrants come from countries where the judiciary is an arm of a repressive government and does not function independently. They expect that persons who will prevail in court are persons with the most money or the strongest ties to the government.³ In domestic violence cases, batterers often manipulate these beliefs to get battered immigrant women to drop charges or dismiss protection orders by convincing them that, since the batterer is a citizen, has more money, or is a man and therefore is inherently more credible, he will win in court and her life will become even more difficult.

2. Fear of Deportation

Threats and fear of deportation are the single largest concern for all immigrant, refugee, or non-English speaking battered women who seek help fleeing violence. Fear of deportation may hinder battered women from seeking legal assistance whether or not they have already obtained legal immigration status. This is largely due to incorrect information provided to battered women by their batterers. For undocumented women, fear of deportation is the primary reason that few seek help unless the violence against them has reached crisis proportions.

Batterers often purposely instill fear of deportation in their wives. This fear, as well as the lack of information available to many battered women, may make it difficult for women to seek help from police, courts, hospitals or advocates, to engage in safety planning and to document their cases with the INS later. Women may not know that it is important that their name be on the checking account, or that they should have saved mail in their names received at their residence. They may not have called the police and made a police report because they were told that if they call the police for help their batterers will have them deported. They may not have reported abuse to hospital workers because their batterer was translating for them. Their batterers' threats of deportation may have kept them from disclosing their situation to anyone.

Legal immigration status, or lack thereof, is not a fact that legally precludes battered immigrant and refugee women from obtaining civil protection orders, from filing criminal charges against their batterers, or from cooperating with criminal prosecutors. No existing law limits court protection or the ability of the criminal courts to prosecute based on the victim's or the perpetrator's immigration status.⁴ Nevertheless, the risks associated with taking action to stop the violence must be assessed in light of each battered woman's immigration status. The risks are real, since the INS will often act on a tip from a batterer even if there is a restraining order against him. Therefore, it is important for advocates and attorneys who may come in contact with battered immigrant women to be aware of the

³ United States Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination* 75 (1993).

⁴ In fact, prosecutors in criminal cases and advocates or attorneys in civil cases should object strenuously if the batterer attempts to enter evidence of a woman's immigration status. They should argue that this evidence is irrelevant and should not be admitted.

rights of immigrants detained by INS and various means available for an undocumented person to attain legal immigration status.

3. Language Barriers

When battered immigrant women do seek assistance, they often encounter great obstacles. The largest obstacle may be language barriers. Few court systems ensure that they will be provided with the assistance of a certified interpreter. Few police departments have implemented policies which ensure that non-English speaking victims can communicate their complaints effectively to police or can learn about their rights from police officers who respond to calls.

Further, non-English speaking battered women have limited access to shelter. When they seek shelter, they may discover that the persons who answer the hot-line do not speak their language. If they do find a way to communicate with the hot-line attendant, their requests for shelter may be denied by shelter workers who prefer to offer limited numbers of slots to women who can theoretically make better use of all shelter services. Finally, even if they are accepted in the shelter, immigrant women may not feel welcome or comfortable when the majority of staff and guests don't speak their language, eat their foods or understand or share their culture.

4. Cultural Barriers

Immigrant women may also not want to leave a marriage due to cultural mores concerning a woman's place, family, marriage, sex roles and divorce. A woman may legitimately feel that she and her children will be ostracized by her community if she leaves her husband. A woman may have been raised in a culture where it is acceptable for a husband to beat his wife and expected that a wife will endure the abuse.

Even if the woman does not want to endure the abuse, she may not want to jeopardize her husband and his standing in the community. If her husband is a legal permanent resident, she may believe that he will be deported if she calls the police or if he is charged with assaulting her. If she turns to members of her community for help they may also be more concerned with his continued status in the community rather than her well-being and safety.

5. Economic Barriers

Often, an undocumented immigrant woman is more economically dependent on her partner than women who are U.S. citizens or legal permanent residents. Her economic dependence is intensified by the impact of immigration laws concerning employer sanctions and hiring practices. If she is undocumented she will not have authorization to work in the U.S. If she manages to find work despite her lack of employment authorization, it is probably at a low-paying job with no benefits or job security.

Battered immigrant women are also hampered by laws and regulations which make them ineligible for most forms of public assistance or income entitlement programs. As of

the writing of this manual, the U.S. Housing and Urban Development Department has implemented regulations that would ban many battered immigrant women from obtaining federal public housing assistance. The Personal Responsibility Act, recently passed by the U.S. House of Representatives and pending in the Senate, would make even lawful permanent resident women ineligible for dozens of assistance programs including AFDC, WIC, Medicaid, and SSI. States also are increasingly restricting the access of immigrants to their public aid programs.

In addition, a woman's relatives or children in her homeland may be dependent on her husband for financial support. She may feel that if she leaves her husband her family might go hungry.

C. Techniques for Interviewing Battered Immigrant Women

Your meeting with a battered immigrant woman may be her first experience with the U.S. legal system. The emotional trauma associated with abuse may be combined with her fear, intimidation and confusion about the legal process. It will be your job to impart a great deal of information as well as to obtain necessary information from her. This will require establishing a good rapport with the woman and being able to both ask questions and listen to the answers, as well as listening to questions and giving clear and concise answers. You must also be supportive, non-judgmental, and understanding.

If you are interviewing a woman who does not speak a language in which you are proficient, make sure you obtain a disinterested translator for your interview. It is better if you can obtain someone who is also from the same culture as your client and can therefore understand more of the nuances of the language and customs of the culture that you may not understand. Unless you absolutely can't avoid it, do not use family members or friends to translate for the woman. Friends and family are not trained to translate. They may summarize or put their own spin on what the client is saying and filter out the parts they decide are not important. More importantly, clients may feel ashamed to discuss many intimate details of the abuse in front of someone they know and have to deal with on an ongoing basis. Friends and family may later use the information gained in the interview to hurt or humiliate the woman, even if unwittingly.

Always avoid using children to translate. They may experience emotional trauma at hearing accounts of abuse inflicted upon someone they love. These situations are also very confusing for them, because children often have ties of affection to their mother's abuser.

Remember that battered women may be very confused, scared and ambivalent about going forward with their cases. Some battered women engage in denial as a means with coping with the abuse they suffer. Others do not identify with being a "battered woman." For this reason, women may say to you that their batterers never beat them or that they are not battered women. They may also simply not understand that certain behaviors constitute abuse.

