



**Literature Review:  
Structural Racism, the Criminal Justice System and Violence Against Women**

**Gavin Kearney**

The Battered Women's Justice Project

2003

Battered Women's Justice Project  
1801 Nicollet Ave N, Suite 102, Minneapolis, MN 55403  
[technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org)  
800-903-0111 prompt 1

## **Literature Review: Structural Racism, the Criminal Justice System and Violence Against Women**

*Prepared by Gavin Kearney for the Battered Women's Justice Project*

Literature on domestic violence, the criminal justice system, and race/ethnicity, all discuss a number of problems with using the CJS to address domestic violence. Many of these problems are interrelated/interdependent.

The structure of this review is as follows:

- I) Structural Racism in the Criminal Justice System in general
- II) Race, Domestic Violence and the CJS: Overarching Issues
- III) Specific issues arising from CJS efforts to address domestic violence.
- IV) Collateral effects of using the CJS to address domestic violence.
- V) More effectively addressing domestic violence through reform or replacement of the CJS.

In addition to these sections, there are a few appendices attached to this review. The first is a list of organizations working on domestic violence and CJS issues with a specific focus on communities of color. The second is a joint statement from Incite! Women of Color Against Violence and Critical Resistance calling for the development of strategies that effectively address violence against women without the involvement of the CJS. Finally, there is a bibliography of the sources used in this literature review as well as a bibliography of additional resources that were not used for this review but may be worth exploring.

## I. Structural Racism in the Criminal Justice System in General

### *Defining Structural Racism*

Although there is no single definition of structural racism, there is substantial agreement about its salient characteristics. The Aspen Institute Roundtable on Comprehensive Community Initiatives, which focuses its efforts on addressing structural racism within the context of community development, states that “structural racism refers to the ways in which history, public policies, cultural stereotypes and norms, and institutional practices interact to maintain racial hierarchies and inequitable racial group outcomes.”<sup>1</sup> Similarly, Henry Louis Taylor and Samuel Cole define structural racism as:

A distributive system that determines the possibilities and constraints within which people of color are forced to act. The system involves the operation of racialized structural relationships that produce the unequal distribution of material resources, such as jobs, income, housing, neighborhood conditions, and access to opportunities.<sup>2</sup>

Writing in the context of global economics, Rodolfo Stavenhagen states that structural racism “refers to the dynamics of economic and social institutions through which racialized groups become systematically marginalized or excluded from the benefits of development, regardless of the prejudices, beliefs or intentions of particular individuals who happen to direct or manage such institutions.”<sup>3</sup>

As these characterizations make clear, a focus on structural racism is a focus on effect and outcomes. Thus, structures and institutions that create and/or perpetuate racial hierarchy are regarded as racist regardless of the means by which this hierarchy is maintained. This is in stark contrast to prevailing domestic civil rights policy and case law which focus on process rather than harm. A prominent example of this is the Supreme Court’s 14<sup>th</sup> Amendment jurisprudence which applies significantly different levels of scrutiny to policies that employ explicit racial categories and which requires, in most circumstances, that racial inequality created by government action be demonstrably intentional before it is found unconstitutional.<sup>4</sup> A focus on structural racism makes clear that the perpetuation of racial hierarchy is not dependant upon the intent of actors (or manifestations of such intent) or the use of explicit racial categories.

In contemporary society, a characteristic feature of racism is the move to deny the relevance of structures on individual and group outcomes and to propagate norms and stereotypes that

---

<sup>1</sup> Aspen Institute Roundtable on Comprehensive Community Initiatives, “Applying a Structural Racism Framework: A Strategy for Community Level Research and Action” (<http://www.regionwise.org/main/pdfs/StructuralRacism.pdf>).

<sup>2</sup> Henry Louis Taylor, Jr. and Sam Cole “Structural Racism and Efforts to Radically Reconstruct The Inner-City Built Environment” (2001) at fnnt. 13 (hereinafter “Taylor and Cole”). ([http://www.thecyberhood.net/Residents\\_enter\\_here/private/seminar\\_room/Monthly\\_Article/Structrural\\_Racism\\_and\\_Community.pdf](http://www.thecyberhood.net/Residents_enter_here/private/seminar_room/Monthly_Article/Structrural_Racism_and_Community.pdf))

<sup>3</sup> Rodolfo Stavenhagen, “Structural Racism and Trends in the Global Economy,” International Council on Human Rights Policy (1999)(<http://www.ichrp.org/ac/excerpts/52.pdf>).

<sup>4</sup> See, e.g. *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

attribute systemic inequalities to individual or collective successes or failures (e.g. the myth of the “self-made man/woman,” the bootstrap ethic, culture of poverty theory, “personal responsibility” approaches to welfare policy, increasingly retributive criminal justice models). In doing so, the effects of structural inequalities are used to justify the structures themselves. Higher rates of unemployment, poverty, crime, and school failure, for example, provide justification for policies that further dismantle the social safety net and hold low-income communities of color increasingly “accountable” for these outcomes.<sup>5</sup> As Taylor and Cole state, “[t]hese structural elements are considered *racist* because of the disproportionately negative affect they have on people of color and because they produce a belief system that normalizes and legitimizes the racially based social class hierarchy that perpetually produces race and social class inequality in the United States.”<sup>6</sup>

In addressing structural racism, it is also important to focus on the interrelationship of structures. Thus, for example, understanding the impact of “welfare reform” requires an analysis that includes but goes beyond the way in which welfare recipients are treated under the policies and through the agencies that administer the program. Such an analysis must look at policies and practices in related areas such as economic development, education, transportation, and housing. As will be discussed below, an analysis of the racial impact of the criminal justice system (CJS) must include an exploration of the ways in which other systems, such as immigration, employment, and housing, affect and are affected by the CJS. Similarly, such an analysis must account for the ways in which different individuals and groups are situated with respect to these systems because of factors such as economic status, race/ethnicity, gender, immigration status, language, and location. Addressing structural racism requires reforming and/or creating institutions and systems that account for these particularities.

### *Structural Racism in the Criminal Justice System*

A statistical overview makes clear that while the CJS has expanded greatly in the recent past, the burden of this expansion has been borne disproportionately by communities of color. The National Criminal Justice Commission (NCJC), an independent organization created to engage in “independent and critical assessment of the American justice system” reports the following:

- The number of people locked up has tripled since 1980. There are now 1.5 million people in prisons and jails nationwide. An additional 3.6 million people are on probation or parole.
- The expansion of the justice system has had little, if any, effect on crime. Crime rates have been stable or slightly declining for the last twenty years. Since 1973, the overall number of victimizations has declined 6%, robbery has dropped 12%, and the murder rate has stayed roughly the same -- though homicides by juveniles have increased markedly.

---

<sup>5</sup> See, e.g., David Theo Goldberg, *RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING* 197 (1993):

The racialized image of urban squalor is taken to pollute the picture we are supposed to have of the body politic by reflecting itself in terms of other social pathologies like crime, drug abuse, prostitution and now AIDS. The poverty of the inner city infrastructure provides a racial sign of complex social disorders, of the manifestation when in fact it is their cause.

<sup>6</sup> Taylor and Cole, footnote 13.

- There are 50 million criminal records on file with the police. Five million Americans have lost the right to vote as a result of a criminal conviction.
- 84% of the increase in admissions to prison since 1980 were non-violent offenders.
- Relative to their populations, there are seven times as many minorities in prison as whites.
- In many cities, about half of young African American men are under the control of the criminal justice system. In Baltimore the figure is 56%; in D.C. it is 42%. In a single year in Los Angeles, one third of the young African American men spend time behind bars. Almost one in three young African American men in the age group 20-29 is under criminal justice supervision on any given day.<sup>7</sup>

Not only are the disparities stark in the present, there is reason to believe that they will become worse in the future, Nearly three fourths of admissions to prison today are African Americans or Hispanics suggesting that these disparities will only worsen over time.<sup>8</sup> In addition the largest imprisoned population on a per capita basis is Native Americans.

In communities of color, men bear the brunt of the CJS. The burden borne by women of color, however, is increasing rapidly. As Angela Y. Davis observed in her keynote address at the Color of Violence Against Women conference:

It is rarely acknowledged that the fastest growing group of prisoners are black women. ...While women still constitute a relatively small percentage of people behind bars, today the number of incarcerated women in California alone is almost twice what the nationwide women's prison population was in 1970.<sup>9</sup>

Studies have consistently found that racial/ethnic disparities in the CJS are a reflection of law enforcement policies and practices rather than different levels of criminal behavior. According to the NCJC:

Racial disparities are better explained by disparate enforcement practices than higher rates of crime in minority communities. For example, African Americans constitute 12% of the U.S. population, 13% of the drug using population, but an astonishing 74% of the people in prison for drug possession. Latinos, Asians, Native Americans and other racial groups also suffer from disparate enforcement of the criminal law.<sup>10</sup>

---

<sup>7</sup> National Criminal Justice Commission, Key Findings, <http://ncia.igc.org/ncia/KEY.HTML> (hereinafter "NCJC-1")

<sup>8</sup> National Criminal Justice Commission, THE REAL WAR ON CRIME (Stephen R. Danziger, ed.)(hereinafter "NCJC-2")

<sup>9</sup> Angela Davis, Keynote Address, Color of Violence Against Women Conference, [http://www.arc.org/C\\_Lines/CLArchive/story3\\_3\\_02.html](http://www.arc.org/C_Lines/CLArchive/story3_3_02.html) (Fall 2000).

<sup>10</sup> NCJC-1.

More specifically, studies of the CJS in general, and the CJS in Minnesota in particular, find a clear and pervasive pattern of racial inequality and bias that begins at the street level with policing, accumulates throughout the system, and culminates in massive disparities in incarceration rates: “As minorities move through the system, they encounter slightly harsher treatment at every step. Marginal disparities at arrest are combined with marginal disparities at the bail decision, the charging decision, the verdict and the sentence-- by the end of the process, the disparity is considerable.”<sup>11</sup>

In response to growing concerns over the possibility of racism in the CJS, the Minnesota Supreme Court created a Task Force on Racial Bias in the Judicial System to examine the legitimacy of these concerns in Minnesota. The Task Force reported its findings in 1993 and its overall summation concludes that bias accumulates throughout the CJS. The task force refers to this accumulation as the “‘funnel effect,’ starting with arrest and charging and ending with sentencing, through which a disproportionate number of people of color get caught up in the system and a disproportionate number are eventually sentenced.”<sup>12</sup>

Discrimination at the front end of the CJS, at the “street level,” is in part manifested in studies of “racial profiling.” One example of this is a recently published study of traffic stops in sixty-five law enforcement jurisdictions in Minnesota. Overall, the study found:

Law enforcement officers stopped Black, Latino, and American Indian drivers at greater rates than White drivers, searched Blacks, Latinos, and American Indians at greater rates than White drivers, and found contraband as a result of searches of Blacks, Latinos, and American Indians at lower rates than in searches of White drivers. Conversely, law enforcement officers stopped and searched White drivers at lower rates than drivers of color and found contraband in searches of White drivers at a greater rate than in searches of drivers of color.<sup>13</sup>

Disparate treatment by law enforcement officers is also manifested in arrest rates for different racial/ethnic groups. According to the NCJC, “relative to population size, about five times as many African Americans as Whites get arrested for the serious index crimes of murder, rape, robbery, and aggravated assault.”<sup>14</sup> Furthermore, three times as many Blacks as Whites are arrested for the less serious crimes which make up the bulk of the cases currently overwhelming the criminal justice system. The NCJC states that “most studies reveal what most police officers will casually admit: that race is used as a factor when the police follow, detain, search, or arrest.”<sup>15</sup>

Biased law enforcement manifests itself both in broad patterns of enforcement activity and in specific incidents where bias and misconduct are clearly manifested. Where misconduct is

---

<sup>11</sup> Id.

<sup>12</sup> Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report at S-3 (May, 1993)(hereinafter “Task Force Report”).

<sup>13</sup> Institute on Race & Poverty and Council on Crime and Justice, Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions. Report to the Minnesota Legislature (9/22/03)(hereinafter “Minnesota Profiling Study” (<http://www1.umn.edu/irp/racialprof/aggregate%20report%2092303.pdf>)).

<sup>14</sup> National Criminal Justice Commission, THE REAL WAR ON CRIME (Stephen R. Danziger, ed.).

<sup>15</sup> Id.

manifest, evidence suggests that departments do not provide effective avenues of recourse or take effective corrective measures. Examples from adjudicated cases and from independent investigations provide hard documentation of the systemic flaws in the complaint processes in many police departments. It is not uncommon to find that officers who have been the subject of numerous citizen complaints of brutality are rarely disciplined and continue to serve on the force.<sup>16</sup>

Discriminatory treatment at the street level is also a function of institutionalized law enforcement policies and practices. For example, many jurisdictions employ policies that disproportionately target law enforcement activity in high crime neighborhoods. Examples of such policies are CODEFOR, a policy of the Minneapolis Police Department, and the use of “SAFE zones” by the Saint Paul Police Department. Neighborhoods targeted by these policies tend to have higher crime rates and are also more likely to be poor and to have large populations of color. Because residents in these neighborhoods are more likely to be stopped, questioned, searched and arrested by officers, the likelihood that people of color will experience such treatment increases. At the same time, evidence suggests that people of color residing in these neighborhoods are more likely to be stopped and searched than White residents of these neighborhoods indicating that the disparate impact of these policies is exacerbated by biased law enforcement.<sup>17</sup>

In January of 2002, the Hennepin County Office of Planning and Development released a report on the status of young African American Men in Hennepin County. Among other things, the report found that in the preceding calendar year, forty-four percent of African American men between the ages of 18 and 30 in the county were arrested. The report also found that young African American men in the county were 27 times more likely to go to jail than young white men.<sup>18</sup> Studies in other jurisdictions have made similar findings.<sup>19</sup>

Beyond policing, research has found bias in every stage of the judicial process. For example, based on its own research, and research that it reviewed, the Minnesota Supreme Court’s Task Force reported the following:

- “Studies indicate bias exists at a number of points in the setting of bail and the pretrial release process.”<sup>20</sup>
- There is evidence of bias in bail evaluations.<sup>21</sup>
- With respect to plea negotiations, “national studies have found that the race of the defendant and the race of the victim can both influence the exercise of this discretion.”<sup>22</sup>

---

<sup>16</sup> David Rudovsky, *Police Abuse: Can the Violence Be Contained*, 27 HARV. CIVIL RTS-CIVIL LIBERTIES 465 (1992).

<sup>17</sup> See Minnesota Profiling Study.

<sup>18</sup> Hennepin County Office of Planning and Development, African American Men Project Final Report Executive Summary (January 2002) (<http://www.co.hennepin.mn.us/opd/Reports/AAmenproject/jan2002/finalreport/finalreportexecutivesummary.htm>).

<sup>19</sup> Jerome G. Miller, *From Social Safety Net to Dragnet: African American Males in the Criminal Justice System*, 51 Wash. & Lee L. Rev. 479, 483-4 (1994).

<sup>20</sup> Task Force Report at S-8.

<sup>21</sup> Id. At S-10.

<sup>22</sup> Id. At S-11.

- “Jury pools rarely, if ever, are representative of the racial composition of our communities.”<sup>23</sup>
- “Sometimes judges do not take minorities, defendants and non-defendants, seriously or treat them with respect. Prosecutors sometimes make disparaging remarks about people of color in the presence of defendants.”<sup>24</sup>
- “Whites were twice as likely to be recommended by probation officers for stays of imposition of sentence than people of color.”<sup>25</sup>
- “The study found that people of color had consistently higher imprisonment rates compared to Whites in these offense categories.”<sup>26</sup>
- “White offenders received more lenient treatment than minority offenders who were similarly situated under Sentencing Guidelines.”<sup>27</sup>

Furthermore, the NCJC reports that “the most comprehensive study of the death penalty found that killer of whites were eleven times more likely to be condemned to death than killers of African Americans”<sup>28</sup>

In conjunction with the bias of decision makers wherever discretion functions within the CJS, racial inequalities are also caused by ostensibly neutral criminal justice policies that affect communities of color most harshly. Notable among these are the policies that comprise the “war on drugs” and the “tough on crime” agenda, two interrelated imperatives of recent criminal justice policy.

As a result of these imperatives, the CJS in general, and the prison system in particular have expanded rapidly. Jerome G. Miller notes:

Federal, state, and local funding of the justice system literally exploded in the two decades leading up to the 1990s. Average direct federal, state, and local expenditures for police grew by 16%; courts by 58%; prosecution and legal services by 152%; public defense by 259%; and corrections by 154%. Federal spending for justice grew by 668%; county spending increased by 710.9%; state spending surged by 848%.<sup>29</sup>

At the same time, funding for social service programs, targeted towards addressing many of the root causes of criminality, was curtailed significantly.<sup>30</sup>

This shift of public funds has created strong business interest in the CJS, particularly as certain aspects of it, notably the prison system, have undergone privatization. This has led many to dub the prison system the “prison industrial complex” (PIC). In some areas, notably rural and semi-rural areas, that have lost their traditional economic bases, the siting of private prisons are now

---

<sup>23</sup> Id. At S-13.

<sup>24</sup> Id. At S-15.

<sup>25</sup> Id. At S-17.

<sup>26</sup> Id. At S-18.

<sup>27</sup> Id. At S-19.

<sup>28</sup> NCJC-2.

<sup>29</sup> Miller at 480.

<sup>30</sup> Id.

perceived as a job creation strategy and this creates an additional layer of incentives to expand the CJS. In regard to this, Angela Y. Davis states:

As prisons proliferate in U.S. society, private capital has become enmeshed in the punishment industry. And precisely because of their profit potential, prisons are becoming increasingly important to the U.S. economy. If the notion of punishment as a source of potentially stupendous profits is disturbing by itself, then the strategic dependence on racist structures and ideologies to render mass punishment palatable and profitable is even more troubling.<sup>31</sup>

### *Collateral Effects of Structural Racism in the CJS*

Beyond the direct consequences of structural racism in the CJS, there are a number of indirect consequences. As the NCJC observes, the excessive nature of the criminal justice system has a number of effects for communities of color on the whole. One is an increased loss of faith in government in general and the CJS in particular as law enforcement is viewed as harmful and discriminatory rather than protective. Intimately related to this is the fact that as police presence, arrests, and convictions increase in a particular neighborhood, criminals are decreasingly viewed as an outside antagonistic force.<sup>32</sup> In communities of color, a large number of residents have personal experience with unjust treatment by the CJS or have a close friend or relative that does. Even when criminal activity is involved, the often excessive response of the CJS diminishes faith in it. Residents of low-income communities of color express frustration over the tension of wanting to be safe from crime and wanting to be safe from discriminatory and excessively punitive treatment by the CJS.

There are also a number of negative collateral effects for individuals who become involved in the CJS. Involvement in the system starts a vicious cycle and a person arrested once (regardless of conviction) may be branded an ex-offender for life. The employment prospects of individuals involved with the CJS are severely diminished because of employer wariness and the failure of the criminal justice system to develop skills in inmates: “employers tend to pass over applicants who have criminal records of any sort - even if that record reflects an arrest for a minor infraction, and even if that arrest is unfounded.”<sup>33</sup> Over-incarceration has also led to the disenfranchisement of a large number of African Americans because of laws prohibiting inmates and ex-convicts from voting. David Bositis notes that one out of every seven Black men has lost the right to vote as a result of the criminal justice system.<sup>34</sup>

Getting caught up in the CJS can also limit the housing prospects of individuals and their families as landlords will often conduct criminal background checks of prospective tenants and choose not to rent to people with any kind of criminal record. This is particularly true in areas with tight rental markets where landlords can choose from a number of individuals for any given opening. Having a criminal record can also affect the eligibility of individuals and their family members for public housing. As will be discussed in further detail below, involvement in the

---

<sup>31</sup> Davis, Keynote Address.

<sup>32</sup> NCJC-2.

<sup>33</sup> NCJC-2

<sup>34</sup>David A. Bositis, *Without the Consent of the Governed: Race, Crime, Voting Rights, and Community*.

CJS can also have significant consequences for non-citizens and their families. Ultimately, involvement in the CJS makes individuals more susceptible to those factors which lead to criminality-joblessness, homelessness, poverty, and so forth.

## II. Race, Domestic Violence and the CJS: Overarching Issues

According to Donna Coker, individuals and organizations concerned about domestic violence, like communities of color, are ambivalent about the CJS:

On one hand, battered women's advocates want to hold the police accountable, as agents of the state, for carrying out the government's mandate to protect citizens. On the other hand, feminists realize that police often exercise their power in ways that reinforce the disadvantages already experienced by women, and in ways that reinforce the disadvantages experienced by members of poor and minority communities as well. We must frame this crisis the following way: state power . . . simultaneously empowers and disempowers women.<sup>35</sup>

Beyond the normative significance of treating domestic violence on a par with other forms of violent crime, advocates across the political spectrum recognize the critical role that the CJS can play in protecting women from immediate threats of violence. A recent report by the Ms. Foundation stated:

It is clear that the criminal legal system has been, and continues to be, a lifesaver for many battered women, including women of color. Women, even from the most disadvantaged communities, routinely seek the help of law enforcement and courts when in crisis. With limited options, law enforcement is called in situations posing serious risk or harm.<sup>36</sup>

As will be discussed below, “abolitionist” organizations—organizations that want to dismantle, not reform, the CJS--recognize that protecting battered women from immediate harm is a critical need for which they have yet to devise an effective response that is independent of the CJS.

***Deep distrust among communities of color of the government in general, and the criminal justice system in particular.***

Not surprisingly, given our country's long and continuing history of racism, many members of communities of color have a deep-seated distrust of the government in general and of the CJS in particular. For example, Andrea Smith notes that in attempting to address domestic violence in the Native American community, “the primary reason Native women gave for not going outside the community for help was that it was like appealing to a ‘foreign government’ for assistance.”<sup>37</sup>

Rivera makes a similar point with respect to Latino/a communities:

---

<sup>35</sup> Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 Buff. Crim. L. Rev 801 (2001) at 801 (quoting Laurie Naranch, Naming and Framing the Issues: Demanding Full Citizenship for Women, in *Feminists Negotiate the State: The Politics of Domestic Violence* 20, 33 (Cynthia R. Daniels et al. eds., 1997).

<sup>36</sup> Ms. Foundation for Women, *Safety and Justice for All: Examining the Relationship between the Women's Anti-Violence Movement and the Criminal Legal System* (2003).

<sup>37</sup> Andrea Smith, *Colors of Violence*, *Colorlines Magazine* (Winter 2000-2001) ([http://www.arc.org/C\\_Lines/CLArchive/story3\\_4\\_01.html](http://www.arc.org/C_Lines/CLArchive/story3_4_01.html)).

If a Latina decides to go beyond the perimeters of her community and seek assistance from outsiders--persons already considered representatives of institutional oppression--the community may view her acts as a betrayal. A Latina, therefore, may tolerate abuse rather than call for outside help. This hesitance to seek assistance provides the community with an excuse for ignoring or denying violence against Latinas, as well as for trivializing and resisting Latina activists' efforts to create a community strategy to end the violence.<sup>38</sup>

Rivera notes that some of this distrust of government and police is a product of experiences that occurred prior to immigration:

People from Latin America share a common regional heritage marked by abuse inflicted at the hands of governmental officials, the military, and local law enforcement officers. Immigrants often come to the United States to escape police and military physical abuse. Because the use of force has often been condoned by repressive governments in the immigrants' native countries, these immigrants possess negative memories and suspicions about the assistance available from law enforcement agencies.<sup>39</sup>

That said, the discussion of structural racism in the CJS above indicates that this distrust has a legitimate foundation in the experiences of people of color in the U.S. as well. The discussion that follows will show that the CJS response to domestic violence is not free from the bias and racism that afflicts the CJS as a whole. This suggests that any attempt to make the CJS an effective avenue for addressing violence against women, no matter how well intentioned or well designed, will be met with resistance from communities of color. It also suggests that strategies and programs that use the CJS to address domestic violence may be underutilized in communities of color no matter how well designed and implemented they are.

***Loss of control of the process, which contributes to the excessive presence of government in the lives of people/communities of color.***

Another overarching issue, noted above, is that involving the CJS can protect and empower women in some respects while at the same depriving them of agency and the power to improve their situations. For many advocates, a central goal of an effective response to domestic violence is empowering victims to make decisions about their own well-being. While the CJS plays a critical role in protecting victims from immediate violent episodes, its involvement can set into a motion a number of processes that ultimately undermine victims' agency. In doing so, it can further insinuate the state into the lives of victims and their families. As will be discussed below, this is particularly problematic for communities of color.

The Ms. Foundation report observes:

---

<sup>38</sup> Rivera at p. 249.

<sup>39</sup> Id. at footnote 78.

- “When state power intervenes, it often takes over. Many people who call for assistance end up having no say in the intervention once the legal system has entered into their lives.”
- “Some communities, such as communities of color, feel that law enforcement (often accompanied by other systems like child protective services) is too present in their lives. In these communities, the police tend to intervene frequently and, as a consequence, many get arrested. Women who experience violence may request assistance during a violent episode, but find that they lose all control over the intervention once the system (be it criminal legal, child welfare, mental health, or welfare) enters their lives.”
- “Institutions of all sorts, but primarily those with oversight functions, such as probation departments and child welfare systems, are part of everyday life for many poor families and communities of color. In this situation, the locus of control is institutionally based, rather than community driven.”<sup>40</sup>

Kimberle Crenshaw also speaks to tension in communities of color dealing with domestic violence between assuring the safety of victims and protecting the community from the racism of government institutions:

Women of color are often reluctant to call the police, a hesitancy likely due to a general unwillingness among people of color to subject their private lives to the scrutiny and control of a police force that is frequently hostile. There is also a more generalized community ethic against public intervention, the product of a desire to create a private world free from the diverse assaults on the public lives of racially subordinated people. The home is not simply a man's castle in the patriarchal sense, but may also function as a safe haven from the indignities of life in a racist society. However, but for this "safe haven" in many cases, women of color victimized by violence might otherwise seek help.<sup>41</sup>

Thus, as Crenshaw points out, victims of domestic violence in communities of color find conflicts among their own interests and conflict between their interest in being safe and the interests of the community at large in protecting itself from racist state structures and policies.<sup>42</sup>

***The need to account for the particular circumstances of members of different racial/ethnic groups when creating and implementing effective policies and program***

Policies and programs tend to affect different racial/ethnic communities differently for a number of reasons. These include discrimination, economic status, legal status, culture, and language. Failure to account for these differences creates policies that are of limited effectiveness, at best, and that reinforce and/or exacerbate existing racial inequalities, at worst. This issue is not exclusive to efforts to address domestic violence through the CJS, but it is manifested in them.

According to Crenshaw, effective efforts to address domestic violence must be responsive to the web of oppression that women of color experience:

---

<sup>40</sup> Ms. Foundation Report.

<sup>41</sup> Crenshaw at 1257.

<sup>42</sup> This observation is echoed by many writers on race and domestic violence.

In most cases, the physical assault that leads women to these shelters is merely the most immediate manifestation of the subordination they experience. Many women who seek protection are unemployed or underemployed, and a good number of them are poor. Shelters serving these women cannot afford to address only the violence inflicted by the batterer; they must also confront the other multilayered and routinized forms of domination that often converge in these women's lives, hindering their ability to create alternatives to the abusive relationships that brought them to shelters in the first place. Many women of color, for example, are burdened by poverty, child care responsibilities, and the lack of job skills. These burdens, largely the consequence of gender and class oppression, are then compounded by the racially discriminatory employment and housing practices women of color often face, as well as by the disproportionately high unemployment among people of color that makes battered women of color less able to depend on the support of friends and relatives for temporary shelter.<sup>43</sup>

Rivera makes this same point with respect to Latinas in particular. She describes a number of factors that limit the economic and political strength of Latino/as and that affect their interactions with government institutions, and that affect efforts to effectively address domestic violence in this community:

- “[B]ecause a large number of Latinos are neither citizens nor legal permanent residents, their economic existence is often based on ‘underground’ employment sources and markets. They remain unable to fully utilize critical services such as social and medical assistance programs.”
- “[M]any Latinos are not native English speakers and have limited English language comprehension. Although fluent in Spanish, their lack of English language skills places them at a competitive disadvantage in the employment market and acts as a barrier to obtaining an equal education.”
- “Latino families are more likely than non-Latino families to be headed by a single woman. Although being raised by a single mother may not impact negatively on personal development or career attainment, to the extent that these rates correlate positively with poverty rates, they are important indicators of actual and potential socioeconomic status.”<sup>44</sup>

Traditional Latino/a culture also affects the dynamics of violence against women and efforts to address it:

Within the Latino community, Latinas' identities are defined on the basis of their roles as mothers and wives. By encouraging definitions of Latinas as interconnected with and dependent upon status within a family unit structure, the Latino patriarchy denies Latinas individuality on the basis of gender. For Latinas, cultural norms and myths of national origin intersect with these patriarchal notions of a woman's role and identity. The result is

---

<sup>43</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 *Stanford Law Review* 1241, 1245-46 (1991).

<sup>44</sup> Rivera at 241.

an internal community-defined role, modified by external male-centered paradigms.<sup>45</sup>

---

<sup>45</sup> Id.

### III. Specific issues arising from CJS efforts to address domestic violence.

As discussed above, structural racism is a significant problem in the CJS, and experiences with the CJS in the context of domestic violence are not exceptional. As is the case in other areas, experience suggests that bias affects the manner in which law enforcement officers respond to domestic violence. For example, Rivera observes that “law enforcement officials may not give adequate consideration to calls received from poor neighborhoods and neighborhoods with significant populations of people of color. Domestic violence calls from these communities may be less likely to draw attention and interest because officials consider such work either highly dangerous or unrewarding.”<sup>46</sup>

Research on mandatory arrest policies has found that the impact and success of these policies varies significantly by race/ethnicity. The National Institute of Justice found that:

- Mandatory arrest policies are associated with fewer killings of white women and of black unmarried men;
- Increased willingness of prosecutors to pursue protection-order violations is associated with increases in homicides of white married intimates, black married intimates, and white unmarried women;
- Increased legal advocacy resources are associated with fewer white women being killed by their husbands and more black women being killed by their boyfriends;
- Certain protection-order policies are associated both with decreased victimization of black married women and increased homicides among black unmarried intimates, and;
- No one policy affects all groups the same way in terms of decreasing violence.<sup>47</sup>

Research has also found that in jurisdictions where mandatory or pro-arrest policies are in place, the arrest rate for women increases significantly. Coker notes:

[G]iven the mandate to arrest, officers resort to dual arrests (arresting both parties), trusting the prosecutor and/or the courts to sort it out. Many of the women arrested are battered women whose violence is either in self-defense or is responsive to their partner's repeated violence against them. In addition to dual arrests, sole arrests of women also climb dramatically in these [mandatory and pro-arrest] jurisdictions. As Cecelia Espinoza describes, the combination of mandatory arrest laws with no drop prosecution policies has resulted in the prosecution of women for domestic violence charges, even in circumstances where the prosecutor admits that the woman's actions -- in the overall dynamics of the relationship -- were defensive.<sup>48</sup>

As will be discussed in section three of this review, this has significant consequences in other life areas for women, particularly those of color.

---

<sup>46</sup> Id. at 249.

<sup>47</sup> Findings reproduced in the Ms. Foundation Report at p. 9.

<sup>48</sup> Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. Davis L. Rev. 1009, 1043-44 (Summer 2000)(hereinafter “Coker-2”).

Even when police do not inappropriately arrest women, mandatory and pro-arrest policies still raise problems for communities of color. As noted in the Ms. Foundation report, police officers are more likely to arrest men of color than White men as a result of pro-arrest domestic violence policies. Furthermore, once arrested, men of color are treated worse than their White counterparts by the criminal legal system.<sup>49</sup>

Coker asserts that, even if arrest disparities did not exist, “arrest may have disproportionately negative effects and carry a disproportionately negative meaning for men of color and indigenous men [and] these negative effects may increase the likelihood of batterer recidivism.”<sup>50</sup> Coker notes three reasons why arrest may have a disproportionately negative effect on men of color. First, for reasons discussed above, men of color are more likely to have a prior police record. As a result, they are more likely to be considered repeat offenders and subjected to harsher treatment by the criminal legal system. Second, prior negative experiences with the CJS may negatively affect the meaning that men of color derive from their arrest. Rather than convey respect for the victim and attach gravity to the crime of domestic violence, arrest may convey disrespect to men of color. Finally, citing the work of Angela Harris, Coker notes that arresting men of color who commit violence against women may be of limited effectiveness because it confronts one display of masculinity/violence with another: “When police intervention reenacts a masculine display--violence met with violence--it is unlikely to curb battering. This suggests that the message of mandatory policies sometimes has little to do with expressing the moral worth of the victim and more to do with expressing state control over men in subordinated communities.”<sup>51</sup>

To the extent that pro-arrest policies increase the presence of law enforcement in communities of color, they may undermine the perceived legitimacy of law enforcement and affect the willingness and ability of victims of domestic violence to use law enforcement as part of an effective solution to their problems:

When large numbers of men are arrested in a given neighborhood, other residents of the neighborhood may be less likely to believe in the legitimacy of law enforcement. The meaning a battered woman's community attaches to criminal intervention against domestic violence is likely to affect her own assessment of the policy and its usefulness. If her community believes that calling the police for domestic violence is disloyal, for example, not only may this assessment affect her own values, but it is likely to reflect the kind of assistance she will receive from her community if she rejects their assessment.<sup>52</sup>

Rivera refers to this as the ‘double bind:’ “empowerment through the disempowerment of a male member of the community [whereby] the internal conflict and external pressure to cast police officials as outsiders, hostile to the community, frustrates the development of the Latinas' empowerment.”<sup>53</sup>

---

<sup>49</sup> Ms. Foundation report at p. 12.

<sup>50</sup> Coker-1 at 854.

<sup>51</sup> Id. at 854-55.

<sup>52</sup> Id. at 857.

<sup>53</sup> Rivera at 248

The assertion that pro-arrest policies may be of limited effectiveness in communities of color finds support in Milwaukee arrest data:

A reassessment of the Milwaukee arrest study data found neighborhood characteristics to be more strongly related to recidivism post arrest than were the individual characteristics of the arrestees. Men arrested for domestic violence were more likely to recidivate if they lived in neighborhoods characterized by a combination of high rates of the following: unemployment, divorce, single mother headed households, households below the poverty line, and households receiving government assistance than were men who did not live in such neighborhoods.<sup>54</sup>

Other research has found that the employment status of batterers affects the success of pro-arrest policy with one study finding that arrest escalated the likelihood of recidivism among unemployed men when compared to employed men.<sup>55</sup>

Women of color face additional challenges in escaping violence through the CJS beyond the arrest stage. When arrest leads to prosecution, the limited resources of women of color may limit their ability to cooperate and increase the cost of that cooperation:

Cooperation with prosecution often requires women to take time off from work, to acquire transportation and childcare, or to make other sometimes costly and difficult arrangements. Thus, women who have family or friends who will watch the children, help them with chores, or provide transportation or emergency loans, are more likely to cooperate with prosecution than women who do not have access to these informal sources of tangible support.<sup>56</sup>

As suggested above, policies and approaches that employ the CJS may also present problems because of their interaction with other overly-punitive criminal justice policies. In her keynote address at the Color of Violence Against Women Conference, Angela Davis describes such an instance:

According to her account, she insisted that she would prepare the dog's food, but he said no, he was already doing it. She says that she grabbed him and, in trying to take the knife away from him, seriously cut her fingers. In the hospital, the incident was reported to the police. Despite the fact that Ms. Gomez contested the prosecutor's version of the events, her husband was convicted of assault. Because of two previous convictions as a juvenile, he received a sentence under California's Three Strikes law of 25 years to life, which he is currently serving.<sup>57</sup>

---

<sup>54</sup> Coker-2 at 1036-37.

<sup>55</sup> Coker-1 at 856.

<sup>56</sup> Id. at 840.

<sup>57</sup> Davis employs this story to illustrate her view that engaging the state to address gender oppression often results in race and gender domination. It also bears noting that the expansion of the criminal justice system has come at the same time that government spending on social programs, including a variety of programs that would enhance the autonomy/agency of women, has diminished dramatically.

Police involvement can also undermine the agency of women that are involved in some form of illegal activity. Women of limited resources may resort to illegal activity as a means for gaining the resources they need to escape their abusive situation. Battered women may also be forced in to criminal activity, such as drug dealing or prostitution, by their abusers or engage in drug use themselves as a way of muting the pain of their abuse.<sup>58</sup>

Reliance on the CJS to escape this violence can lead to prosecution for these other criminal activities and thus will deter women from seeking help. Furthermore, geographically targeted law enforcement policies disproportionately affect women who live in low-income neighborhoods of color. Once arrested, “tough on crime” policies lead to increased rates of incarceration for women and less discretion for prosecutors and judges to respond to the circumstances that have led to criminal activity. As noted in the Ms. Foundation report, “over 2 million women are arrested each year, with the number of women in prison tripling between 1980 to 1990 and more than doubling again between 1990 and 2001.”<sup>59</sup>

Women convicted of criminal activity face a number of consequences beyond whatever punishment they receive. For example, in many states convicted felons are barred for life from receiving welfare benefits. In addition, conviction for drug related offenses can lead to suspension of eligibility for financial aid.<sup>60</sup> As noted earlier, being arrested can jeopardize the employment status of women who miss work. Having a criminal record, even if it is just an arrest record, can also undermine a person’s employability in the long run. It is also common for landlords to perform criminal background checks for prospective tenants. When other things are equal, a prospective tenant with an arrest record is much less likely to get an apartment than a prospective tenant with no record. The consequences of this are particularly significant in areas with tight rental markets in general and with tight affordable rental markets.

---

<sup>58</sup> Coker-1 at pp.837-38.

<sup>59</sup> Ms. Foundation Report.

<sup>60</sup> Coker-1 at 839.

#### **IV. Collateral effects of using the CJS to address domestic violence.**

In addition to issues that can arise within the CJS for victims and perpetrators of domestic violence, CJS solutions can lead to a number of other negative consequences that disproportionately affect people of color. As noted earlier, police responses to domestic violence can jeopardize a woman's job and her eligibility for government benefits. In addition, it can have negative consequences for those with children and for women who are non-citizens.

##### *Child Custody*

Police response to domestic violence can jeopardize child custody in a several ways. First, in those cases where pro-arrest policies lead to the arrest of battered women, evidence of the arrest, even absent formal charges, can affect custody because of the existence of laws, in some states, that disfavor violent parents in custody proceedings. Arrest, even absent prosecution, can also be destructive because it can lead to children being placed in foster care (particularly where there are dual arrests), because it can jeopardize women's jobs, and because the potential of wrongful arrest can be used by batterers to intimidate their partners.<sup>61</sup>

Even where women are not arrested, police response may trigger the involvement of child protection systems, which can also jeopardize custody:

Several changes in child protection laws and policies have increased dramatically the number of child abuse investigations founded solely or primarily on the basis that a child's parent is the victim of intimate abuse. Some police departments have developed policies that require officers to report to child protection services every case in which a child is present at a domestic violence call. In addition, child protection organizations have broadened dramatically the definition of child abuse to include residing in a home in which domestic violence takes place.<sup>62</sup>

These developments are particularly troubling for women of color and poor women because of their limited resources and limited ability to adequately represent their interests during such an investigation. Moreover, women in poverty and women of color (significantly overlapping groups) are more likely than other women to be charged with child neglect.

##### *Immigration Problems*

Under the Illegal Immigration Reform and Immigrant Responsibility Act, certain immigrants convicted of a domestic violence crime become deportable.<sup>63</sup> Because of this, CJS solutions to domestic violence present significant potential harms for immigrant women who are battered. Deportation can lead to "economic deprivation, ...separation from children, and the probability of more and even greater violence in their home country."<sup>64</sup> Deportation of a partner can also jeopardize the well-being of a women in much the same way that imprisonment of a partner can,

---

<sup>61</sup> Coker-2 at pp. 1044-45.

<sup>62</sup> Coker-1 at pp. 833-34.

<sup>63</sup> Coker-2 at 1048.

<sup>64</sup> Id. at 1031.

particularly when there is economic dependence. For these reasons, some women may perceive the harm of being abused to be less significant to the potential harms of reporting this abuse to the police. This is particularly true for women who are dependent upon a citizen or permanent resident husband for their own immigration status and women abused by partners that are undocumented immigrants.

As discussed earlier, mandatory and pro-arrest policies have been found to increase the number of women arrested for domestic violence crimes. Once arrested, immigrant women are susceptible to wrongful conviction for domestic violence for a number of reasons. According to Coker, “immigrant women who are primary caretakers of children are particularly likely to plea bargain in order to avoid jail time, and thereby unwittingly render themselves deportable.”<sup>65</sup> Immigrant women who do not speak English well are also at an elevated risk for wrongful conviction because of the insufficiency of interpretation offered in many jurisdictions and the potential for mistreatment that this creates. Coker illustrates this with the story of Maria Sanchez:

When her husband came home drunk, he dragged her out of their child's room, pinned her on the couch, and began beating her. Maria bit his back. Her husband called the police and Maria was arrested. She tried telling the police that he had been beating her again and that she was defending herself but, unlike her husband, she didn't speak English and the police spoke no Spanish. When she went to court, Maria signed a form, printed in English, that waived her right to counsel and entered a guilty plea to misdemeanor assault. Maria had no understanding of the forms she was signing and the court's unqualified interpreter was no help. Despite the fact that Maria's husband had a prior record for domestic violence, despite the fact that she had endured years of her husband's abuse, Maria now faces deportation because of her domestic violence conviction.<sup>66</sup>

Immigration law does allow the Attorney General to waive deportation of battered women who can prove that they are "not the primary perpetrator of violence in the relationship" and that they were "acting in self-defense." This protection is insufficient, however, because “many women who are violent in response to ongoing battering may not meet the legal requirements for self-defense in a particular incident.”<sup>67</sup>

In order to prevent fraudulent marriages, immigration law requires that a couple remain married for two years before an immigrant spouse of a citizen or permanent resident becomes eligible for that status. Once the two year time period has passed, both spouses must submit applications on behalf of the immigrating partner. Battered women who are dependent upon their spouse for their immigration status are often reluctant to seek protection from the police for fear that doing so will jeopardize their present status and the possibility of improving this status.<sup>68</sup> Moreover, batterers in this situation may use their immigration status and the threat of deportation as a tool for abuse and control.<sup>69</sup>

---

<sup>65</sup> Id. at 1048-49.

<sup>66</sup> Id.

<sup>67</sup> Coker-1 at 831-32.

<sup>68</sup> Ms. Foundation report at 16.

<sup>69</sup> Coker-2 at 1030.

In response to this problem, the Immigration and Nationality Act was amended in 1990 to protect women abused by the citizens or legal permanent residents that they came to the U.S. to marry. Inserted into the Act was a provision that allowed for waiver of marriage fraud requirements in the case of hardships created by domestic violence. According to Crenshaw, however:

Many immigrant women, particularly immigrant women of color, have remained vulnerable to battering because they are unable to meet the conditions established for a waiver. The evidence required to support a waiver "can include, but is not limited to, reports and affidavits from police, medical personnel, psychologists, school officials, and social service agencies." For many immigrant women, limited access to these resources can make it difficult for them to obtain the evidence needed for a waiver. And cultural barriers often further discourage immigrant women from reporting or escaping battering situations. ... Immigrant women who are socially, culturally, or economically privileged are more likely to be able to marshal the resources needed to satisfy the waiver requirements. Those immigrant women least able to take advantage of the waiver--women who are socially or economically the most marginal--are the ones most likely to be women of color.<sup>70</sup>

For undocumented immigrants, using the CJS as a means of protection from domestic violence is even more problematic. Undocumented women, and women married to undocumented immigrants, jeopardize the well-being of their entire family when they seek protection through the CJS.<sup>71</sup>

---

<sup>70</sup> Crenshaw at 1247-48, 1250.

<sup>71</sup> Id. at 1248-49.

## V. More effectively addressing domestic violence through reform or replacement of the CJS.

There are a number of challenges for advocates seeking the kinds of reform that are necessary to more effectively address domestic violence. As the preceding discussion suggests, effective reform must address the particular needs of different women including needs that arise from their racial/ethnic identity and their economic status. In order to increase the agency of victims of domestic violence, reforms must also account for the multiple, interrelated needs of victims, needs that go beyond immediate safety.

Current political trends suggest that as a society we may be moving away from, rather than towards effective reform. We are in the midst of a long-term trend towards a more punitive and retributive CJS, and the policies that structure this system are increasingly harsh. This may not be without its benefits, particularly in terms of getting law enforcement to treat domestic violence crimes with gravity. At some point, however, there is a divergence between policies/programs that increase the effectiveness of efforts to protect and enhance the agency of women and policies/programs that increase punishments for committing domestic violence crimes.<sup>72</sup> For this reason, tapping into the “tough on crime” sentiments of current politics is a double-edged sword. Coker provides an example of this from Florida, where increasing punishment for domestic crime ultimately undermined the well-being of victims of domestic violence, particularly those who are low-income and of color:

[T]he County Commission in Miami-Dade, Florida enacted an ordinance in 1999 that, among other provisions, requires the clerk of the court to notify the employer of anyone convicted of a domestic violence offense. The sponsors of the legislation argued that “it sends a message,” but regardless of the intended message, the result was direct and predictable harm for poor women of color. Professional men are not likely to lose their jobs if their boss is notified of a misdemeanor conviction, but men working in low skill jobs, where men of color are disproportionately represented, are likely to be fired. The ordinance takes money directly from poor women and their children by diminishing their possibility for receiving child support. The ordinance probably increases women's danger, as well, since unemployed men may be more likely to engage in repeat violence.<sup>73</sup>

Pursuing retributive solutions can also detract from a more nuanced analysis of the multiple forces that subordinate women and increase their vulnerability to violence. Retributive criminal justice policies are often justified by normative visions that emphasize personal responsibility, individual freedom, and limited government (in non-criminal areas). As a result, proponents of retributive criminal justice models also tend to support policies that reduce the social safety net and hold individuals responsible for the ways in which structures beyond their control shape their lives. Under such a vision, poverty is a failure of the poor and wealth is a success of the wealthy and policies that seek to restructure society are anathema to individualistic ideals.

---

<sup>72</sup> Different advocates, of course, locate that point differently, and some would argue that there is little to no *convergence* of the two.

<sup>73</sup> Coker-2 at 1015.

For women's advocates, this means that efforts to address the long-term well-being of women exposed to violence face increasing challenges even though it may be easier to get law enforcement to address their immediate need for safety:

Poor women are more vulnerable to repeat violence, yet relatively few dollars are allocated for measures that would render them less vulnerable such as transportation, or education and job training. Without legal representation, women are unable to benefit from much of domestic violence law reform, yet women have no legal right to a state subsidy for an attorney and there are too few free lawyers for the number of domestic violence cases. Without adequate resources, women are unable to relocate and therefore, they are unable to escape the reach of controlling, violent ex-partners. Yet few dollars are allocated for emergency relocation and long-term housing. Women who are escaping well-funded or well-connected dangerous men need the equivalent of a witness-protection program (regardless of whether or not they testify in a criminal proceeding), but no such program exists.<sup>74</sup>

For those working on domestic violence issues in communities of color, there is an additional challenge presented by tension between race and gender. Representatives of these communities strongly opposed to racism may at times subordinate the desire for women of color to be free from gender oppression to the desire for men of color to be free from racial oppression. Crenshaw illustrates this conflict by describing the difficulties she encountered while trying to get precinct level data on domestic violence crimes from the Los Angeles Police Department:

The informant also claimed that representatives from various minority communities opposed the release of the statistics. They were concerned, apparently, that the data would unfairly represent Black and Brown communities as unusually violent, potentially reinforcing stereotypes that might be used in attempts to justify oppressive police tactics and other discriminatory practices. These misgivings are based on the familiar and not unfounded premise that certain minority groups--especially Black men--have already been stereotyped as uncontrollably violent. Some worry that attempts to make domestic violence an object of political action may only serve to confirm such stereotypes and undermine efforts to combat negative beliefs about the Black community.<sup>75</sup>

Within some Asian American communities, there is also pressure to hide the existence of domestic violence. In these communities, the pressure arises not from an effort to refute negative stereotypes, but instead from an effort not to undermine positive stereotypes that portray Asians as model minorities.<sup>76</sup> There is also cultural pressure within Asian communities to protect a family's honor from shame. As Crenshaw notes, "this priority tends to be interpreted as obliging women not to scream rather than obliging men not to hit."<sup>77</sup>

In response to the challenges of addressing both racism and sexism, Angela Harris states:

---

<sup>74</sup> Coker-1 at 804-5.

<sup>75</sup> Crenshaw at 1253.

<sup>76</sup> Id. at Footnote 51.

<sup>77</sup> Id. at 1253.

[W]e must also learn how to oppose the racist fixation on people of color as the primary perpetrators of violence, including domestic and sexual violence, and at the same time to fiercely challenge the real violence that men of color inflict on women. These are precisely the men who are already reviled as the major purveyors of violence in our society: the gang members, the drug-dealers, the drive-by shooters, the burglars, and assailants. In short, the criminal is figured as a black or Latino man who must be locked into prison.

For some, addressing these challenges means, in part, effective reform of the CJS. For others who view the CJS as inherently violent, racist, and sexist, addressing these challenges means working for the abolition of the CJS while pursuing strategies and developing programs that protect and enable women without reliance on it.

### *Reform of the CJS*

According to Coker, an advocate of reform, “the dilemma for feminists is to develop strategies for controlling state actors--ensuring that the police come when called and that prosecutors do not trivialize cases--without increasing state control of women. It is the dilemma of making domestic violence a public responsibility in the context of racist and classist public systems.”<sup>78</sup> Coker fears that advocates for legal reform “will both overestimate the state's power to do good and underestimate the power of the state to do harm ... [and] overlook the importance of women's material resources in the calculus of whether or not state intervention is likely to do harm or good.”<sup>79</sup>

What is needed instead, according to Coker, is to allow victims of domestic violence the flexibility and agency to decide what the best course of action is for them. Coker most directly addresses mandatory arrest policies, but more generally addresses the loss of agency that state involvement can cause, even in the absence of such policies. In arguing for a flexible approach, Coker points to research that “suggests that battered women who oppose arrest and prosecution because they predict it will result in further violence are often accurate in their assessment.”<sup>80</sup> Coker reviews a number of studies which suggest the need for flexibility in how to respond to domestic violence:

The assumption that women are safest when they cooperate with prosecution also ignores the stories of the women who are successful in stopping the violence in their lives. Lee Bowker's study of women who solved their domestic violence problem found that women employ a number of strategies which may or may not include criminal justice intervention, and that some women are successful at stopping the violence and resuming their relationship with their formerly abusive partner. ...Recent research regarding the effects of a pro-arrest policy found that two groups of women were the most likely to be strongly opposed to mandatory arrest. The first were those who had experienced minor violence and who accurately predicted that they were not in danger. The second were those women who were in extreme danger from very violent partners

---

<sup>78</sup> Coker-1 at 807.

<sup>79</sup> Id. at 823.

<sup>80</sup> Id. at 818.

and who predicted accurately that arrest and prosecution would not make them any safer.<sup>81</sup>

Coker discusses this flexibility in terms of creating a more effective police and prosecutorial response. What remains for consideration is the extent to which this focus on flexibility can lead to, or be pursued in conjunction with, effective reform in related areas of the CJS (e.g. sentencing policies) and other state structures, such as immigration and welfare, which are also not oriented around providing flexibility and enhancing the agency of individuals, particularly low-income individuals of color.

In the context of the CJS, Coker advocates for reform measures that seek balance between mandatory actions and unfettered discretion, for options that move beyond rigid “arrest/not arrest” and “prosecute/not prosecute” dichotomies. Exemplary of this are “soft” no-drop prosecution policies. According to Coker:

Soft no-drop policies allow victims to choose to drop charges under certain specified conditions, such as watching a domestic violence video, speaking to a domestic violence counselor, or appearing before a judge to explain their reasons for dropping. Police response can also be more flexible, while still incorporating a standard for police conduct. For example, Lawrence Sherman proposes that police be subject to “mandatory action” policies that require that they choose from a list of options including: offering to transport the victim to a shelter, taking the suspect or victim to a detoxification treatment center, allowing the victim to decide if an immediate arrest should be made, [and] mobilizing the victim's social networks to provide short-term protection.<sup>82</sup>

Coker proposes a “material resources test” that can be used to evaluate potential policies and programs in the area of domestic violence. According to Coker, “a focus on material resources forces an assessment of the impact of intersections of class, immigrant status, race, ethnicity, and gender because these factors will determine the degree to which a policy or law is likely to increase material resources for the women affected.”<sup>83</sup> This test is offered in response to the tendency to ignore the relevance of economic subordination in making women vulnerable to domestic violence:

Inadequate material resources render women more vulnerable to battering. Inadequate resources increase the batterers' access to women who separate, and inadequate resources are a primary reason why women do not attempt to separate. Some battering men appear to seek out women that are economically vulnerable, but even were this not so, the batterer's behavior often has a devastating economic impact on the victim's life. Abusive men cause women to lose jobs, educational opportunities, careers, homes, and savings. Battering renders some women permanently disabled and puts others at greater risk for HIV infection. Women become homeless as a result of battering, their homelessness is made more difficult to remedy because they are battered, and they are more vulnerable to further battering because they are homeless. They frequently become estranged from

---

<sup>81</sup> Id. at 827.

<sup>82</sup> Id. at 843-44.

<sup>83</sup> Coker-2 at 1014-15.

family and friends who might otherwise provide them with material aid.<sup>84</sup>

Coker goes on to reference research which “found that economic dependency on the partner was a significant predictor of severe violence and a primary reason women gave for re-uniting with their abusive partner ... [and which] suggests that victims' resources have a relationship to experiencing renewed violence and to increased victim well being.”<sup>85</sup> Conversely it has been found that “connection to material resources in areas that the women identified as necessary made significant differences both in terms of their ability to improve their lives and in reducing their victimization.”<sup>86</sup>

Coker argues that all domestic violence strategies should be subject to a material resources test and that “because women's circumstances differ in ways that dramatically affect their access to material resources, the standard for determining the impact on material resources should be the situation of women in the greatest need who are most dramatically affected by inequalities of gender, race, and class. In other words, poor women and, in most circumstances, poor women of color should provide the standard of measurement.”<sup>87</sup> Such a test would:

- “require first that priority be given to those programs, laws, or policies that provide women with direct aid. ...
- prefer methods of implementation that are likely to, directly or indirectly, improve women's access to material resources. ...
- prefer local assessment of the impact of law and policy on women's material resources over universal assessments because the impact of a policy will always be mediated by the particular conditions facing women in a given locale. ...
- prefer assessment that is informed by the circumstances of those women who are in the greatest need. In most circumstances this will be poor women of color who are sandwiched by their heightened vulnerability to battering, on the one hand, and their heightened vulnerability to intrusive state control, on the other. Strategies that increase material resources for poor women of color are likely to benefit -- or at least not harm -- other battered women in the same locale.”<sup>88</sup>

Applying this test to CJS strategies, Coker concludes that the costs of mandatory arrest policies for women of color will outweigh the benefits in most cases:

[G]iven the current realities of inadequate services for battered women, inappropriate arrests of women, harsh anti-immigrant policies, and laws that punish poor mothers by removing their children, it is hard to imagine a community in which a mandatory arrest policy would be worth the risk to poor women of color.<sup>89</sup>

In determining what is an appropriate policy, she asserts that a critical factor to be considered by

---

<sup>84</sup> Id. at 1020-22.

<sup>85</sup> Id. at 1024.

<sup>86</sup> Id.

<sup>87</sup> Id. at 1009-10.

<sup>88</sup> Id.

<sup>89</sup> Id. at 1049-50.

advocates is the state of relationships between the police and communities of color and immigrant communities. Where significant concerns of law enforcement bias are present, policies that involve the police must be structured in a way to account for this and to protect people of color and immigrants. Advocates must also, according to Coker, “evaluate the strength of domestic violence community services for poor women of color and the degree to which state actors -- notably prosecutors and child protection service workers -- understand the circumstances of poor women of color in their locale.”<sup>90</sup>

In addition to the “mandatory action” policies referenced above, Coker references other possible interventions and policy shifts that have the potential for gaining the benefits of police protection while providing for the long-term interests and agency of women:

- “[S]pecial citizen panels could be established to monitor police performance on domestic violence calls and serve as a complaint center for battered women. Anti-domestic violence work that is linked with work against police brutality may be particularly sensitive to the degree to which police are responsive to the needs of poor women of color. For example, the Philadelphia Barrio Project, which focuses on police brutality issues in the predominantly Latina/o sections of the city, coordinates its work with battered women's advocates to press for adequate police response to battered women. This kind of coordinated effort and community outreach means that battered women have recourse both against police inaction as well as against police brutality.”<sup>91</sup>
- “Some activists and scholars are investigating the use of restorative justice programs such as community conferencing and peacemaking. While these processes present challenges to establishing safety for battered women, they may widen the net of responsibility so as to increase material resources available for victims, thereby increasing social supports and services for victims.”<sup>92</sup>
- “The most obvious impact of applying the material resources test is to shift significant monies to direct aid for victims and to target more significant aid to poor women and especially poor women of color. There are many possible steps towards this goal. Because of the possible relevance of neighborhood disintegration to domestic violence recidivism, particular services should be focused on increasing the autonomy of women in those neighborhoods through resource enhancement. Current legal remedies that enhance resources for battered women could be made more effective. For example, crime victim compensation requirements that victims cooperate with the prosecution of the batterer, renders the aid useless for many women. In addition, compensation is frequently available for psychological counseling, but not for meeting the material needs of victims. Law reform that increases criminal penalties without evidence of gains for battered women should be disfavored and law that diminishes battered women's material resources should be eliminated.”<sup>93</sup>
- Application of the material resources test may also suggest changes in the way lawyers engage in their legal representation of battered women. For example, Legal Services in Tampa, Florida formed an organization called ChildNet to respond to the material and

---

<sup>90</sup> Id.

<sup>91</sup> Id. at 1051-52.

<sup>92</sup> Id. at 1052.

<sup>93</sup> Id. at 1052-53.

social support needs of battered women clients. ...ChildNet provides women with advocates, who assist them in locating community services including education, childcare, and job training. Similarly, Linda Mills has argued for the establishment of domestic violence commissions that would assist women with housing and job needs as well as provide legal remedies such as restraining orders.<sup>94</sup>

### *Replacement of the CJS*

For some advocates, the CJS is fundamentally racist in both design and implementation and thus beyond effective reform. From this perspective, strategies that promote criminalization of gender violence only serve to further legitimize and support the racism of the CJS. Because of this, Angela Harris makes the following suggestion for women's advocates:

I suggest that we focus our thinking on this contradiction: Can a state that is thoroughly infused with racism, male dominance, class-bias, and homophobia and that constructs itself in and through violence act to minimize violence in the lives of women? Should we rely on the state as the answer to the problem of violence against women?

Andrea Smith reiterates this view:

This narrow approach toward working against violence is problematic because sexual/domestic violence within communities of color cannot be addressed seriously without dealing with the larger structures of violence, such as militarism, attacks on immigrants and Indian treaty rights, police brutality, the proliferation of prisons, economic neo-colonialism, and institutional racism. It is simply futile to attempt to combat interpersonal violence without addressing the fact that we live in a world structured by violence.

According to Harris, the choice of some advocates to pursue domestic violence interventions through the CJS is in part a reflection of the fact that advocates have become increasingly dependent upon institutional resources for their livelihood. In turn the conceptualization and creation of strategies have been structured by the state and other mainstream institutions who place strictures on the types of organizations and programs that they will support.

From the abolitionist perspective, one of the major challenges that exists is developing strategies that support the larger anti-violence movement without subordinating the needs and interests of women victimized by domestic violence. According to Critical Resistance and Incite!, an organization committed to addressing this challenge, the anti-prison movement has too often failed to critically examine how abolitionist strategies affect women:

The various alternatives to incarceration that have been developed by anti-prison activists have generally failed to provide sufficient mechanism for safety and accountability for survivors of sexual and domestic violence. These alternatives often rely on a romanticized notion of communities, which have yet to demonstrate their commitment

---

<sup>94</sup> Id. at 1054-55.

and ability to keep women and children safe or seriously address the sexism and homophobia that is deeply embedded within them.<sup>95</sup>

An immediate challenge posed by an abolitionist strategy is how to keep women safe. The Ms. Foundation report asserts that “this course of action has implications far beyond addressing violence against women, yet offers no obvious mechanisms for keeping women safe. For this reason, activists desiring the complete dismantling of the criminal legal system recognize that the discussion must be grounded in reality.”<sup>96</sup>

Critical Resistance and Incite! Women of Color Against Violence have issued a joint call for social justice advocates to develop strategies and analyses that address both state and interpersonal, domestic violence.<sup>97</sup> Specifically, they call for advocates to:

- 1) Develop community-based responses to violence that do not rely on the criminal justice system AND which have mechanisms that ensure safety and accountability for survivors of sexual and domestic violence. Transformative practices emerging from local communities should be documented and disseminated to promote collective responses to violence.
- 2) Critically assess the impact of state funding on social justice organizations and develop alternative fundraising strategies to support these organizations. Develop collective fundraising and organizing strategies for anti-prison and anti-violence organizations. Develop strategies and analysis that specifically target state forms of sexual violence.
- 3) Make connections between interpersonal violence, the violence inflicted by domestic state institutions (such as prisons, detention centers, mental hospitals, and child protective services), and international violence (such as war, military base prostitution, and nuclear testing).
- 4) Develop an analysis and strategies to end violence that do not isolate individual acts of violence (either committed by the state or individuals) from their larger contexts. These strategies must address how entire communities of all genders are affected in multiple ways by both state violence and interpersonal gender violence. Battered women prisoners represent an intersection of state and interpersonal violence and as such provide an opportunity for both movements to build coalitions and joint struggles.
- 5) Put poor/working class women of color in the center of their analysis, organizing practices, and leadership development. Recognize the role of economic oppression, welfare “reform,” and attacks on women workers’ rights in increasing women’s vulnerability to all forms of violence and locate anti-violence and anti-prison activism alongside efforts to transform the capitalist economic system.

---

<sup>95</sup> Critical Resistance – Incite Statement, Gender and the Prison Industrial Complex, <http://www.criticalresistance.org/index.php?name=incitestatement>.

<sup>96</sup> Ms. Foundation report at 17.

<sup>97</sup> The full text of this document is reproduced in Appendix 2,

- 6) Center stories of state violence committed against women of color in our organizing efforts.
- 7) Oppose legislative change that promotes prison expansion, criminalization of poor communities and communities of color and thus state violence against women of color, even if these changes also incorporate measure to support victims of interpersonal gender violence.
- 8) Promote holistic political education at the everyday level within our communities, specifically how sexual violence helps reproduce the colonial, racist, capitalist, heterosexist, and patriarchal society we live in as well as how state violence produces interpersonal violence within communities.
- 9) Develop strategies for mobilizing against sexism and homophobia WITHIN our communities in order to keep women safe.
- 10) Challenge men of color and all men in social justice movements to take particular responsibility to address and organize around gender violence in their communities as a primary strategy for addressing violence and colonialism. We challenge men to address how their own histories of victimization have hindered their ability to establish gender justice in their communities.
- 11) Link struggles for personal transformation and healing with struggles for social justice.<sup>98</sup>

---

<sup>98</sup> <http://www.criticalresistance.org/index.php?name=incitestatement>

## **Appendix 1: Organizations/Individuals working at the intersection of racism and violence against women.**

Following is a list of organizations generated from the literature I read and conversations that I had with people related to this research. It is by no means exhaustive.

### **Critical Resistance**

NATIONAL OFFICE

1904 Franklin Street, Suite 504

Oakland, CA 94612

Phone: 510.444.0484

Fax: 510.444.2177

crnational@criticalresistance.org

Critical Resistance seeks to build an international movement to end the Prison Industrial Complex by challenging the belief that caging and controlling people makes us safe. We believe that basic necessities such as food, shelter, and freedom are what really make our communities secure. As such, our work is part of global struggles against inequality and powerlessness. The success of the movement requires that it reflect communities most affected by the PIC. Because we seek to abolish the PIC, we cannot support any work that extends its life or scope.

### **Incite! Women of Color Against Violence**

INCITE! Women of Color Against Violence

P.O. Box 6861

Minneapolis, MN 55406

(415) 553-3837

[incite\\_national@yahoo.com](mailto:incite_national@yahoo.com)

INCITE! Women of Color Against Violence is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue and grassroots organizing.

*Bernice Young overviews three local organizations working on domestic violence strategies outside of the CJS in an article for Colorlines magazine.<sup>99</sup>*

### **Korean American Women in Need**

P.O. Box 59133

Chicago, Illinois 60659

phone: (773) 583-1392

fax: (773) 583-2454

Korean American Women In Need (KAN-WIN) is the first organization in the U.S. formed solely for the purpose of serving victims of domestic violence in the Korean American

---

<sup>99</sup> Bernice Young, Fighting the Many Faces of Violence: Three women's groups build innovative approaches to anti-violence work, Colorlines Magazine (Winter 2000-2001).

[http://www.arc.org/C\\_Lines/CLArchive/story3\\_4\\_02.html](http://www.arc.org/C_Lines/CLArchive/story3_4_02.html)

Community. Our mission is to provide culturally and linguistically appropriate services, and to educate on issues of violence against women, to change our community's norms regarding domestic violence. We seek to empower Korean American women to make and implement informed choices regarding their lives and the lives of their children.

*From Young's interview/profile:*

Choi continued, "My personal concern is that domestic violence stems from power injustice in society. Society is creating this issue, but the quick remedy, and the remedy that is most used, is the police and the courts. But in some ways, the state itself is an oppressor, so how much are we really revolutionizing? The system is convoluted: on one hand, we're trying to change it, on the other hand, we're working with it."

Though the organization now receives federal funding, Choi said KAN-WIN is dedicated to "maintaining our political edge through community organizing and education." It negotiates the tension between its politics and government funding by dividing the responsibilities of its paid staff members and volunteer board members. "Staff members, because they're government-funded, have specific goals geared toward direct services," Choi explained. "So the volunteer board takes on the community work. The board takes on the work outside of direct services."

### **Arkansas Women's Project**

2224 Main Street

Little Rock, AR 72206

Phone: 501-372-5113

Fax: 501-372-0009

TDD: 501-372-6853

[wproject@aol.com](mailto:wproject@aol.com)

<http://members.aol.com/wproject/home.htm>

The Women's Project was founded in 1981 by women with a vision for a world where opportunity is not determined by gender or race. To work towards this vision, the Women's Project works to educate and organize women on three primary issues:

- Violence against women, children and people of color
- Women's economic issues, especially those affecting low-income women
- Social justice issues such as racism, sexism, homophobia, ageism, ableism, classism and anti-Semitism

To achieve this vision, we work through linked grassroots [projects](#) that each address different issues of social justice. We also provide meeting space to community groups, a lending library that includes hard-to-find books with African American and lesbian content, and sponsor a variety of community [events](#).

*From Young's interview/profile:*

Since its creation in 1980 the Arkansas Women's Project, one of the first organizations in Arkansas to tackle domestic violence issues, has always sought to help populations that get the least attention, including women of color, prisoners, and youth. And because the organization reaches out to the marginalized, it learned early on that oppressed groups were all suffering in similar ways. "Since the beginning, we have always connected racism, homophobia, classism, and sexism," said Executive Director Judy Matsuoka. "We've always said that oppression is

similar and connected, and you cannot dismantle one without all of them. People see it as a ladder of `isms,' and first they'll tackle racism, and then move onto something else, when the reality is that many people live at the intersections of those oppressions."

A Women's Project trainer once heard a prison guard make the offhand observation that battered women make the easiest adjustment to prison. "Well, what does that say, when women with a history of domestic violence make easy adjustment to incarceration?" Matsuoka demanded. "Because all that restriction is not that dissimilar to what they were experiencing from the life outside."

At the request of the female inmates, the organization is also working with male inmates, who, according to Matsuoka, are known to say when they are released, "The first thing I want is a beer and a woman." Women's Project trainer Felicia Davidson goes to prisons to remind the male inmates that they too have survived the violence of racism and economic injustice. By asking the male inmates to question power structures both in and out of prison, the mostly African American inmates can connect their own oppression with the sexism that women face.

A domestic violence survivor herself, Davidson talks to the male inmates about healthy relationships and asks them why they feel they have the right to control women. "It boils down to people saying that [sexism] is all they've ever known," Matsuoka said. "It's poignant from both sides. Men didn't realize what they were doing; they had always seen men treat women in their family that way. They never thought about it, yet through their prison experience, they are being controlled and yelled at. We ask them, `How does that make you feel? What gives the correctional system the right to do things the way they do them? Let's look at the treatment of women, how they're harassed and abused and constricted too.'"

### **The Esperanza Peace and Justice Center, San Antonio**

922 San Pedro

San Antonio, TX 78212

Ph. 210-228-0201

Fx. 210-228-0000

[esperanza@esperanzacenter.org](mailto:esperanza@esperanzacenter.org)

<http://www.esperanzacenter.org/index.html>

Esperanza works to help individuals and grassroots organizations acquire knowledge and skills so that we can control decisions that affect our day-to-day lives in a way that respects and honors shared goals for a just society. We believe that by having a place with resources available we can come together to facilitate and provoke discussions and interactions in a variety of ways among diverse groups of people who believe that together we can bring positive social change to our world and address the inherent interconnection of issues and oppressions across racial, class, sexual orientation, gender, age, health, physical and cultural boundaries.

*From Young's interview/profile:*

Since 1987, the Esperanza Peace and Justice Center in San Antonio, TX, has followed the Latin American model of using art as resistance and a way to fight for social justice.

Esperanza proudly considers itself a feminist organization--and one that operates without hierarchy. But the way it chooses to fight violence against women is a truly holistic one. "It's

hard to pinpoint one specific project that deals only with violence against women," explained Marissa Ram'rez, who has been with the organization for almost two years. "A lot of projects deal with a wide range of issues, including violence, immigration, and all those things that affect violence: racism, sexism, and homophobia."

Puerto Rican Legal Defense and Education Fund, Latina Rights Initiative (described in Rivera-2)  
Puerto Rican Legal Defense and Education Fund  
99 Hudson Street, 14th Floor,  
New York, NY 10013-2815  
(212) 219-3360 / Toll Free 1 (800) 328-2322 / Fax: (212) 431-4276  
E-Mail: [info@prldef.org](mailto:info@prldef.org)

Hispanic Women's Task Force of New Jersey (described in Rivera-2)  
[unable to find contact info on the web.]

### **Communities Against Rape and Abuse-Seattle**

801-23rd Ave S, Suite G-1  
Seattle, WA 98144  
[info@cara-seattle.org](mailto:info@cara-seattle.org)  
(206) 322-4856  
tty/fax: (206) 323-4113

A group of activists in the Seattle area banded together in August 1999 to create an organization that would undermine the root causes of sexual violence. By January 2000, these activists established Communities Against Rape and Abuse (CARA), an organization spearheaded by survivors who are marginalized from mainstream sexual assault services.

CARA creates spaces for our constituencies — including people who are young, of color, queer, incarcerated, poor, and/or have disabilities — to invest in the power of collective action, critical dialogue, and community organizing to undermine rape, abuse, and oppression.

CARA pushes a broad agenda for liberation and social justice while prioritizing anti-rape work as the center of our organizing. CARA is spearheaded by survivors of sexual and domestic violence who have led organizing efforts against forced institutionalization of people with disabilities, against racist sterilization abuse of women of color and poor women, and against the alarming criminalization of young people. Organizers and activists demonstrate how these issues are intricately connected to the process of undermining sexual violence.

CARA also uses community organizing as a tool to reconnect people to each other with a common goal of building safe, supportive, and accountable communities. Community members participate in support group facilitation training; in-depth dialogue about family/friend-based accountability strategies; and projects that emphasize positive sexuality.

### **Free Battered Women- a project of the California Coalition for Women Prisoners**

1540 Market St., Suite 490  
San Francisco, California 94102

phone: (415) 255-7036 x6

fax: (415) 552-3150

[info@freebatteredwomen.org](mailto:info@freebatteredwomen.org)

[www.freebatteredwomen.org](http://www.freebatteredwomen.org)

The Free Battered Women project (FBW) engages in creative solutions to addressing the particular needs of incarcerated survivors of domestic violence as part of the struggle to combat all forms of violence against women. We envision a criminal justice system that recognizes how the exploitation of women in abusive relationships contributes to criminal acts. We recognize that culpability for a crime cannot merely be judged by the crime itself, but that a contextual understanding of the woman's abusive history is critical to this determination. We understand that without a contextual analysis, the state commits further violence against women and exploits the racial and gender inequalities that disproportionately affect women of color. We acknowledge that battered women are survivors, and that by drawing on their/our strength, we may end the state-sanctioned re-victimization of incarcerated survivors of domestic violence.

## **Appendix 2: Critical Resistance - Incite Statement**

### Gender Violence and the Prison Industrial Complex

We call social justice movements to develop strategies and analysis that address both state AND interpersonal violence, particularly violence against women. Currently, activists/movements that address state violence (such as anti-prison, anti-police brutality groups) often work in isolation from activists/movements that address domestic and sexual violence. The result is that women of color, who suffer disproportionately from both state and interpersonal violence, have become marginalized within these movements. It is critical that we develop responses to gender violence that do not depend on a sexist, racist, classist, and homophobic criminal justice system. It is also important that we develop strategies that challenge the criminal justice system and that also provide safety for survivors of sexual and domestic violence. To live violence free lives, we must develop holistic strategies for addressing violence that speak to the intersection of all forms of oppression.

The anti-violence movement has been critically important in breaking the silence around violence against women and providing much-needed services to survivors. However, the mainstream anti-violence movement has increasingly relied on the criminal justice system as the front-line approach toward ending violence against women of color. It is important to assess the impact of this strategy.

1) Law enforcement approaches to violence against women MAY deter some acts of violence in the short term. However, as an overall strategy for ending violence, criminalization has not worked. In fact, the overall impact of mandatory arrests laws for domestic violence have led to decreases in the number of battered women who kill their partners in self-defense, but they have not led to a decrease in the number of batterers who kill their partners. Thus, the law protects batterers more than it protects survivors.

2) The criminalization approach has also brought many women into conflict with the law, particularly women of color, poor women, lesbians, sex workers, immigrant women, women with disabilities, and other marginalized women. For instance, under mandatory arrest laws, there have been numerous incidents where police officers called to domestic incidents have arrested the woman who is being battered. Many undocumented women have reported cases of sexual and domestic violence, only to find themselves deported. A tough law and order agenda also leads to long punitive sentences for women convicted of killing their batterers. Finally, when public funding is channeled into policing and prisons, budget cuts for social programs, including women's shelters, welfare and public housing are the inevitable side effect. These cutbacks leave women less able to escape violent relationships.

3) Prisons don't work. Despite an exponential increase in the number of men in prisons, women are not any safer, and the rates of sexual assault and domestic violence have not decreased. In calling for greater police responses to and harsher sentences for perpetrators of gender violence, the anti-violence movement has fueled the proliferation of prisons which now lock up more people per capita in the U.S. than any other country. During the past fifteen years, the numbers of women, especially women of color in prison has skyrocketed. Prisons also inflict violence on

the growing numbers of women behind bars. Slashing, suicide, the proliferation of HIV, strip searches, medical neglect and rape of prisoners has largely been ignored by anti-violence activists. The criminal justice system, an institution of violence, domination, and control, has increased the level of violence in society.

4) The reliance on state funding to support anti-violence programs has increased the professionalization of the anti-violence movement and alienated it from its community-organizing, social justice roots. Such reliance has isolated the anti-violence movement from other social justice movements that seek to eradicate state violence, such that it acts in conflict rather than in collaboration with these movements.

5) The reliance on the criminal justice system has taken power away from women's ability to organize collectively to stop violence and has invested this power within the state. The result is that women who seek redress in the criminal justice system feel disempowered and alienated. It has also promoted an individualistic approach toward ending violence such that the only way people think they can intervene in stopping violence is to call the police. This reliance has shifted our focus from developing ways communities can collectively respond to violence.

In recent years, the mainstream anti-prison movement has called important attention to the negative impact of criminalization and the build-up of the prison industrial complex. Because activists who seek to reverse the tide of mass incarceration and criminalization of poor communities and communities of color have not always centered gender and sexuality in their analysis or organizing, we have not always responded adequately to the needs of survivors of domestic and sexual violence.

1) Prison and police accountability activists have generally organized around and conceptualized men of color as the primary victims of state violence. Women prisoners and victims of police brutality have been made invisible by a focus on the war on our brothers and sons. It has failed to consider how women are affected as severely by state violence as men. The plight of women who are raped by INS officers or prison guards, for instance, has not received sufficient attention. In addition, women carry the burden of caring for extended family when family and community members are criminalized and warehoused. Several organizations have been established to advocate for women prisoners; however, these groups have been frequently marginalized within the mainstream anti-prison movement.

2) The anti-prison movement has not addressed strategies for addressing the rampant forms of violence women face in their everyday lives, including street harassment, sexual harassment at work, rape, and intimate partner abuse. Until these strategies are developed, many women will feel shortchanged by the movement. In addition, by not seeking alliances with the anti-violence movement, the anti-prison movement has sent the message that it is possible to liberate communities without seeking the well-being and safety of women.

3) The anti-prison movement has failed to sufficiently organize around the forms of state violence faced by LGBTI communities. LGBTI street youth and trans people in general are particularly vulnerable to police brutality and criminalization. LGBTI prisoners are denied basic human rights such as family visits from same sex partners, and same sex consensual

relationships in prison are policed and punished.

4) While prison abolitionists have correctly pointed out that rapists and serial murderers comprise a small number of the prison population, we have not answered the question of how these cases should be addressed. The inability to answer the question is interpreted by many anti-violence activists as a lack of concern for the safety of women.

5) The various alternatives to incarceration that have been developed by anti-prison activists have generally failed to provide sufficient mechanism for safety and accountability for survivors of sexual and domestic violence. These alternatives often rely on a romanticized notion of communities, which have yet to demonstrate their commitment and ability to keep women and children safe or seriously address the sexism and homophobia that is deeply embedded within them.

We call on social justice movements concerned with ending violence in all its forms to:

1) Develop community-based responses to violence that do not rely on the criminal justice system AND which have mechanisms that ensure safety and accountability for survivors of sexual and domestic violence. Transformative practices emerging from local communities should be documented and disseminated to promote collective responses to violence.

2) Critically assess the impact of state funding on social justice organizations and develop alternative fundraising strategies to support these organizations. Develop collective fundraising and organizing strategies for anti-prison and anti-violence organizations. Develop strategies and analysis that specifically target state forms of sexual violence.

3) Make connections between interpersonal violence, the violence inflicted by domestic state institutions (such as prisons, detention centers, mental hospitals, and child protective services), and international violence (such as war, military base prostitution, and nuclear testing).

4) Develop an analysis and strategies to end violence that do not isolate individual acts of violence (either committed by the state or individuals) from their larger contexts. These strategies must address how entire communities of all genders are affected in multiple ways by both state violence and interpersonal gender violence. Battered women prisoners represent an intersection of state and interpersonal violence and as such provide and opportunity for both movements to build coalitions and joint struggles.

5) Put poor/working class women of color in the center of their analysis, organizing practices, and leadership development. Recognize the role of economic oppression, welfare “reform,” and attacks on women workers’ rights in increasing women’s vulnerability to all forms of violence and locate anti-violence and anti-prison activism alongside efforts to transform the capitalist economic system.

6) Center stories of state violence committed against women of color in our organizing efforts.

7) Oppose legislative change that promotes prison expansion, criminalization of poor

communities and communities of color and thus state violence against women of color, even if these changes also incorporate measure to support victims of interpersonal gender violence.

8) Promote holistic political education at the everyday level within our communities, specifically how sexual violence helps reproduce the colonial, racist, capitalist, heterosexist, and patriarchal society we live in as well as how state violence produces interpersonal violence within communities.

9) Develop strategies for mobilizing against sexism and homophobia WITHIN our communities in order to keep women safe.

10) Challenge men of color and all men in social justice movements to take particular responsibility to address and organize around gender violence in their communities as a primary strategy for addressing violence and colonialism. We challenge men to address how their own histories of victimization have hindered their ability to establish gender justice in their communities.

11) Link struggles for personal transformation and healing with struggles for social justice.

We seek to build movements that not only end violence, but that create a society based on radical freedom, mutual accountability, and passionate reciprocity. In this society, safety and security will not be premised on violence or the threat of violence; it will be based on a collective commitment to guaranteeing the survival and care of all peoples.

Please sign our statement!

Individuals:

Name:

Organization (for identification purposes only):

Organizations:

Organizational Name:

Please send signed statements to Andrea Smith, 123 Felix Street #4, Santa Cruz, CA 95060

For more information, contact: [incite\\_national@yahoo.com](mailto:incite_national@yahoo.com); 415-553-383

### Appendix 3: Bibliography

Aspen Institute Roundtable on Comprehensive Community Initiatives

“Applying a Structural Racism Framework: A Strategy for Community Level Research and Action” (<http://www.regionwise.org/main/pdfs/StructuralRacism.pdf>).

David A. Bositis

Without the Consent of the Governed: Race, Crime, Voting Rights, and Community.

Donna Coker

Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review, 4 Buff. Crim. L. Rev 801 (2001) [cited as Coker-1].

Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color, 33 U.C. Davis L. Rev. 1009 (Summer 2000) [cited as Coker-2].

Kimberle Crenshaw

Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, 43 Stanford Law Review 1241 (1991)

Angela Davis

Keynote Address, Color of Violence Against Women Conference, [http://www.arc.org/C\\_Lines/CLArchive/story3\\_3\\_02.html](http://www.arc.org/C_Lines/CLArchive/story3_3_02.html) (Fall 2000).

David Theo Goldberg, RACIST CULTURE: PHILOSOPHY AND THE POLITICS OF MEANING (1993).

Risa L. Goluboff

Book Note: Reckoning with Race and Criminal Justice; Search and Destroy: African-American Males in the Criminal Justice System. By Jerome G. Miller. New York: Cambridge University Press, 1996. 106 Yale L.J. 2299 (1997).

Angela P. Harris

Criminal Justice as Environmental Justice, 1 J. Gender Race & Just. 1 (Fall 1997).

Hennepin County Office of Planning and Development,

African American Men Project Final Report Executive Summary (January 2002) (<http://www.co.hennepin.mn.us/opd/Reports/AAmenproject/jan2002/finalreport/finalreportexecutivesummary.htm>).

Jerome G. Miller,

*From Social Safety Net to Dagnet: African American Males in the Criminal Justice System*, 51 Wash. & Lee L. Rev. 479, 483-4 (1994).

Minnesota Supreme Court Task Force on Racial Bias in the Judicial System

Final Report (May, 1993).

- Ms. Foundation for Women,  
Safety and Justice for All: Examining the Relationship between the Women's Anti-Violence Movement and the Criminal Legal System (2003).
- National Criminal Justice Commission  
Key Findings (<http://ncia.igc.org/ncia/KEY.HTML>)(cited as NCJC-1).
- National Criminal Justice Commission  
THE REAL WAR ON CRIME (Stephen R. Danziger, ed.)(cited as NCJC-2).
- Jenny Rivera  
Intimate Partner Violence Strategies: Models for Community Participation, 50 Me. L. Rev. 283 (1998).  
  
Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials, 14 B.C. Third World L.J. 231 (Summer 1994)
- Patrisia Macías Rojas  
Rebuilding the Anti-Violence Movement, Colorlines Magazine (Fall 2000).  
[http://www.arc.org/C\\_Lines/CLArchive/story3\\_3\\_03.html](http://www.arc.org/C_Lines/CLArchive/story3_3_03.html)
- David Rudovsky  
*Police Abuse: Can the Violence Be Contained*, 27 HARV. CIVIL RTS-CIVIL LIBERTIES 465 (1992).
- Andrea Smith  
Colors of Violence, Colorlines Magazine (Winter 2000-2001)  
[http://www.arc.org/C\\_Lines/CLArchive/story3\\_4\\_01.html](http://www.arc.org/C_Lines/CLArchive/story3_4_01.html)
- Rodolfo Stavenhagen  
Structural Racism and Trends in the Global Economy, International Council on Human Rights Policy (1999)(<http://www.ichrp.org/ac/excerpts/52.pdf>)
- Henry Louis Taylor, Jr. and Sam Cole  
Structural Racism and Efforts to Radically Reconstruct The Inner-City Built Environment (2001)  
([http://www.thecyberhood.net/Residents\\_enter\\_here/private/seminar\\_room/Monthly\\_Article/Structural\\_Racism\\_and\\_Community.pdf](http://www.thecyberhood.net/Residents_enter_here/private/seminar_room/Monthly_Article/Structural_Racism_and_Community.pdf))
- Bernice Young  
Fighting the Many Faces of Violence: Three women's groups build innovative approaches to anti-violence work, Colorlines Magazine (Winter 2000-2001)  
[http://www.arc.org/C\\_Lines/CLArchive/story3\\_4\\_02.html](http://www.arc.org/C_Lines/CLArchive/story3_4_02.html)

**Additional Resources** (resources that appear relevant that I was not able to access and/or incorporate into this literature review)

Michele Bograd

Strengthening Domestic Violence Theories: Intersections of Race, Class, Sexual Orientation, and Gender. *Journal of Marital and Family Therapy*, 25(3), 275 (1999).

Patricia Hill Collins

The Tie That Binds: *Race, Gender and US Violence*. *Ethnic and Racial Studies*, 21 (5), 917-938 (1998).

Barbara Fedders

Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women's Movement, *XXIII Rev. of L. & Soc. Change* 281 (1997)

Michelle Fine and Lois Weis,

*Crime Stories: A Critical Look Through Race, Ethnicity and Gender. Qualitative Studies in Education*, Vol. 11, No. 3, pp. 435-460 (1998).

Angela Harris

*Gender, Violence, Race, and Criminal Justice*. 52 *Stanford Law Review* 777 (2000).

Kimberly A. Huisman,

Wife Battering in Asian American Communities, 2 *Violence Against Women* 260, 267 (1996)

Valli Kanuha,

Domestic Violence, Racism, and the Battered Women's Movement in the United States, in *Future Interventions with Battered Women and Their Families* 34, 45 (Edleson & Eisikovits eds., 1996) (arguing that the battered women's movement has failed to represent battered women who are "most at the margins," including women of color and discussing situation of native Hawaiian women, in particular).

Susan L. Miller

Unintended Side Effects of Pro-Arrest Policies and Their Race and Class Implications for Battered Women: A Cautionary Note, 3 *CRIM. JUST. POL'Y REV.* 299 (1989);

Beth E. Richie

Black Feminist Reflection on the Antiviolence Movement. *Signs*, 25(4), 1127-1133 (2000).

*Compelled to Crime: Gender Entrapment of Battered Black Women*. New York: Routledge 1996).

Adrien Katherine Wing

*Violence and State Accountability: Critical Race Feminism.* Georgetown Journal of Gender and the Law, Summer (Summer 1999).