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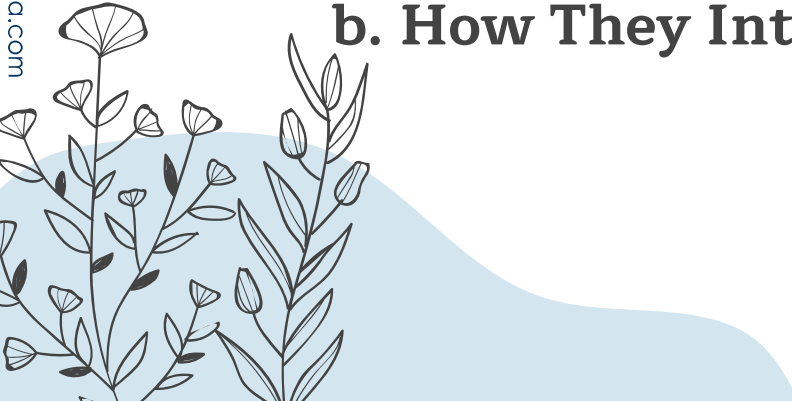

Intersectionality in Domestic Violence Law

By Kayla Clark





Overview

- 1. The Basics of Domestic Violence**
 - 2. How Domestic Violence Interacts with Civil Law**
 - 3. The Basics of Intersectionality**
 - 4. Intersectionality in Domestic Violence Law/Advocacy**
 - a. Marginalized Identities Individually**
 - b. How They Intersect**
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The Basics: Domestic Violence



What is Domestic Violence?

“Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another.”

-National Coalition Against Domestic Violence





A Note on Pronouns and Gender

People of any gender, race, sexual orientation, religion, nationality, or disability can be victims of DV.

However, the majority of DV/coercive control is perpetrated by men against women.

As such, I will be using “she” to refer to victims/survivors and “he” to refer to perpetrators.

KLS can and does help victims/survivors of DV of any and all genders.





A Common Misconception

“Domestic Violence is just physical abuse.”

Nope!

Abuse is about coercive control.

Physical violence can be (but is not always) a tool used by an abuser to control their victim.






What is Coercive Control?

“[A] strategic course of conduct that consists of physical and sexual violence, stalking, and other forms of intimidation, emotional abuse, isolation, ‘economic violence,’ and ‘control,’ illustrated by what are termed ‘arbitrary violations of liberty.’”

- Dr. Evan Stark

- Not just isolated instances of physical abuse
 - Repeated, ongoing, and intentional tactics
 - Present in 92% of female homicides
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Types of Violence

Coined by Michael P. Johnson in his book “A Typology of Domestic Violence: Intimate Terrorism, Violence Resistance, and Situational Couple Violence”





1. Intimate Terrorism
 - a. Coercive Control
 2. Violence Resistance
 - a. Self defense by victims
 3. Situational Couple Violence
 - a. Violence/fighting that does not involve coercive control (intimidation, isolation, psychological attacks, etc.)
 - b. Still unacceptable!
 4. Mutual Violent Control
 - a. Both partners are violent and controlling
 - b. Extremely rare
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Interactions with Civil Law

Family Law - Protection Orders

- A way for a victim to receive protection from an abuser without pressing charges
- Lasts a year in KS (but can be extended)
 - Temporary and/or final orders
- Penalty for violating is a criminal charge
- Protection from Abuse
 - Required relationships
 - Have a child in common; dating relationship (current or former); residing together (current or former)
 - Abuser caused bodily injury or threatened bodily injury
 - Can file on behalf of a child
 - On behalf of a child against that child's parent → substantial pain or threat of substantial pain

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- Protection from Stalking
 - No relationship required
 - 2 or more incidents of stalking that put a person in reasonable fear for their safety
 - Knowing or intentional course of conduct
 - No legitimate purpose
 - Incidents can be however close together
 - Can't fall under free speech
 - Protection from Sexual Assault
 - No relationship required
 - Nonconsensual sexual act or
 - an attempted sexual act against another by force, threat of force, duress or when the person is incapable of giving consent
 - Protection from Human Trafficking
 - Anything considered HT under criminal statute (a lot of things)
 - Can be sex trafficking or labor trafficking



Pros & Cons

- Pros
 - Survivor autonomy
 - Can choose to pursue or drop
 - Shorter term than criminal proceeding
 - Can get abuser removed from residence
- Cons
 - 40% of protection orders are violated
 - And often the police do not enforce
 - Traumatic to testify
 - Only lasts a year
 - In KS, can only be extended if:
 - PFA is violated
 - Abuser is convicted of a crime against victim or member of victim's family





Family Law: Divorce/Child Custody

- After separation, abusers will use child custody court to continue abuse
 - Having children → can continue abuse until children turn 18
- Seek sole legal custody of children despite small chance of success
- Making litigation long, expensive, and embarrassing
 - Cases having hundreds of docket entries
 - Forcing survivors to take time off work, line up childcare, and prepare mentally and emotionally for court
- Using discovery to seek highly personal information
- Loss of trust in the legal system → no longer asking for help
- Forces continued contact with abuser
- Could be more harm than good to mention abuse in hearings



Family Law: Divorce (no children)

- Again, driving up time and fees
- Withholding property
- Removing survivor from marital home
- Survivors less likely to seek relief they may be entitled to to get the case over with

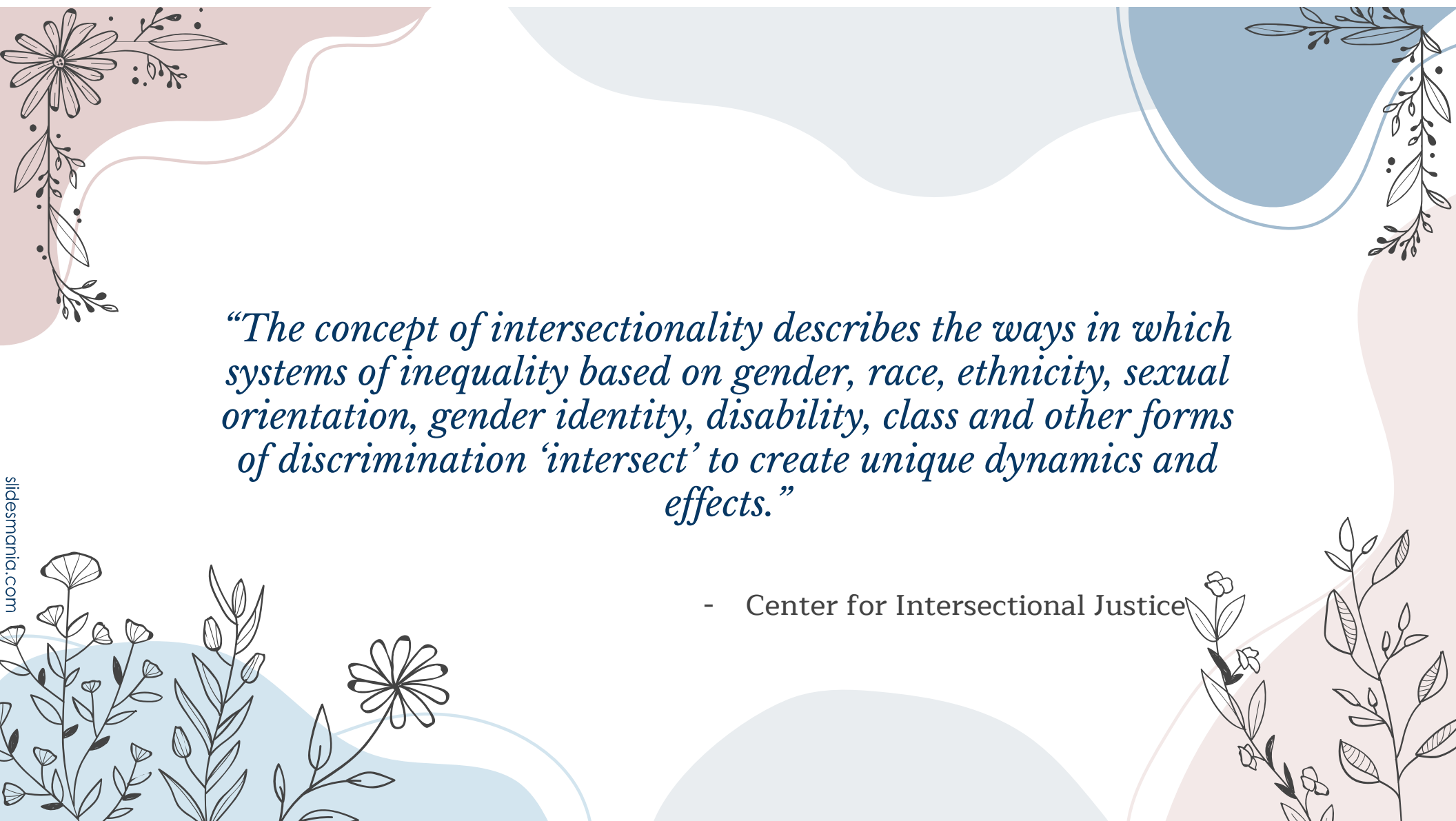


Housing

- Victims facing eviction due to repeated calls to police and/or abusers violent behavior
- Abusers filing PFAs to get victims removed from homes
- Unable to break lease to leave abuser
- K.S.A. 58-25,137
 - Victim can provide proof of abuse, stalking, sexual assault to landlord in order to stay in their home OR break their lease
 - PFA (final or temporary orders) is good proof



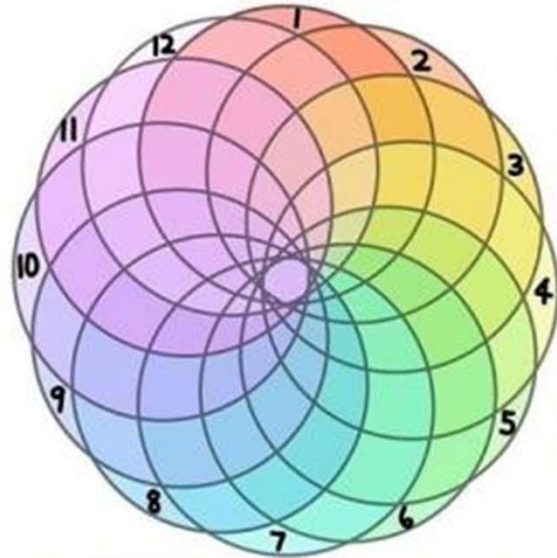
What is Intersectionality?



“The concept of intersectionality describes the ways in which systems of inequality based on gender, race, ethnicity, sexual orientation, gender identity, disability, class and other forms of discrimination ‘intersect’ to create unique dynamics and effects.”

- Center for Intersectional Justice

INTERSECTIONALITY



- 1 Race
- 2 Ethnicity
- 3 Gender identity
- 4 Class
- 5 Language
- 6 Religion
- 7 Ability
- 8 Sexuality
- 9 Mental health
- 10 Age
- 11 Education
- 12 Attractiveness
- (...and many more...)



Intersectionality is a lens through which you can see where power comes and collides, where it locks and intersects. It is the acknowledgement that everyone has their own unique experiences of discrimination and privilege.

- Kimberlé Crenshaw -

@sylviaduckworth



Examples (not DV related)

- A Muslim woman wearing a hijab is facing discrimination
 - It is not possible to separate her Muslim and female identity to isolate the root of the discrimination
- Women/girls with ADHD or autism
 - Women/girls are less likely to be diagnosed with ADHD
 - They are at a disadvantage because of lack of resources from no diagnosis, and at a disadvantage because of their disability



To be intersectional while practicing law or other advocacy is to think outside of the box when coming up with solutions or providing advice, and not sticking to advising based on one identity of your client.

Don't worry, examples are to come!





Why can't we just focus on one thing at a time? Why complicate this?

Because society does not treat all survivors of abuse equally.

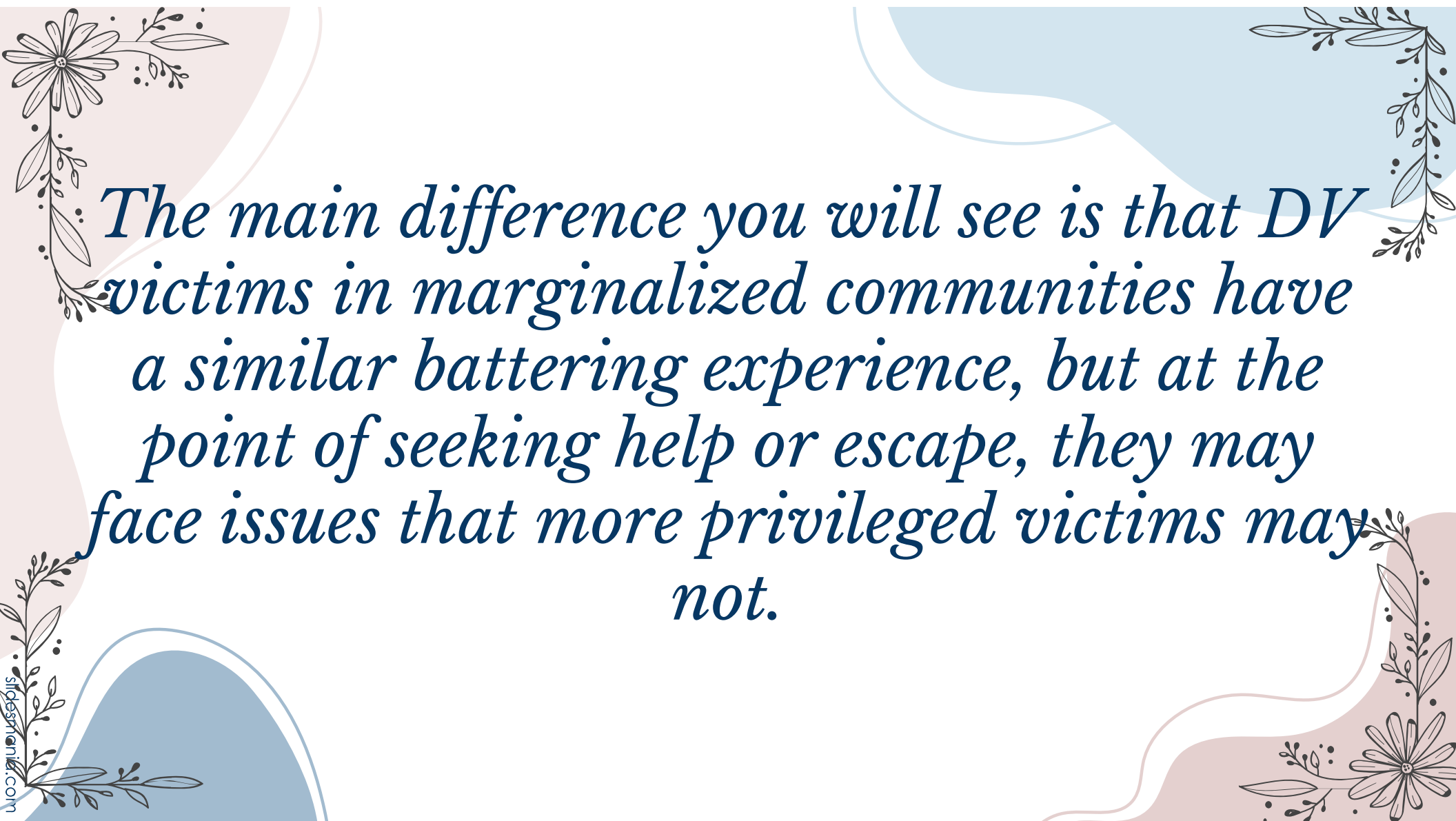
It is important to have a more holistic understanding of domestic violence.

By focusing on one identity marker (e.g. race, gender, sexuality), we fail to understand and resolve the problem completely.



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DV Law/Advocacy Examples



The main difference you will see is that DV victims in marginalized communities have a similar battering experience, but at the point of seeking help or escape, they may face issues that more privileged victims may not.




Gender*

- All of the following identities intersect with gender
- DV is a gendered crime
- Roots
 - DV viewed as a “private” issue
 - Traditional gender norms - masculinity
 - Oppression = lack of resources
 - E.g. wage gap
- 80% of domestic homicide victims are female
 - Though the vast majority of all homicide victims are male
 - Only 10% of homicides committed in the public sphere have female victims

*discussion on





Class - Low-income

- **A massive factor!**
 - **Need economic resources to leave abuser**
 - **Generational trauma**
 - **Men who witness DV as children are more likely to commit DV as an adult**
 - **A risk factor for DV is low socioeconomic status**
 - **No money = lack of therapy as children**
 - **The cycle continues**
 - **Financially relying on abuser = less likely to leave and less likely to press charges**
Even if separated - may be harder to get gov't benefits based on abuser's income
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Low-income - Changing Approach

- **Address the root of the problem**
 - **Promote economic stability**
 - **How you can promote this really depends on your organization and their capabilities**
- **Going to a shelter is not the magic solution**
 - **Often full or very crowded**
 - **Can be traumatic for survivors and their children**
- **Incarcerating abuser may hurt**
 - **E.g. child support**



Women of Color - Black women

- **40% will experience DV in their lifetime (compared to 30% of white women)**
 - But these are hard stats to gather
 - **Reporting to police**
 - Less likely to be believed
 - Understand that their abuser (if Black) is more likely to face police brutality & incarceration
 - Effects of reporting within racial community
 - Reinforce negative stereotypes
 - **Economic consequences**
 - Wage gap, higher rates of homelessness, etc.
 - **Less likely to trust courts/lawyers**
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Women of Color - Black women: Changing Approach



- **Understand an initial (or lasting) reluctance to trust lawyers or those that work with lawyers**
 - **Research shows implicit (or explicit) bias in legal system**
- **Understand the implications that come with advising to call the police**
- **Understand reluctance to press charges**
 - **Consider sticking with a PFA**





Women of Color - Latinas



- **34.4%**
- **More exposed to certain risk factors**
 - **Male partners who**
 - Abuse alcohol, are unemployed, less than a high school education, low socioeconomic status
 - **Immigrant character**
 - **Language barrier**
 - May not know that DV is a crime and that services exist
 - **Risk of becoming undocumented**
 - Abusers withholding immigration docs, fear of calling police
 - While there are U Visas, T Visas, etc. those are very hard to get and require an atty

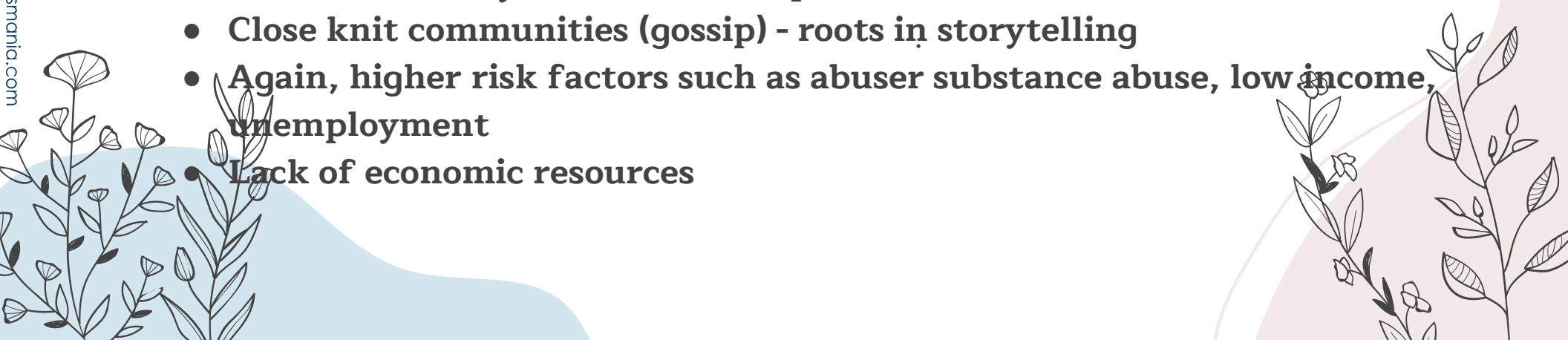


Women of Color - Latinas: Changing Approach

- **Become familiar with how to use an interpreter**
 - **If in person - make eye contact with client, sit across from client, speak in short sentences, try not to have outside conversations, try to have a neutral interpreter**
 - **If an interpreter is friend or family they may not know the terms and/or client may be afraid to disclose abuse**
- **Understand that in their home country there may have been no DV laws at all**
May not understand that abuse is unacceptable and unlawful



Women of Color - Native American Women

- **83% (men & women)**
 - **Jurisdictional issues**
 - **This is VERY complicated**
 - **Until recently, native tribes could not prosecute non-natives**
 - **In 2013 VAWA provided tribal nations with special DV criminal jdx, but certain specific criteria must be met**
 - **Close knit communities (gossip) - roots in storytelling**
 - **Again, higher risk factors such as abuser substance abuse, low income, unemployment**
 - **Lack of economic resources**
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Women of Color - Native American Women: Changing Approach

- **Emphasize confidentiality**
- **Refer to culturally sensitive resources**
 - **There are specific support groups for Native American survivors**
- **Understand you may not be trusted fully**
 - **Particularly in dealing with child custody - history of ICWA**



Women of Color - Asian Women

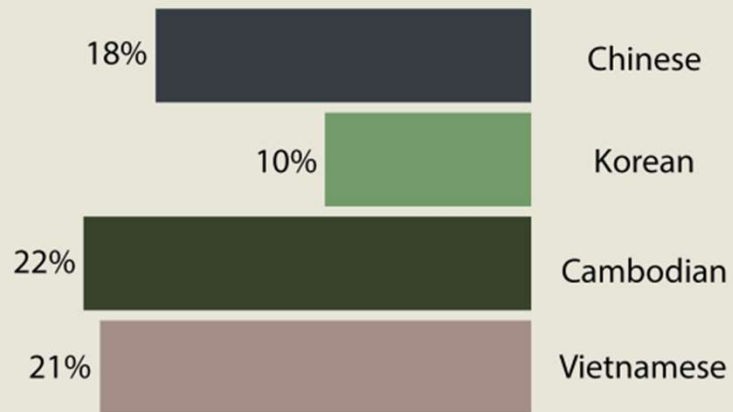
- 21-55% of Asian women in U.S. report DV/SA
 - Immigrant character: 61% are foreign-born
 - Abuser withholding immigration docs
 - Citizenship attached to marriage
 - Limited English Proficiency = issues reporting DV, issues receiving services, not knowing services exist
 - Cultural differences
 - Lack of eye contact & Limited English
 - Advocates may assume they are lying
- DV perceived as a personal problem of the husband**



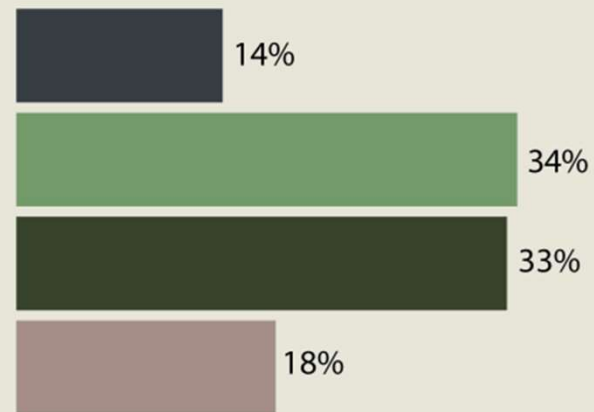
A A P I D A T A

Proportion that agree with statement

“A wife should move out of the house if her husband hits her”



“A husband should be arrested if he hits his wife”





Measure derived from: Revised Attitudes toward Wife Abuse Scale. (Yoshioka & DiNoia, 2001)

Source: Yoshioka, Dinoia, and Ullah (2001)




Women of Color: Asian Women: Changing Approach

- **Again, become familiar with using interpreter**
 - **Although you will likely have to use a language line**
 - **Have a language line!**
 - **Shift your understanding of what social cues show that someone is being dishonest**
 - **Understand that survivor may not know that what is happening to her is wrong**
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Disabled Women

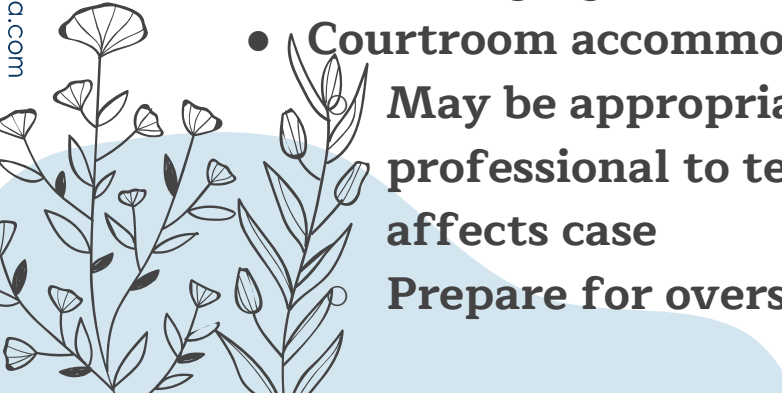

- **Physical disability**
 - **Shelters (or courthouses or offices!) may not be accessible**
 - **Limited mobility**
 - **Abuser may be their caregiver**
 - **Mental**
 - **Abusers using coercive tactics that may not be effective on non-disabled victims**
 - **Psychological**
 - **Seen as “crazy” by advocates**
 - **Poor personal interactions or communication**
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Disabled Women: Changing Approach



- **Ensure meeting spots have ramps and elevators**
 - **Understand the reasons why a disabled client may want to drop charges or a PFA**
 - **Heavily reliant on abuser for caretaking**
 - **Hiring a caretaker is not an option for many**
 - **Try not to blow someone off because they present as “crazy”**
 - **Changing stories does not always mean dishonesty**
 - **Courtroom accommodations**
 - **May be appropriate for a friend, family member, or medical professional to testify about your client’s disability and how it affects case**
 - **Prepare for overstimulation**
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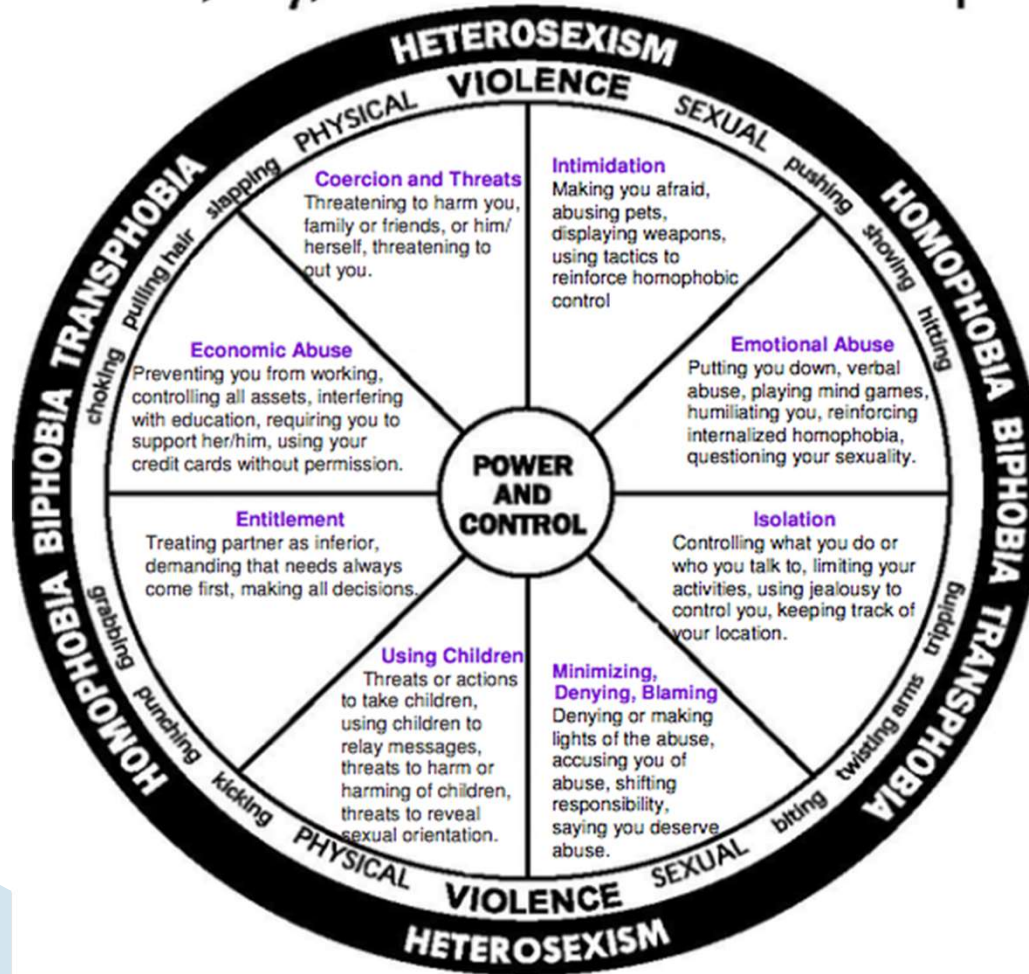
LGB

- **DV occurs in same-sex relationships at same frequency as straight couples, but many do not report the abuse for fear of homophobic reactions and biases from police, court personnel, etc**
- **All LGBTQ victims/survivors face:**
 - **barrier of not being taken seriously - abuse isn't "real"**
 - **Fear of being "outed"**
 - **Fear of triggering homophobia by larger society**
 - **Chosen family**
- **Lesbian/Bisexual women**
 - **Abuser may come to same shelter**
 - **"Cat fight"**
- **Gay/Bisexual men**
 - **Lack of resources**
 - **"Roughhousing" - risk of dual arrests is very high**

Trans Victims/Survivors

- 50% report being assaulted or raped by a partner
 - 31% identify as a DV survivor
 - Abuser using trans status against them - emotional abuse
 - New laws ban trans women from DV shelters
 - Transphobia of society and service providers
 - Economic instability = more susceptible to economic control
 - E.g. more likely to be fired because gender ID doesn't match gender marker on license
 - Abuser can withholding gender affirming medicines
- If abuser is LGBT - victim doesn't want to subject them to harm by police



Power and Control Wheel for Lesbian, Gay, Bisexual and Trans Relationships





LGBTQ: Changing Approach



- **Be prepared to deal with unsympathetic judges**
 - LGBTQ status may affect child custody decisions
 - **Get on the same page with your client re: pronouns and correct name**
 - **For some clients it may not be worth it to hash this out - they just want to be out of the situation**
 - **Others it may be very important**
 - **Understand why calling police may not be appropriate**
 - **Know what shelters are LGBTQ friendly**
 - **Be clear from the start that your org is LGBTQ friendly**
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Religion

- Some religions are opposed to divorce and encourage victims to “work it out” or put blame on the victim (Mormonism, Christianity, etc.)
- Judaism
 - Abusers (and rabbis) misusing Jewish concepts
 - E.g. “shalom bayit” - peace of the home
 - Abuser using control to further what he believes is peace in the home - dinner being ready, house being clean, etc.
 - E.g. “lashon hara” - gossip
 - Victims being told they are committing lashon hara when confiding about abuse



Religion

- **Judaism (continued)**
 - **Under traditional Jewish law, women must get permission from husband to divorce, must be initiated by husband**
 - **DV Shelters**
 - **May not be able to prepare food in kitchen if it is not kosher**
 - **Light candles on Shabbat - shelters often have rules against candles/open flames**
 - **Stays in shelters are overall shorter than that of non-Jewish women**





Religion

- **Muslim Women**
 - 10% of Muslim women are abused by their husbands
 - Again, abusers will manipulate the religion to justify abuse and/or control
 - Husband may believe and socialize his wife and children to believe that whatever he wants the family to do is the same as what Allah wants
 - Divorce “is the most hated thing to God”
 - **May be uncomfortable going to shelters run by non-Muslims**



Religion: Changing Approach



- **Separation may be a better option over divorce**
- **Understand reluctance to stay in shelters**
- **Understand the gravity of the situation if victim does take the steps to confide in you or reach out for resources**
- **Refer to culturally appropriate resources**
- **Understand leaving abuser may mean leaving family and community**

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Bringing it All Together: Examples



Survivor is...

- **A low-income, Black, trans woman**
 - NOT intersectional:
 - Addressing only the economic issue without further understanding
 - Referring to shelter without any further research
 - Intersectional:
 - Evaluating whether survivor wants intervention that involves police or the courts
 - Referring to resources for gender affirming care
 - Roots of economic insecurity
 - Gender marker does not match gender identification?
 - Employment discrimination leads to illegal sources of income?
 - Community resources are transphobic?



Survivor is...

- **Low-income, physically disabled undocumented cis woman**
- NOT intersectional
 - Referring to shelter without calling to ensure it is accessible
 - Referring to resources that require in-person meetings only
 - Getting police involved without consent
- Intersectional
 - Making connection to immigration attorneys to ensure survivor understands her rights upon separation
 - Researching attitudes about DV in home country
 - Arranging to meet in accessible places or virtually



*All of these things
intersect.*


It is extremely complicated. You will not know all of the answers all of the time. It's just important to do your research. Let me know if you need some resources.

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Sources

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 - In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors by David Ward
 - Intersectionality and Domestic Violence by Genesis Women's Shelter
 - One is too many: Trends and Patterns in domestic homicides–Canadian Domestic Homicide Prevention Initiative
 - Killings of women and girls by their intimate partner or other family members–United Nations Office on Drugs and Crime
 - An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin by Lisa M. Martinson
 - The Asian American Domestic Violence Movement by Gina Szeto
 - Still Hidden in the Closet: Trans Women and Domestic Violence by Kae Greenberg
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 - Protecting Hispanic Women: The Inadequacy of Domestic Violence Policy by Michelle Decasas
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 - Domestic Violence in the Muslim Community by Nooria Faizi
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