PUERTO RICO'S DOMESTIC VIOLENCE PREVENTION AND INTERVENTION LAW AND THE UNITED STATES VIOLENCE AGAINST WOMEN ACT OF 1994: THE LIMITATIONS OF LEGISLATIVE RESPONSES†

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> [O]ur judicial systems are currently ineffective instruments in their intervention in situations of domestic violence against women. They do not offer, for now, alternatives or remedies to women victimized by this form of violence.[1]

INTRODUCTION

Annually, three to four million women are targets of violence by their intimate partners or spouses.[2] The women who survive this violence endure physical, verbal, emotional, and psychological abuse that threatens

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† All translations from Spanish to English contained in this Article are by the author, unless otherwise specified.

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[1] Sylvia Bonilla, Center for Social Investigations of the University of Puerto Rico, Ay! Ay! Ay! Amor No Me Quieras Tanto 38, quoted in *El Pueblo v. Correa*, 90 J.T.S. 8215, 8219 (P.R. 1990) (emphasis omitted).

[2] Nancy Kathleen Sugg & Thomas Inui, Primary Care Physicians' Response to Domestic Violence: Opening Pandora's Box, 267 JAMA 3157, 3157 (1992); N.Y. Senate Comm. on Investigations, Taxation, and Government Operations, Domestic Violence: The Hidden Crime 1 (1992) [hereinafter N.Y. Senate Report].

their health, and often their lives.[3] The daily incidences of violence include severe physical abuse.[4] Even more alarming is the number of women who die at the hands of their intimate partners: violence against women by spouses or intimate male companions accounts for thirty percent of all homicides of women.[5] In 1990 alone, over 800 women were killed by their husbands and another 400 were killed by their male companions.[6] There is no avoiding or denying the prevalence and nondiscriminative nature of this violence, for it "cuts across all racial, ethnic, religious, educational and socio-economic lines."[7]

Violence against women by their former and current male partners is commonly referred to as domestic violence, partially because it involves the personal dynamics of intimate relationships.[8] The effects of this violence, nevertheless, extend beyond the confines of the domestic sphere.[9] First, because family, neighbors, and law enforcement officials may have direct or direct knowledge of this violence, it cannot be summarily categorized as strictly private. Second, because of its detrimental impact on women's lives

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[3] For purposes of this Article, I have adopted the definition of "domestic violence" recently set forth in the American Medical Association's Guidelines, which describe it as follows: "a pattern of coercive behaviors that may include repeated battering and injury, psychological abuse, sexual assault, progressive social isolation, deprivation and intimidation." Diagnostic and Treatment Guidelines on Domestic Violence (American Medical Ass'n), May 1994, at 5. See also, e.g., Don Terry, Killing of Woman Waiting for Justice Sounds Alert on Domestic Violence, N.Y. Times, Mar. 17, 1992, at A14.

[4] Over half of the survivors of attacks by intimates are "seriously injured," and at least 25% require medical care. Antonia C. Novello, From the Surgeon General, U.S. Public Health Service, 267 JAMA 3132, 3132 (1991).

[5] Id. See Terry, supra note 3.

[6] Novello, supra note 4.

[7] Ronet Bachman, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, Violence Against Women: A National Crime Victimization Survey Report, NCJ-145325, Jan. 1994, at 7.

[8] As I have indicated in a previous article, I consider the term "domestic violence" a misnomer:

> [I]t suggests that violence that occurs in the home or among family members belongs in a different category than other forms of violence or is [of] a distinctly private nature. Historically, such beliefs have acted to insulate violence against women from state intervention and from rigorous law enforcement and judicial scrutiny."

Jenny Rivera, Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials, XIV B.C. Third World L.J., 231, 232 n.5 (1994). I have limited the use of this term in this Article, except where necessary for sake of clarity.

[9] "Domestic sphere," in this context, refers to the home, as well as the "private sphere" of intimate relationships. These concepts contrast with the "public sphere," which the law has often treated as a more appropriate area for legislative intervention.

and on the social and human services which bind society, it has larger social and political implications. Indeed, in 1991, the United States Surgeon General announced that domestic violence is the second leading cause of injury to women.[10] Although the cost of the violence in dollars and cents is of secondary importance, and pales in comparison to the numerous lives lost or shattered as a direct consequence of this violence, it is, nonetheless, notable. In economic terms, this violence has had devastating cost implications for public and private medical and legal services and has drained already scarce resources.[11]

Despite the extensive and destructive consequences of domestic violence suffered by women, the United States' political and legal systems have failed to provide women with adequately responsive anti-violence strategies and remedies. Legal procedural and administrative obstacles dissuade and deter women.[12] Violence against women by intimates has been treated as dissimilar from other forms of violent crimes. This seems to justify, to the detriment of the survivors, civil and rehabilitative efforts all of which provide little more than temporary and inadequate safeguards to the family unit's safety.

In addition, individual notions about women and institutionalized gender stereotypes which discredit and devalue women's experiences and testimony have encouraged the trivialization of domestic violence within the legal arena. For example, women encounter resistance from law enforcement personnel who minimize the severity and danger of the physical attacks on women by their male partners. These officials often refuse to arrest and prosecute the perpetrators of such violence.

This Article considers the current and potential successes of two recently enacted statutory efforts to address intimates' violence against women: Puerto Rico's domestic violence law and the United States' federal

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[10] Novello, supra note 4.

[11] A 1992 study indicates that the medical costs of domestic violence range from five to ten billion dollars. See Harris Meyer, The Billion-Dollar Epidemic; Experts Say Family Violence Could Be the 'Number One Draw on the Domestic Economy,' 35 Am. Med. News, Jan. 6, 1992, at 7. In New York City, for example, the costs are staggering. According to the New York Victim Services Agency, New York City employers bear an annual cost of $250 million as a consequence of lower worker productivity, higher turnover, and greater absenteeism attributable to domestic violence. NY Senate Report, supra note 2, at 2. Over one-fourth of the women in emergency rooms have injuries related to domestic violence, totalling $77.5 million in emergency room costs for New York City hospitals. Id. New York City law enforcement costs for domestic violence arrests were $41 million in 1989. Id.

[12] Until recently, for example, domestic violence survivors in New York had to choose between Family or Criminal Court as the forum in which to initiate an action against an abuser, permitting a batterer to escape criminal penalties. NY Senate Report, supra note 2, at 28-29.

anti-violence legislation. Puerto Rico's Domestic Violence Prevention and Intervention Law, commonly referred to as "Ley 54," Law 54,[13] is considered a model internationally because of its ambitious and comprehensive approach to domestic violence, its recognition of the seriousness of violence against women, and its criminalization components.[14] Hence, Puerto Rico's legislation is a useful source of information and a model for legislative structure. This legislation, however, has engendered mixed responses from Puerto Rico's legal community.[15] The experiences of government officials and advocates in Puerto Rico have caused them to forge opinions about the efficacy of Law 54 and reflect underlying presumptions and concerns about domestic violence legislation are useful in the design and implementation of other legal strategies. Therefore, advocates and designers of federal legislation in the United States should consider the Puerto Rican experience when identifying the strengths and weaknesses of comprehensive domestic violence legislation.

Although Puerto Rico's Law 54 and the United States' Violence Against Women Act reflect distinct jurisdictional and cultural concerns, they adopt similar remedial goals and mechanisms for addressing violence against women. Both embrace criminalization of domestic violence and prescribe criminal and civil sanctions for the abuser. In the case of both legislative enactments, advocates' efforts have been pivotal. Thus, Law 54 is an appropriate comparative base. These legislative efforts have had significant, albeit limited, success in curbing such violence because of deep-rooted gender inequalities in the legal system and legal discourse on domestic violence. The best intentioned legislator must contend with sexism as well as misinformation about domestic violence. This Article proposes that effective legislation is one which recognizes each woman's individuality and her entitlement to full participation in society as an equal. The ultimate success and utility of legislation depends upon its integration into the legal framework and the political discourse on violence against women. Where that integration is tainted by or constructed pursuant to presumptions founded on gendered about women and violence against women, legislation will face serious obstacles, and will provide only partial remedies for women. However, where the legislative focus is the safety and autonomy of women, a wider range of success is possible.

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[13] P.R. Laws Ann. tit. 8, §§ 601-708 (1991).

[14] Commission for Women's Affairs Office of the Governor of Puerto Rico, Second Report on the Progress of the Implementation in Puerto Rico of the Domestic Violence Prevention and Intervention Law (Law 54 of Aug. 15, 1989 (1993)) [hereinafter Second Commission Report].

[15] See infra part I.

I suggest that legislation follow three mandates in order to achieve a more comprehensive and equitable level of success. First, as a primary purpose, it must accept and promote political and social reform of societal perceptions of and approaches to violence against women by intimates. Acceptance of this goal as a valid and necessary aim of legislation is crucial. Second, the legislation must expressly decouple or disconnect separate notions and strategies which focus on the integrity of the family unit, and which thereby promote as a main goal and justification for the legislation the preservation of traditional family configurations, from strategies which focus on the safety and existence of women as individuals. As such, legislation must strive to encourage women's empowerment for their own sakes, not because women are caretakers of children, husbands, or parents. Third, the legislation must emphasize the eradication of misperceptions and stereotypes about the nature of violence against women, women survivors, and male abusers.

Parts I and II of this Article discuss Law 54, which was enacted in 1989 in the wake of a massive effort by women activists, including lawyers, who sought to codify women's rights and to establish sanctions against domestic violence.[16] As discussed in Part I, enactment of the statute was the beginning of another struggle, presaged by government officials' publicly voiced opposition to the statute. This struggle reveals the need for community and professional education in order to ensure the adequate utilization of the statute.

Part II of this Article discusses the potential for social reform under Law 54. Unlike other criminal legislative initiatives, which focus on the defendant's conduct, Law 54 provides women with both legal shelter from intimate partner violence, especially physical abuse, and with the opportunity for self-development and personal empowerment.

Part III describes the recently-enacted Violence Against Women Act of 1994 ("VAWA").[17] After years of debate and compromise, the VAWA was finally enacted in September, 1994. The VAWA is comprehensive legislation, enacted to address violence against women through civil and criminal strategies,[18] and as such is groundbreaking federal legislation in

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[16] See Commission for Women's Affairs, Office of the Governor of Puerto Rico, First Report on the Progress of the Implementation in Puerto Rico of the Domestic Violence Prevention and Intervention Law (Law 54 of Aug. 15, 1989), at 7 (1991) [hereinafter First Commission Report].

[17] Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in isolated sections of 18 and 42 U.S.C.A. (West Supp. 1994)).

[18] The Violence Against Women Act addresses other types of violence in addition to domestic violence and, indeed, the it was passed as part of the Omnibus Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 13701 (1994).

the area of domestic violence. Part III reviews and critiques the sections of the VAWA on domestic violence.

Part IV compares Law 54 and the VAWA. The effectiveness and capacity for social reform envisioned by Puerto Rico's Law 54 remains untested in many ways. However, the statute, and the political and social discourses surrounding its implementation, provide a rich source of information. The VAWA is new legislation, a composite of various views and strategies on domestic violence. In the case of both laws, their ultimate value can only be measured by the successes and failures of their implementation.

I. PUERTO RICO'S DOMESTIC VIOLENCE PREVENTION AND INTERVENTION LAW—LAW 54

With the passage of Puerto Rico's Domestic Violence Prevention and Intervention Law ("Law 54") in 1989, Puerto Rico ushered in a new era of legal and social reform with respect to domestic violence. The international legal community has acknowledged the legal and political importance of Law 54.

> Within the international legal community, [Law 54] is recognized as one of the most advanced legal efforts, globally, and as an effort to address domestic violence in an integral and complete manner.[19]

Despite the fanfare and enthusiasm which accompanied the enactment of the legislation, the pre- and post-enactment periods have been plagued by controversy and tainted by criticism. Evaluations of the Law's impact reveal that the legislation has encountered ongoing resistance and skepticism from law enforcement officials and politicians. Legislation alone, therefore, has done little to change officials' opinions concerning the importance of and need for a systemic legal response to domestic violence. Nevertheless, Law 54 has engendered positive social and legal change as the number of women utilizing Law 54's provisions has increased, and as police, prosecutors, and the courts have grappled with the penalogical components of the legislation.

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[19] Second Commission Report, supra note 14, at 153.

A. The Language of Law 54

The purpose of Law 54 and the public policy at its core are set forth in its preamble. Thus, familiarity with the opening language of Law 54 provides a valuable point of departure for understanding the historical and legal context within which the legislation passed. The preamble reads like a political diatribe on the need for a comprehensive legislative response to domestic violence. The Legislature used the preamble to emphasize its commitment not only to the protection of the life, security, and dignity of women and men, but also to the protection of the family unit. As discussed further herein, this emphasis on the family unit has hampered the effectiveness of Law 54's implementation.

Law 54 assumes a progressive posture in defining domestic abuse. It states that domestic violence includes physical and non-physical methods of abuse:

> [domestic abuse is] a constant pattern of conduct involving physical force or psychological violence, intimidation or persecution against a person by his/her spouse, former spouse, a person with whom he/she cohabits, or has cohabited, with whom he/she has, or has had, a consensual relationship, or a person with whom a son or daughter has been procreated, to cause physical harm to their self, their property, or another's self, or to cause him/her grave emotional harm.[20]

This definition is legally and politically important for several reasons. First, Law 54 places responsibility for the illegal conduct on the abuser. It rejects the notion that women cause or provoke the violence. As such, it removes the philosophical and political justification for treating women as the instigators (whether passive or aggressive), rather than the targets of domestic violence.

Second, Law 54 attaches legal responsibility to abusers, regardless of the status of the relationship of the parties. Current and former spouses, as well as intimate partners, are recognized as abusers under Law 54. The statute focuses on the acts of violence rather than the "domestic" quality of the relationship. This focus avoids disparate treatment of abusers simply because the relationship has ended, and ensures that all abusers and, *a fortiori*, all types of abusive conduct, are addressed. This is critical because, as research has shown, violence escalates once the woman attempts to leave a violent environment, or after the relationship ends.[21] Law 54,

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[20] P.R. tit. 8, § 602(k).

[21] See, e.g., Novello, supra note 4, at 3132.

therefore, aptly reflects women's experiences and violent consequences of their relationships.

Third, the Law's definition of violence facilitates the provision of comprehensive legal protection for women against a range of abusive tactics. For example, the Law defines "psychological abuse" as:

> a constant pattern of conduct performed to the dishonor, discredit or scorn of personal worth, unreasonable limitation to access and handling of common property, blackmail, constant vigilance, isolation, deprivation of access to adequate food or rest, threats of deprivation of custody of sons or daughters, or destruction of objects held in esteem by the person, except those that privately belong to the offender.[22]

By penalizing emotional and psychological abuse, Law 54 responds to women's experiences, and ensures that all types of harms and injuries may be addressed through legal interventions.

Successfully providing opportunities for self-development to women who are the targets of domestic violence is perhaps Law 54's most ambitious intent. According to its "Statement of Purpose for Law 54,":

> [Law 54 will contribute to] the development, establishment, and strengthening of effective measures to give protection and help to the victims, options for the rehabilitation of the transgressors, and strategies for the prevention of domestic abuse.[23]

Thus based on its language, Law 54 is a legislative empowerment model. It includes statutory mandates to prevent and penalize abuse and incorporates procedural and substantive self-development methodologies.

B. Structure

Law 54 promotes legal and policy strategies through a triad structure composed of criminal sanctions, civil remedies, and preventive measures. The criminal sections of the statute identify five crimes and their corresponding penalties, the civil sections address orders of protection, and the preventive measures focus on education and government organizational development.

1. Criminal Provisions

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[22] P.R. tit. 8, § 602(l).

[23] Id. § 601.

Law 54 follows the trend in various jurisdictions in the United States,[24] and adopted in the VAWA,[25] of limiting the discretion of law enforcement personnel in domestic violence cases. The most obvious examples are the mandatory arrest provisions and sections of Law 54 that mandate particular conduct in the preparation of law enforcement reports and in the treatment of domestic violence survivors by law enforcement personnel.[26]

Law 54 authorizes public officials, police officers, and prosecutors to issue complaints and to arrest an assailant without the benefit of a warrant, so long as the officials have a well-founded belief that the person has committed an act, even if committed outside of the officials' presence, or is committing an act in violation of Law 54.[27] Any public official who intervenes in a domestic altercation must prepare a written report which includes the allegations and the conducted investigations, even if no criminal charges are issued.[28] The names of persons implicated in domestic violence cases are kept confidential.[29] The law further directs public officials to take all necessary steps to avoid another violent

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[24] Mandatory arrest provisions exist in fifteen states. Ariz. Rev. Stat. Ann. § 13-3601b (1991); Conn. Gen. Stat. Ann. § 46B-38b(a) (West 1990); D.C. Code Ann. § 16-1031(a) (1991); Haw. Rev. Stat. § 709-906(4) (1991); Iowa Code Ann. § 236.2 (West 1989); Me. Rev. Stat. Ann. tit. 19, § 770 (West 1991); Mo. Rev. Stat. § 455.085 (1990); Nev. Rev. Stat. § 171.137 (1991); N.J. Rev. Stat. § 2C:25-5a (1991); Or. Rev. Stat. § 133.055 (1989); R.I. Gen. Laws § 12-29-3(B) (1991); S.D. Codified Laws Ann. § 23A-3-21 (1991); Utah Code Ann. § 30-6-8(2) (1991); Wash. Rev. Code Ann. § 10.31.100(2) (West 1990); Wis. Stat. Ann. § 968.075(2) (West 1990). Nineteen states require arrests for violations of an order of protection. Del. Code. Ann. tit. 13, § 1510 (1991); Me. Rev. Stat. Ann. tit. 19, § 770 (West 1991); Mass. Gen. Laws Ann. ch. 209A, § 6 (West 1992); Minn. Stat. Ann. § 518B.01(14) (West 1991); Mo. Rev. Stat. § 455.085(2) (1990); Neb. Rev. Stat. § 42-928 (1990); Nev. Rev. Stat. § 33.070 (1991); N.H. Rev. Stat. Ann. § 173-B:8 I(a) (1990); N.J. Rev. Stat. § 2C:25-15-1 (1991); N.M. Stat. Ann. § 40-13-6(c) (Michie 1991); N.C. Gen. Stat. § 50B-4 (1991); Or. Rev. Stat. § 133.310 (1989); R.I. Gen. Laws § 12-29-3(B) (1991); S.D. Codified Laws Ann. § 23A-3-2.1 (1991); Tenn. Code Ann. § 36-3-611(a) (1991); Tex. Crim. Proc. Code Ann. § 14.03(b) (West 1991); Utah Code Ann. § 30-6-8(1) (1991); Wash. Rev. Code Ann. § 10.31.100(2)(B) (West 1990); Wis. Stat. Ann. § 813.122(10) (West 1990). See Joan Zorza, The Criminal Law of Misdemeanor Domestic Violence 1970–1990, 83 J. of Crim. L. & Criminology 46, 64 nn.182–83 (1992).

[25] Pub. L. No. 103–322, 108 Stat. 1902.

[26] P.R. tit. 8, §§ 638, 640, 641.

[27] Id. § 638.

[28] Id. § 641. This section also requires that the Police Superintendent establish a mechanism to maintain copies of these documents. The statistics division of the Puerto Rico Police must prepare an annual public statistical account about domestic violence in Puerto Rico using these documents.

[29] Id.

altercation, and to provide medical and social services, as well as full information to the woman about her rights.[30]

Courts may release a person charged under Law 54 pending trial[31] and courts may condition bail on a prohibition against contact with the complainant or persons providing her with shelter or refuge, and may mandate that the abuser abandon the residential premises, if shared with the complainant.[32] Finally, courts may also grant the accused release from prison on his own recognizance after considering the defendant's prior history of violence and whether the accused represents a potential threat to any other person.[33]

An abuser may be charged with up to five crimes under Law 54: abuse; aggravated abuse; threat to abuse; abuse and kidnapping; and marital rape. These five crimes constitute serious offenses carrying severe prison sentences.[34] Provisions for the reduction or increase in sentences are based on mitigating or aggravating circumstances.[35]

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[30] The official is responsible for: (a) providing and facilitating medical attention for any physical injuries; (b) providing transportation to a safe location if the woman expresses concern about her safety; (c) upon her request, providing protection and assistance to the woman as she recovers personal items from her residence or other location; (d) informing the woman about the importance of preserving the evidence of abuse; and (e) informing the woman about her rights and about the available public and private services for victims of domestic violence, as well as providing her with a fact sheet for domestic violence victims. Id. § 640.

[31] Prior to the accused's release, however, the complainant, or other endangered person, must receive sufficient advance notice to ensure her safety. Id. § 637(e).

[32] Id. §§ 637(b)(1), (b)(3).

[33] Id. §§ 637(c)(1)-(3). The court must also consider the complainant's opinion concerning release or that of others who testified, as well as any other pertinent circumstances. Id. § 637(c)(4).

[34] The crime of "abuse" carries a fixed twelve-month sentence, with an allowable increase to eighteen months in the case of aggravating circumstances or a reduction to nine months for extenuating circumstances. Id. § 631. "Aggravated abuse" carries a fixed three-year sentence, which may be increased to five years in the case of aggravating circumstances or reduced to two years for extenuating circumstances. Id. § 632. The crime of "abuse by threat" carries a fixed twelve-month term, with the possibility of an increase to eighteen months or a reduction to nine months. Id. § 633. "Abuse by restriction of liberty" carries a three-year fixed term, with a possible increase to five years or reduction to two years. Id. § 634. "Conjugal sexual assault" carries a fifteen-year fixed sentence with a possible increase of up to twenty-five years or a reduction to ten years. Id. § 635. Where rape is accomplished by the use of force, violence, intimidation, or threat of grave and immediate bodily harm, the Law prescribes a thirty-year fixed sentence, with a possible increase to fifty years or reduction to twenty years. Id. Further, if the crime is committed on the woman's residential premises, through unauthorized access, the penalty shall be a sixty-year fixed sentence, with a possible increase of up to ninety-nine years or a reduction to forty years. Id.

[35] This Article does not consider what constitutes extenuating or aggravating

In a limited number of cases, which are characterized by certain mitigating circumstances, and as a one-time option, Law 54 provides for alternative punishment to incarceration.[36] The defendant's release is contingent on his participation in a program of re-education and rehabilitation for batterers. The charging complainant has the right to state her opinion to the court regarding the appropriateness of this alternative release program.

The court may, at its discretion, supersede the case against the abuser. In such case, no sentence is entered and the record of the charges and proceedings may be sealed. The convicted abuser is exonerated and avoids any and all legal ramifications associated with a criminal conviction.[37]

While flexibility and the development of individualized responses are positive aspects of a democratically instituted criminal justice system, a blanket provision allowing for the complete exculpation of an abuser, at best, is antithetical to efforts to criminalize domestic violence, and, at worst, undermines Law 54's legislative goals. Even where, as in the case of Law 54, legislative standards limit judicial discretionary action favoring exculpation, the very recognition of such exculpatory provisions negates Law 54's severity and exigency, and is therefore detrimental to the Law's success. It allows, even encourages, resistance to criminalization of abusive conduct between intimate partners.

2. *Civil Provisions*

Chapter II contains civil provisions for securing and enforcing orders of protection. Law 54 defines an order of protection as:

> [a] written court mandate which sets forth the manner by which the assaulter must cease, or prevent from occurring, certain conduct or acts which constitute domestic violence.[38]

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circumstances. For a discussion of sentencing in the general context of the implementation of Law 54 and the legal reform movement in Puerto Rico see infra notes 67–78 and accompanying text.

[36] See P.R. tit. 8, § 636. The guilty defendant may avoid incarceration if: the defendant-abuser does not have any prior convictions for any of the crimes against the complainant set forth in Law 54, or for crimes set forth in similar legislation of the United States; the defendant is not in violation of an order of protection; or the defendant enters an agreement with the Prosecuting Attorney's Office. Id. §§ 636 (a)-(c). In the case of marital rape, this alternative release program is only available if the parties were living together at the time of the criminal act. Id. § 636.

[37] The exonerated abuser, for example, has the option to secure any fingerprints or photographs related to his conviction under Law 54 which are in the custody of the Puerto Rico Police. Id. § 636.

[38] Id. § 602(e).

A woman may obtain an order of protection, without filing criminal charges or a complaint, at her own request, at the request of her legal representative, or through a public official.[39] A court shall issue an order of protection if there is sufficient evidence that the petitioner is a victim of domestic violence.[40] The court of first instance or municipal judge is further authorized to issue orders to promote the goals and public policy of Law 54.[41] Orders may be revised by the appropriate higher court or, where necessary, by the family court.[42]

3. Statutorily Prescribed Preventive Measures

Chapter IV sets forth three preventive measures for implementation of Law 54 on a macrolevel. The implementation of the preventive measures and responsibility for reporting on the progress of the Law fall directly within the duties of Puerto Rico's Commission for Women's Affairs ("Commission"), a government agency whose members are appointed by the Governor of Puerto Rico.[43] The Law's stated objectives include the establishment, in collaboration with other governmental departments, of a package of preventive and prescriptive measures to address domestic violence.[44] Thus, Law 54 assigns the Commission oversight responsibility and authorizes it to direct certain programs and initiatives, in furtherance of the statute's public policy.[45]

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[39] Id. § 621.

[40] Law 54 permits the issuance of broad orders of protection. For example, a court may grant any or all of the following: provisional custody of children and child support; the removal of children from the jurisdiction; the removal of the respondent from the residence; prohibitions against harassment, surveillance, intimidation, or threats; prohibition against the spending of private or communal finances or wages; and indemnification for harm caused. Id. §§ 621(a)-(i). Indemnification may include, but is not limited to, compensation for moving expenses, property repairs, legal costs, medical costs, psychiatrists, psychologists, therapy, lodging, and shelter. In addition, this section does not limit or supplant other civil actions available to the petitioner. Id. § 621(i).

[41] Id. § 621(j).

[42] Id. § 622.

[43] P.R. Laws. Ann. tit. 1, § 301 (1991). The Commission is established under another section of Puerto Rico's internal law as an ombudsman-type Commonwealth agency which oversees various programs and projects on women's issues in Puerto Rico. The Commission's Board is appointed by the Governor of Puerto Rico to serve for staggered fixed terms.

[44] P.R. tit. 8, § 653.

[45] Id. § 651. Law 54 guarantees confidentiality for the Commission's service population. Id. § 652.

The Commission's twelve distinct responsibilities fall within four general categories: 1. Educational—providing information to the Puerto Rican community on domestic violence and on the scope and applicability of Law 54;[46] 2. Investigative—studying, investigating, and publicizing reports on domestic violence in Puerto Rico,[47] including an annual report to the Governor of Puerto Rico and the Legislature on the progress of Law 54;[48] 3. Program and Service Development—developing direct service projects and strategies to promote political and procedural changes in government agencies, in order to improve those agencies' responses to domestic violence survivors;[49] and 4. Service Provision—providing training and orientation services for counselors, concerning treatment and counseling of domestic violence survivors.[50]

II. ANALYSIS OF LAW 54

A. Law 54, Public Policy, and Gender Roles

The tension in Law 54 is juxtaposed between the Law's legal and political promises: criminalization of violence against women by current and former lovers and spouses, as well as the empowerment of women achieved through the development of women's self-esteem, in the context of a self-help legislative model.

Concern over the expansive nature of domestic violence and its concomitant devastating effects on women is partly the social and moral bases for the legislation. This legislation, Law 54, is thus unique and

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[46] The Commission is authorized to: promote and develop education programs on domestic violence prevention; educate and sensitize groups on anti-violence techniques; sensitize help professionals about the needs of domestic violence victims and their families; analyze and prepare studies on the need for intervention, education, and rehabilitation programs for batterers; and develop guidelines, for judicial consideration, on the minimum requirements for programs utilized through the alternative process set forth in section 636. Id. §§ 651 (a),(c)-(d),(k)-(l).

[47] Id. § 651(b). The Commission's reports include a discussion of the nature, scope, and consequences of domestic violence as well as a number of recommendations which seek to eradicate the violence. See infra parts I, II.

[48] P.R. tit. 8, § 651(j). For a discussion of the Commission's first annual report, see infra part II.B.

[49] Id. § 651(e). The Commission must also establish and promote the establishment of information, support, and counseling services for survivors. Id. § 651(f). It must encourage the establishment of domestic violence shelters and, in coordination with Puerto Rico's Department of Social Services, promote service programs for children who are victims of domestic violence. Id. §§ 651(g)-(h).

[50] Id. § 651(i).

ambitious in its political and legal approach to violence against women. Nevertheless, the statute's Statement of Purpose places doubt on whether the status of women as independent members of Puerto Rican society is part of the legislative concern. The language suggests that concern for women's rights and women's opportunities to participate fully in Puerto Rico's political, legal, and social domains is inextricably intertwined with the concern for the well-being and continued existence of the traditional family structure.[51]

> The Government of Puerto Rico reaffirms its constitutional commitment to protect the life, safety and dignity of men and women. It also recognizes that domestic abuse violates the integrity of the family and its members and is a serious threat to the stability and preservation of the civilized conviviality of our people.[52]

The theme of the preservation and solidification of the family extends legislative intervention beyond male and female relationships to include "traditional" parent/child and spouse/caretaker relationships. Thus, the legislation accepts experts' claims about the extensive harm done to children who are survivors of domestic violence, its affects on the disintegration of the family, and the weakening of human coexistence values.[53]

The objective of preserving people's lives and dignity conflicts with the effort to preserve the integrity of the family when the latter is based on defined gender roles that set boundaries on appropriate behavior for men and women within the family structure. So long as domestic violence is viewed as a danger because it threatens the traditional family structure and values, the impact of violence on women's lives, autonomy, and independence remains secondary to, or in conflict with, societal objectives.[54]

The fear that attacks on domestic violence will destroy the family unit clashes with feminist agendas. Feminists address violence within the context of women's struggles for recognition as individuals and as a community. To the extent that feminists define women as standing outside

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[51] See Celina Romany, Killing "the Angel in the House": Digging for the Political Vortex of Male Violence Against Women, in The Public Nature of Private Violence 285, 293 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994) [hereinafter Romany] (focus on violence towards women and children compromises the position of women's experiences and gender-based violence).

[52] Id.

[53] P.R. tit. 8, § 601.

[54] Romany, supra note 51, at 293 (women's experiences of gender-based violence are submerged and concealed by focus on violence against the family).

or beyond the family infrastructure, feminist ideas cannot co-exist with legislative and political strategies based on well-entrenched gender roles.

> Home, the sacred site of the family, the "shelter for those moral and spiritual values which the commercial spirit and the critical spirit are threatening to destroy" . . . becomes the contested terrain of state intervention. As long as it fits the natural model which suppresses oppositional and/or different configurations, the family will remain the "sanctuary of privacy into which one can retreat to avoid state regulation" . . . . As long as the family remains the consolidating unit of male hierarchy, the state can remain neutral . . . .[55]

The tenuous nature of women's rights, and of women's entitlement to full protection of the laws, is revealed by the limited enforcement of legal mandates. As described in the Commission's evaluation of Law 54's implementation, the purposive inaction of officials has obstructed the full implementation of Law 54 in Puerto Rico.

Even when cases are prosecuted, the courts are not "safe havens" for women. Judicial resolutions of factual situations, in which the philosophical bases of Law 54 challenge established gender roles and male dominance, evidence the social and legal reform potential and limitations of Law 54.

B. The Commission Reports on the Status of Law 54

Pursuant to its statutory mandate, the Commission has issued two reports on Law 54 to Puerto Rico's Governor and Legislature. The First Commission Report, issued in 1991, was the first evaluation and analysis of the Law's implementation. In addition to including summaries of the reactions of the Puerto Rican legal community, it provides a historical and socio-political sketch of the Law's legislative and political past, and stands as the seminal work on the Law's status within Puerto Rico. The Second Commission Report, issued April, 1993, further advances the analysis of Law 54's effectiveness by presenting a detailed discussion of the implementation of Law 54 during the interim two years between the issuance of the First Report and the Second Report.

For both reports, the Commission adopted an evaluation methodology dependent on statistical and narrative data. The Commission gathered and analyzed statistical information and individual responses from government officials, such as police officers, prosecutors and judges, and domestic violence survivors and service providers, on the utilization and perceived successes and failures of Law 54. It then presented the raw data, as well

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[55] Id. at 291 (citations omitted).

as the Commission's assessment of the statistics and of the individual interviews. The Commission's utilization of statistical and narrative methodologies produced a balanced, legitimate, and useful gauge of the obstacles and impediments to the full implementation of Law 54.

Three themes predominate the Commission's reports. First, Law 54 represents a radical change in Puerto Rico's social and legal fabric. Second, law enforcement officials have resisted the change in legal and social culture envisioned by Law 54. Third, patriarchal ideologies threaten the Law's implementation and the criminalization of domestic violence.

1. Law 54 Changes the Legal and Social Landscape

Law 54 is not only a political effort to ensure justice for domestic violence survivors but also a vehicle for social reform and women's empowerment.

> [E]mphasis on the responsibility for the consequences of violent conduct is transferred from the victim to the entire community. It is no longer "her problem," rather it is ours.
>
> . . . .
>
> By converting physical and psychological violent conduct into serious offenses, society not only ratifies its repudiation of this behavior, but also sends a clear message about the social value of an individual's integrity and dignity in intimate relationships . . . .[56]

The data confirms that women rely on Law 54 as the legal vehicle to protect themselves from abusers. During the initial months after the enactment of Law 54, it served as a mechanism for formalizing complaints and charges of domestic abuse. In fact, during the early months of Law 54's implementation, Puerto Rico experienced a dramatic increase in domestic violence cases of approximately forty-four percent.[57]

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[56] First Commission Report, supra note 16, at 16.

[57] According to the First Commission Report, prior to the Law's enactment in 1988, there were only 772 documented domestic violence cases per month. In 1990, however, the number had increased by 44.3% to 1,114, and another slight increase followed in 1991. Id. at 34; Second Commission Report, supra note 14, at 25. During the first 14 months following Law 54's enactment, there were 15,594 calls related to domestic violence made to the police.

Other data in the reports reveal additional information about the nature of violence against women by their intimate male partners. According to the reports, women are most in danger of physical violence in their homes and at the hands of men who are in their twenties and thirties. In 1990, 81.4% (and in 1992, 85.7%) of all domestic violence incidents in which the police intervened occurred in the survivor's residence. First Commission Report, supra note 16, at 40. Thirty-eight percent of abusers are

From November 1989 to December 1990, Puerto Rico's Department of Justice initiated investigations in 9,095 domestic violence cases, found probable cause to arrest in 6,168 cases, and had probable cause to go to trial in 2,422 cases. Of the 1,529 cases in which there were final determinations, defendants were convicted in 72.5% of the cases and acquitted in 6.1% of the cases.[58]

The Committee opined that this increase was directly attributable to Law 54 and to public education on conduct constituting domestic violence and how to avoid this violent behavior.[59] Nevertheless, much work remains to be done.

2. *Officials' Resistance to Law 54*

As detailed in both reports, the reactions and concerns of government and legal officials and advocates are mostly negative, often unabashedly contrary to the letter and spirit of Law 54. Indeed, the Commission found that the several officials charged with the Law's implementation have expressed vitriolic anti-Law 54 attitudes.

The Second Report presents a disturbing picture of official resistance to, and rejection of, legislative action and criminalization of domestic violence. This situation has generally failed to improve since it was first documented in the First Commission Report. According to the Commission, government insiders who support Law 54 are "isolated, fragmented and delicately sustained."[60]

The opposition has been diverse and expansive, and even includes individual resistance entrenched even within the institutions charged with enforcing Law 54. At the forefront of the resistance are government

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males between 20 and 29 years old, and another 32% are males between 30 and 39 years old. Second Commission Report, supra note 14, at 33. In 67% of the domestic violence incidents reported to the police, the abuser relied predominantly on physical force. Id. at 37. Intimidation is the next most frequently used method of abuse and was present in 22% to 28% of the cases in which the police intervened. Id. at 38. Over 60% of the incidents are categorized as aggravated assault. Id. at 35-36.

[58] Id. at 67-69. Of the remaining cases, 20.9% were filed, and 0.5% were transferred. The number of cases which eventually ended up in court is much smaller, although there were higher conviction rates in 1991 for certain categories of offenses. For example, in 1991, 2,207 cases went before judges, and of these, 1,107, or 75%, resulted in convictions. Second Commission Report, supra note 14, at 55. There were higher conviction rates on charges of aggravated assault, threat to abuse, and marital rape. Id. at 80. There were decreased conviction rates for charges of assault and assault with intent to kidnap. Id. Noticeably, cases of violations of orders of protection increased approximately 14%. Id. at 78-79.

[59] First Commission Report, supra note 16, at 36.

[60] Second Commission Report, supra note 14, at 9.

leaders and agency heads who continue to orchestrate opposition to domestic violence legislation.

> The [Commission] understands that the obstacles which impede the implementation of Law 54 for the chief benefit of persons who suffer the impact of domestic violence, are the result of a persistent strategy (at times public and at other times discreet) of the functionaries and leaders at the highest level in the system's agencies who do not accept the mandate for change which [Law 54] imposes.[61]

This "officials' resistance" has continued to be the single most serious impediment to implementation. According to the Commission, "the Justice Administration System's agencies' leadership is the factor which has most adversely affected and impeded the progress of the implementation of Law 54."[62] The resistance by officials has been pro-active and incessant, fostering gender-based attitudes which are anti-feminist and anti-woman.

> This leadership, far from prompting and assuming the challenge to bring about change, has taken the task of opposing [Law 54], proposing its amendment (amendments which cover minor elements and go even to the repeal of the statute), while promoting and strengthening anti-women attitudes which tend to victimize the women who attempt with great or little success to utilize the statute for their protection and in order to denounce domestic violence crimes.[63]

During the first, and critical, years after Law 54's enactment, two of the most ardent and visible opponents of the Law were the Superintendent of Police, Ismael Rivera Betancourt y Lebron, and the Administrator for Corrections, Dr. Mercedes Otero de Ramos. Rather than commend the implementation of Law 54, they argued that the growing numbers of complaints of domestic violence and the increased incarceration of abusers revealed the weakness of any criminalization effort and indicated that Law 54 is ineffective. In support of their universal condemnation of the Law, they highlighted the inability of the Puerto Rico criminal justice system to manage a burgeoning caseload.[64] While they made sweeping statements

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[61] Id. at 8.

[62] Id. at 7.

[63] Id. at 8.

[64] In addition to the increase in domestic violence complaints, as documented in the statistical information contained in the First Commission Report, there was also an increase in the number of individuals incarcerated for violating provisions of Law 54. During the first nine months of the Law's application, 1,270 persons were incarcerated on charges of domestic violence. Only 0.3% of this population had actually been sentenced to serve time in prison, the remainder of the population (99.7%) was

about the system's overall weaknesses, however, they did not point to specific deficiencies in the statute.

Dr. Otero de Ramos publicly voiced her pessimism about the effectiveness and desirability of criminalizing domestic violence before Puerto Rico's legislature. She asserted that alternatives to incarceration were preferable and appropriate responses to the prison system's inability to manage the influx of inmates incarcerated under Law 54. She urged the Legislature to amend Law 54 to emphasize rehabilitation as an alternative to incarceration.

> Otero call [sic] on the Legislature to establish effective ways for rehabilitation, "because jail is not the solution to all evils."
>
> "We must define what it is that the Legislature meant when it talked about [rehabilitation programs,] [sic] she said. "We must also find an alternative for dealing with the real problem, which is drug and alcohol abuse."[65]

Opponents who agreed with Dr. Otero de Ramos asserted that the problem was "social" not legal,[66] thus attempting to delegitimize criminalization as an appropriate societal and legal response to violence against women by intimates, and seeking to legitimize rehabilitation options as viable alternatives to incarceration.

Supporters of Law 54 maintained that government officials had mischaracterized the nature of the problem by confusing lack of resources and insufficient fiscal appropriations with substantive problems in the legislation. Supporters argued that while the former concerned problems with the criminal justice system and its capacity to handle the effects of any criminal statute, regardless of the subject matter, the latter dealt with the underlying philosophical premises of Law 54: criminalization as an appropriate and primary response to domestic violence.

The negative views of Law 54 voiced by Mr. Rivera Betancourt y Lebron and Dr. Otero de Ramos had debilitating effects on efforts to propagate a public education campaign and reform movement. In addition, these opinions sent a message to other officials within their departments that

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incarcerated for failure to post bail. Id. at 95–96.

The Corrections Department was ill-prepared and ill-equipped to manage the increase in detainees. However, the Department defensively denied these shortcomings. As discussed in the text, the head of that department, Dr. Otero de Ramos, responded to the increased pressures placed on the Corrections Department by attacking the utility and credibility of Law 54.

[65] First Commission Report, supra note 16, at 145–46.

[66] Id. at 59.

Law 54 was an ill-conceived and misguided legislative effort.[67] As a result, the police continue to trivialize the seriousness of domestic violence.[68]

Puerto Rico's experience is not unique. An array of studies and surveys in the United States documents the fact that police and other law enforcement personnel regularly downplay the criminal implications of domestic violence.[69] Studies have also shown that an overwhelming majority of domestic violence cases are not prosecuted.[70] Law enforcement personnel react by rejecting the efficacy of legislative action and criminalization, blaming women for the violent conduct of their intimate partners, and condemning women who fail to pursue prosecution of abusers. Thus, in order for legislation to succeed in the United States, it would behoove advocates and legislators in the United States to consider Puerto Rico's experiences, in order to avoid replicating those mistakes.

As the First Commission Report details, law enforcement officials were critical of the Law and outwardly opposed it. A significant segment of the police vehemently disapproved of Law 54, believing that neither Law 54, nor any other legislation, could resolve a fundamentally "social" problem like domestic violence.[71] Prosecutors opposed criminalization because domestic violence was perceived as a social problem which required the infusion of social services targeted at the family, rather than the imposition of criminal penalties on the abuser.

Prosecutors also relinquished responsibility for the implementation of Law 54 by focusing on the lack of follow-up by abused women, and on some women's unwillingness to pursue prosecution of the abuser. Prosecutors concluded that many women survivors lacked interest in and commitment to criminal prosecution. Frustrated by the numbers of incomplete or abandoned prosecutions, prosecutors blame women because they do not cooperate or desire prosecution.[72]

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[67] Romany, supra note 51, at 294.

[68] See Second Commission Report, supra note 14, at 131.

[69] See, e.g., Sarah Eaton & Ariella Hyman, The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts, 19 Fordham Urb. L.J. 391, 423, 426–27 (1992).

[70] See Zorza, supra note 24, at 71.

[71] Their objections to Law 54 ranged from benign discontent with the Law to aggressive opposition to domestic violence legislation in general. The following are typical responses by police officers: "[A]s we see it because this problem is a family issue, it requires more attention to the social rather than to the criminal." First Commission Report, supra note 16, at 55. "We understand that Law 54's purpose has not achieved its objective. Spousal abuse continues. Instead of uniting the nuclear family, this law has done the opposite." Id. at 56.

[72] Below are examples of some prosecutors' opinions, excerpted from the First

While government agencies also blame one another for the poor implementation of the Law,[73] women's failure to prosecute abusers remains a constant theme throughout agency descriptions of the problems associated with Law 54. The majority of prosecutors still consider women's lack of interest in prosecution to be the main obstacle to the implementation of the Law.[74]

Service providers once again paint a different picture of the dynamic between prosecutors and survivors and focus on prosecutorial blameworthiness. Providers claim that prosecutors are abusive themselves. They assert that prosecutors openly blame women for the abuse and chastise them for failing to cooperate with the criminal prosecution of the abuser.

Moreover, Law 54's supporters assert that insufficient resources exist in the criminal justice system to adequately respond to the Law's requirements for mandatory arrest and the resultant increase in incarcerations and convictions. Rather than blame survivors, advocates charge that government officials responsible for the proper funding and implementation of Law 54 should be held accountable for failing to direct adequate resources towards the efficacious use of the Legislation. They maintain that a lack of sensitivity and informed understanding of the nature of domestic violence, institutional resistance, and misinformation are the true culprits, not women.[75]

Women survivors of domestic violence also complain that the police do not know what to do with an order of protection, or that they doubt the veracity of the women or the severity of the problem. They complain that judges issue dual orders of protection and refuse to recognize orders of

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Commission Report:

> This movement leads a woman to resort to the police for any triviality . . . . Nothing is gained by prosecuting the aggressor. . . . Law 54 labels as grave offenses situations which could be handled through other laws. . . . Domestic violence is utilized as an escape valve for other problems such as alcohol or drugs. . . . What the woman wants is to resolve her immediate problem, they are satisfied if the husband goes to jail for five or six days. . . . The problem is not solved by putting the man in jail. . . . The women themselves put up bail. . . . The problem is social and not penal.

Id. at 77-80.

[73] For example, in the Second Commission Report prosecutors commented that judges attempt to move the cases through the system as quickly as possible without regard to the merits of the action, and often "did not believe in the Law." Second Commission Report, supra note 14, at 66.

[74] Id. at 64.

[75] Id. at 99-102. Josefina Pantoja Oquendo, an attorney at the Support Center Legal Services of Puerto Rico, stated that the problems "have more to do with the implementation of the Law, attitudes and lack of information than with the virtues of the Law." Id. at 101.

protection from other jurisdictions, or that superior court judges refuse to take these cases because they incorrectly believe they should be handled by the lower courts.[76]

The system's opposition to the implementation of Law 54 is also manifested in more subtle, but no less pernicious ways, as is illustrated by the low number of men who are convicted under Law 54, and by the disproportionately high number of women, when compared to men, who complete their jail terms for violations of Law 54. It is further demonstrated by the number of men actually convicted for violations of Law 54 who are then granted release on parole by the court. These men are never required to participate in re-education or re-training programs.[77]

3. Ideology As a Practical Threat to Law 54

According to the Commission, institutional sexism undermines the implementation of Law 54 and the goal of empowering women.

> The sexist attitudes of some functionaries . . . [and] a view of the traditional right which places the responsibility on the victim, . . . and that prefers to continue seeing the problem of domestic violence only in a socio-cultural dimension, without recognizing the criminal dimension of the Law . . . impedes the . . . implementation of this legislation.
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> The Commission takes the position that persons charged with violating the domestic violence law should be treated no differently than others charged with committing a crime.[78]

In opposition to traditional theories of abuse modalities, the Commission rejects the proposition that alcohol and drug abuse are the true roots of the problem, or that domestic violence is a pathological condition which justifies excusing the abuser's conduct. The Commission's position reaffirms Law 54's contextual framework; Law 54 holds the abuser

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[76] All courts have jurisdiction, under Law 54, to consider charges of domestic violence and to issue orders of protection. P.R. tit. 8, § 622.

[77] Second Commission Report, supra note 14, at 11-12. Exact comparisons are impossible because the Commission did not have available statistics segregated by gender on the number of persons sentenced to prison pursuant to Law 54. However, the data for 1991 relied on by the Commission reveals that while women were aggressors in one in 17 domestic violence cases, they represented 25% of the persons completing prison terms for violations of Law 54. In comparison, 94% of the aggressors in domestic violence incidences during 1991 were men, yet they comprised 75% of persons completing prison terms for Law 54 violations. Id. at 99.

[78] Id. at 147, 151.

responsible for his or her violent conduct, regardless of the use of drugs or alcohol.[79]

In its efforts to oversee the proper implementation of Law 54, the Commission has had to address both governmental resistance to the substance of the Law, as well as challenges to the Commission's initiation of preventative and educational efforts. As a result of this barrage of criticism, the Commission has come to recognize the precarious position of Law 54's public policy basis.[80]

From a critical perspective, the officials' oppositional views of Law 54 and domestic violence reflect well-entrenched gendered visions of the nature of "violence," and women's roles within Puerto Rican society. Moreover, the officials' characterizations cast domestic violence within the sphere of private conduct. By relegating the violent acts of intimate partners and ex-partners to the private sphere, officials propose to legitimate limited interventions which further goals of maintaining a family structure. The goal of punishing the abuser is devalued and seen as conflicting with the goal of family unification.

The Second Commission Report concludes that the core of the resistance is based on patriarchal stereotypes and gender-specific norms opposed to feminist concepts of liberation and empowerment.

> The resistance of the functionaries is marked by a tradition of patriarchy within the justice system's agencies which tends to privilege [a male-centered world vision] and which challenges the importance of crimes against women and undervalues [women's] credibility and claims.[81]

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[79] According to the Commission,

> [T]o say that the problems of addiction, alcoholism and domestic violence are one and the same contributes to uninformation, confuses certain sectors and again, tends to remove the responsibility for acts of violent conduct from the aggressor, which is contrary to the intent of Law 54 and its public policy.

Id. at 151.

[80] The Commission has stated that,

> [L]amentably, our justice system functionaries were questioned too early on the principles of Law 54's public policy. As a result of their public expressions, there was confusion among the citizenry as well as among other lower functionaries as to how to enforce the Law. In diverse forums and sectors of the community, as within government sectors, controversies were fostered which placed in a fragile position the seriousness of the public policy enunciated by the Law and the commitment to prevent and intervene in the problem of domestic violence . . . .

Id. at 168.

[81] Id. at 10 (footnote omitted).

The gender-biased perceptions and attitudes of those charged with enforcing Law 54 are conspicuous and pervasive. Indeed, they are the basis for much concern among the Law's supporters.

> With respect to all of these agencies [the police, the Department of Justice, the Office of Court Administration and the Administration of Corrections], constant complaints and warnings are raised in the Commission as well as in institutions or centers which service women regarding the attitudes, violations of procedures and lack of support which confront women when they seek assistance from police, prosecutors and judges.[82]

C. The Commission's Recommendations

The Second Commission Report proposes numerous recommendations for the successful implementation of Law 54. Many respond to the shortcomings of the recent legislative efforts to address domestic violence, while others are reactions to the resistance of government officials towards Law 54. The Commission's recommendations are important both because they are the conclusions of the government agency charged with properly implementing the law, and because they may provide useful suggestions for future domestic violence legislation in the United States.

The Commission recommends the proper compilation of data. The Commission further notes that the fact that women do not receive thorough information on civil remedies often contributes to their inability to assert their rights. Therefore, it recommends that all government representatives, especially police and investigators, assume responsibility for providing victims with information on Law 54's civil remedies.[83] Resources must be allocated to provide enough court space and judicial staff to address requests for orders of protection twenty four hours a day, seven days a week. An information system must be established to facilitate the flow of information among the various court branches. Training of staff on the civil and criminal components of Law 54 must continue.[84]

Recognizing the importance of a genuine agency commitment to change, the Commission recommends the development of interagency collaborative efforts and the establishment of an internal complaint review procedure to evaluate complaints against government officials. The

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[82] Id. at 126.

[83] Id. at 127.

[84] Id. at 130-31.

Commission also recommends the immediate establishment of an Interagency Advisory Board for the implementation of Law 54.[85]

The Commission supports the continuation of educational and training programs for law enforcement personnel, as well as the establishment of a procedure for receiving complaints regarding enforcement practices. These recommendations respond to official resistance by simply providing law enforcement personnel with information about the nature of violence against women; the hope is that such knowledge will serve to dissipate long-standing opinions and patterns of conduct. Where education fails or is rejected, a complaint mechanism must be instituted as a safety net for those whose cases are jeopardized by officials' resistance or misapplication of the Law.

D. *Puerto Rico v. Lacroix Correa*

A recent decision of the Supreme Court of Puerto Rico illustrates the philosophical struggle and norm-reference tensions inherent in the current jurisprudence on Law 54.[86] In *El Pueblo de Puerto Rico v. Lacroix Correa*,[87] the Supreme Court of Puerto Rico overturned a lower court conviction under Law 54. Lizette Malcun Valencia, the complainant, and Alejandro Lacroix Correa, the defendant, had been involved in an intimate personal relationship until 1988.[88] They had lived together for one year when their relationship ended because of Lacroix Correa's unbearable conduct toward Malcun Valencia when he became drunk. One day, Lacroix Correa saw Malcun Valencia on a public street and physically and verbally accosted her. He stuck his hand through the car window where she was seated, punched her below the right cheekbone and called her a dirty whore. As a result of her injuries, Malcun Valencia had to get nine stitches and was placed on antibiotics.

At the plea colloquy, Lacroix Correa pleaded guilty to the lesser charges of aggravated assault and disturbance of the peace. In return, and pursuant to a plea agreement, the prosecutor recommended that the court

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[85] Id. at 147.

[86] The case discussed in the text, in this author's opinion, is an example of the misapplication of Law 54. The case is presented to highlight the difficulty inherent in judicial interpretation of legislation when jurisprudence is based on gender roles, defined by social norms, at odds with women's realities. The case illustrates the results of legal and societal decisions based on accepted gender norms. In *Lacroix Correa*, the appellate court found that the defendant was eligible for a suspended sentence, contrary to the trial judge's sentence and over the objections of the woman he attacked.

[87] 90 JTS 124 (Sup. Ct. P. Rico 1990).

[88] All facts are taken from the dissent in *Lacroix Correa*. Id. at 8217-18.

impose a suspended sentence. The lower court rejected the recommendation and sentenced Lacroix Correa to two consecutive six month terms of incarceration, one on each count. He appealed, claiming, in part, that the sentence violated the plea agreement.[89]

In overturning the lower court's decision, the Supreme Court reviewed the appropriate circumstances in which a suspended sentence should be granted and concluded that Lacroix Correa qualified for a suspended sentence. The Supreme Court examined the various mitigating factors specific to Lacroix Correa's case and emphasized his character. He did not have a prior criminal record; he held a degree in accounting; he was employed as an automobile leasing company sales representative with a $1,580 monthly salary; and he was the father of two dependent teenage children from a prior marriage. The report from the probation officer also noted that he

> has an adequate social conduct, except for some adulterated images of the female as a result of his prior marital experiences. This induces him to be aggressive with women when he comes into contact with liquor.[90]

On the basis of this information the Supreme Court concluded that the lower court acted beyond the scope of its discretion in refusing to consider suspending the sentence. The Supreme Court's only tacit modifications to the sentence were directions that Lacroix Correa abstain from drinking alcohol, enter a treatment program for his alcohol problem, and have no contact with Malcun Valencia.

The majority opinion assumes that the abuser can be excused for his conduct based on such factors as his prior experiences with women the impact of alcohol on his behavior towards women. The majority defines violent behavior in male/female intimate relationships as a form of aberrational and uncontrollable conduct. Such a definition falls within the discourse that such behavior is "pathological" in nature and downplays the significance of patriarchy and patriarchal structures in male/female relationship dynamics.

The dissent strongly opposed the suspended sentence.[91] In striking

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[89] The defendant charged the court with the following errors: (1) no factual basis to support imposition of the maximum sentence on the charges; (2) improper imposition of consecutive sentences without benefit of a suspended sentence; (3) failure to give proper deference to the sentence recommendation submitted pursuant to the plea bargain, especially where the pre-sentence report lacks an extraordinary fact or event which justifies an aggravated sentence; (4) capricious sentence; and (5) improper imposition of consecutive sentences in violation of the plea agreement of a fine. Id. at 8217.

[90] Id.

[91] The dissent was authored by Associate Judge Hernandez Denton and joined by

contrast to the majority opinion, the dissent approached the appeal as a violation of Law 54, rather than as an issue of abuse of discretion. It specifically rejected the significance of the proposed "mitigating" circumstances. In fact, it argued that the proposed mitigating factors demonstrated the nature of Lacroix Correa's aggressive behavior towards women, and therefore justified imposing a heavier penalty than a suspended sentence and an alcohol treatment program.[92]

In support of its position, the dissent referred to Lacroix Correa's abusive and deprecating attitude. It noted that he admitted to committing the assault, that he justified his behavior on the ground that Malcun Valencia provoked him, and that he exhibited no remorse for his actions.[93]

The dissent argued that Lacroix Correa's actions must be viewed as related to the larger problem of violence against women and that the case must be considered in the context of the role of the courts in stemming such violence. The dissent refused to excuse Lacroix Correa, and perceived a more active role for the Court in addressing violence against women.[94]

While the dissent's recommendations for the proper treatment of Lacroix Correa reemphasizes Law 54's mandate to penalize abusers, the dissent did not go far enough. Although clearly more sympathetic to the struggles of domestic violence survivors than the majority, the dissent treats violence against women as unique, and *a fortiori* outside the category of other violent crimes. Moreover, the dissent succumbs to the prevalent theory that domestic violence can be addressed through alternative rehabilitative techniques. For the dissent, the need for rehabilitation is obvious because domestic violence is a societal problem which pervades and infects the social structure, threatening both men and women. In the

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Associate Judge Naveira de Rodon. Judge Naveira de Rodon is the only woman on the Court.

[92] The dissent indicated that Lacroix Correa had a history of allegations of aggressive behavior towards other women with whom he had lived. Id. at 8218.

[93] Id. at 8219.

[94] The dissent stated that

> [I]t is evident, that in addition to incarceration, the conduct exhibited by the petitioner requires that he submit to, additionally, psychological or psychiatric therapy to address the causes of his mental problems and his aggression against women. Otherwise, to suggest another solution would not only cause that the petitioner would not comply with his social responsibility for his unlawful conduct but also that he would not be rehabilitated and unfortunately would continue being a danger for the women with whom he associates in the future.

Id. at 8220.

See Romany, supra note 51, at 287, for a discussion and critical analysis of the impact on Law 54's implementation of the helping professions' and judiciary's focus on rehabilitation and "decriminalization."

specific case of *Lacroix Correa*, the dissent concluded there was a need for psychological treatment to address Lacroix Correa's problems relating to women.

This is not to suggest that rehabilitation or alternative sentencing programs do not have a place within the domestic violence discourse, or that they are not useful for domestic abuse survivors. Rehabilitative remedies and criminal penalties are not mutually exclusive, however, and rehabilitation should not be presumed preferable to criminalization merely because the persons involved have or had an intimate relationship. The better approach is to replicate society's and the criminal justice system's treatment of other violent or criminal acts. The system should first penalize and then determine whether rehabilitation is useful or worthy of application under the circumstances.

The de-emphasis of women's needs in a violent situation further hampers the ultimate development and implementation of a strategy to proscribe and prevent violence, and *insure* women's *control* over their lives. The operative word is *control*. Control over the lives of women remains dependent on external factors—e.g. rehabilitation of male batterers, judicial commitment to appropriate sentencing, and societal recognition of the need to address violence against women because it harms women collectively. As long as the legislative strategies, be they legal or nonlegal, perpetuate this external control and favor male status and the family structure over women's status, domestic violence will continue to tear at the social fabric. As one commentator has stated, "the inadequacy of resources becomes the smokescreen for maintaining the preeminence of the social over the criminal nature of violence."[95]

Law 54's introductory description of domestic violence and its negative effects is devoid of any conflict between what "should be" and what "will be." Nor is there evident discontinuity between social behavior norms and women's autonomy and self-development. Herein lies the significant weakness of the statute: the void between the pronouncement in the law of what "shall be," and the acceptance in the social fabric and the halls of justice of what "will be." This is inherent in the harmonization of societal values and community norms with legal prohibitions and standards of behavior.

III. VIOLENCE AGAINST WOMEN ACT

In the United States, state initiatives against domestic violence have had varied successes; activists, legislators, and legal professionals have

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[95] Romany, supra note 51, at 291.

focused their energies on addressing violence against women through federal interventions and financial support for state law enforcement efforts.[96] The culmination of those federalization efforts is the recent enactment of the Violence Against Women Act ("VAWA"), a compilation of new legislation and amendments to various existing federal statutes, designed to aggressively and comprehensively address violence against women through civil and criminal strategies.[97] The discussion of the VAWA in this Article is limited to that legislation's domestic violence provisions.[98]

A. Subtitle B—Safe Homes for Women

Subtitle B contains various amendments to existing legislation, such as the Family Violence Prevention and Services Act,[99] and the Omnibus Crime Control and Safe Streets Act of 1968,[100] as well several new statutory provisions.[101]

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[96] Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 18 and 42 U.S.C.A (West Supp. 1994)).

[97] The Violence Against Women Act's criminal components are fully integrated into the congressional anti-crime strategies, as demonstrated by its passage as Title IV of the Violent Crime Control and Law Enforcement Act of 1994.

[98] Relevant sections of the Violence Against Women Act which address issues collateral to the larger problems of violence against women by their intimate partners are included in this Article. However, due to space limitations and for purposes of clarity, the Article does not discuss Subtitle F—National Stalker and Domestic Violence Reduction and stalking by intimate partners. Other sections of the Violence Against Women Act which have some peripheral connection to abuse by intimates—for example, the provisions concerning safe streets and safety in public transportation and public parks—are also excluded en toto from the text.

[99] 42 U.S.C. §§ 10401-10415 (Supp. V 1993).

[100] 42 U.S.C. §§ 3711-3797 (1988).

[101] This Article does not discuss the Violence Against Women Act Subtitle A-Safe Streets for Women which focuses on criminalization and the criminal justice system's response to violence against women, since the subject matter of that subsection exceeds the narrower scope of this Article's domestic violence discussion. A brief description of Subtitle A is provided herein for the reader's information.

Chapter 1 of Subtitle A is a federal crimes penalty enhancement provision, authorizing increased federal imprisonment terms for sex crimes. Chapter 1 also embodies a mandatory restitution requirement for sex crimes victims, which provides for medical services and lost income. The defendant must provide the person violated with restitution and the defendant's economic status is irrelevant to the court's determination of the appropriate restitution amount, other than for purposes of designing a payment schedule.

Chapter 2 of Subtitle A authorizes grants and appropriations to assist the states in developing effective law enforcement and prosecutorial strategies to combat violence

1. Chapter 1—National Domestic Violence Hotline

Section B, Chapter 1 provides for the awarding of grants to a private, nonprofit entity to establish a federal national domestic violence hotline.[102] The national domestic violence hotline will provide information and assistance to domestic violence victims through a national toll-free telephone service, available twenty-four hours a day for information and assistance. In recognition of the difficulty of providing such a service to a diverse national population, the grant applicant must demonstrate "a commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities."[103]

There are several advantages to a national domestic violence hotline. It provides an additional and necessary comprehensive resource center for women. It is useful for women who might otherwise abstain from utilizing local initiatives because they fear an abuser's retaliation, or a lax response from local enforcement personnel or social services. It is also a crucial resource for women who leave their homes and cross state boundaries, looking for shelter or trying to reunite with families, because it centralizes information for easy access on interstate services.

The large-scale anti-violence message inherent in a national hotline is another benefit only available though such a federal service. The establishment of a national hotline sends the message that domestic violence is a matter of national import, and that federal resources are allocated to it both because of its impact on women individually and collectively, and because of the effect of such violence on the general population. It emphasizes a commitment to reach out to all women, and to provide a broad range of services within a federal framework. It serves as a mechanism for institutionalizing opposition and resistance to violence against women and for promoting national support for victims of this type of violence. It is a provision which addresses both the public education and the preventive aspects of the VAWA.

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against women. The focus of this Chapter is criminalization. Grantees must allocate 25% of the funds received, each respectively, towards prosecution, law enforcement, and victims services. The enforcing federal regulations should ensure that geographic differences and service needs of underserved populations, including racial and ethnic populations, are recognized.

[102] Violence Against Women Act sec. 40211.

[103] Id. sec. 40211.

2. Chapter 2—Interstate Enforcement

Chapter 2 amends Part I of Title 18 of the United States Code by adding a new chapter: Chapter 110A—Domestic Violence.[104] This chapter may be properly called the "federal domestic abuse crime statute." It criminalizes certain domestic abuse where the abuser or the abuser's target crosses state borders, or where the actions otherwise implicate interstate transgressions of a woman's security resulting in bodily injury to the woman. The most important aspects of this section are its definitions of the abuser and the abuser's target and the nature of the conduct which constitutes a criminal violation.

The chapter includes a broad definition of "spouse or intimate partner," reflecting the various relationships in which abuse occurs. It extends protection to current and former spouses and unmarried intimate partners. The definition is gender neutral on its face and thus does not exclude gay and lesbian couples who are recognized by the domestic or family violence laws of the states. The statute defines "spouse or intimate partner" as:

> (A) a present, or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and
>
> (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides.[105]

This definition ensures that former domestic partners—regardless of whether they were married, have a child, or are former cohabitants—are subject to the criminal sanctions set forth in the VAWA. The definition is justified by numerous studies which uniformly concede that violence against women is perpetrated by current and former spouses as well as current and former intimate partners. By casting a wide net the VAWA ensures that all those who commit violence will be prosecuted.

Chapter 2 applies to interstate conduct when:

> [a] person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided [herein].[106]

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[104] Id. sec. 40211, §§ 2261-2266.

[105] Id. sec. 40221, § 2266.

[106] Id. sec. 40221, § 2261(a)(1).

Any person who violates this provision may be fined up to $1,000 and/or imprisoned.[107] A person who forces a spouse or intimate partner to cross state lines "by force, coercion, duress or fraud" and injures the person is also punishable under the VAWA.

The definitions in this section of the VAWA are similar to those contained in Law 54 discussed previously in Part I.[108] Both statutes broadly define violence and partners, and thus take a progressive approach, supported by empirical data, to the nature of abuse.

The penalties under this section are severe and depend on the victim's injury. Any person who inflicts fatal injuries may be sentenced to life imprisonment. Permanent disfigurement or life threatening bodily injury carries a penalty of up to twenty years imprisonment, serious bodily injury or use of a dangerous weapon carries a maximum penalty of ten years imprisonment, and a penalty of up to five years imprisonment applies in all other cases.[109]

Violations of orders of protection are similarly sanctioned and carry the same penalties, depending on the severity of the violent consequences flowing from the violation of the order. For example, the violation of an order of protection which results in permanent disfigurement or life threatening bodily injury is punishable by up to twenty years imprisonment.[110]

In an effort to afford the greatest possible national protection to women, orders of protection are accorded full faith and credit in non-issuing states and granted the same enforcement power as if issued by the enforcing state.[111] To be accorded such expansive authority, these orders must comply with certain jurisdictional and procedural requirements aimed at ensuring protection of basic due process rights.[112]

Courts are required to provide the victim with restitution.[113] Restitution is expansive and may include medical costs, lost income, and attorneys' fees. The defendant cannot escape liability based on economic

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[107] Id. sec. 40221, § 2261(b).

[108] See supra part I.

[109] Violence Against Women Act of 1994 sec. 40221, § 2261(b).

[110] Id. sec. 40221, § 2262(b).

[111] Id. sec. 40221, § 2265(a).

[112] The court in the state issuing the order of protection must have both personal and subject matter jurisdiction under its state law. The respondent must be given notice and an opportunity to be heard. Ex parte orders are permissible, so long as the jurisdictional requirement is satisfied and notice and an opportunity to be heard are provided under the state's law, or at least within a reasonable time. Id. sec. 40221, § 2265(b).

[113] Id. sec. 40221, § 2264(a)-(b)(4).

status.[114] However, the court may consider the defendant's economic status when fashioning a repayment schedule.[115]

One obvious benefit of this section is its provision of a federal forum to address domestic violence. A federal venue is important for women who are suspicious of local officials' commitment to the enforcement of state anti-violence laws, or for women who have left their original jurisdiction and are unfamiliar with the local laws and customs of the jurisdiction in which they subsequently reside. These women might feel more comfortable or receive more appropriate treatment in federal court.

Criminalization of abuse which occurs across state lines is responsive to the form of violence which is prevalent among domestic partners. Data reveals that domestic violence escalates once the woman attempts to leave the batterer. Women and their advocates are provided with a new weapon in their struggle against the violence whenever these brutal incidents occur across geographic boundaries. The statute reaches behavior which constitutes psychological warfare against women or which seeks to force a woman against her will, through blackmail, threats, or other coercive methods, to travel interstate. Federal criminalization and the imposition of the severe penalties in the VAWA help deter such conduct, eliminate any state conflict of law issues, and facilitates prosecution of an abuser.

3. Chapter 3—Arrest Policies in Domestic Violence Cases

A corollary to the VAWA's enforcement of penalties for abusive conduct at the federal level is its encouragement of states' strict enforcement of arrest practices in domestic violence cases. The stated purpose of Subtitle B, Chapter 3—Arrest Policies in Domestic Violence Cases, is "to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law."[116]

Localities are eligible for grants under Chapter 3 for the following purposes:

> (1) To implement mandatory arrest or pro-arrest programs and policies in police departments, including mandatory arrest programs and policies for protection order violations.
> (2) To develop policies and training in police departments to improve tracking of cases involving domestic violence.

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[114] Id. sec. 40221, § 2264(b)(3), (b)(4)(B)(1).

[115] Id. sec. 40221, § 2264(b)(4)(C)(1).

[116] Id. sec. 40231(a)(3), § 2101(a).

> (3) To centralize and coordinate police enforcement, prosecution, or judicial responsibility for domestic violence cases in groups or units of police officers, prosecutors, or judges.
> (4) To coordinate computer tracking systems to ensure communication between police, prosecutors, and both criminal and family courts.
> (5) To strengthen legal advocacy service programs for victims of domestic violence.
> (6) To educate judges in criminal and other courts about domestic violence and to improve judicial handling of such cases.[117]

Grant eligibility requirements focus on the effective and serious implementation of policies regarding arrest and orders of protection. For example, the locality must certify that its laws or official policies encourage or mandate arrests based on probable cause. In the case of abusers who have violated orders of protection, the locality must discourage dual arrests of the abuser and the victim, and prohibit issuance of mutual restraining orders, except where the court finds that both parties acted either as aggressors or in self-defense. The local laws or policies cannot require that the abused bear costs associated with the issuance or service of a warrant, protection order, or witness subpoena.[118] Moreover, the locality must identify the nonprofit private victim services programs which will be consulted in the development and implementation of the program.[119] Priority in the issuance of grants shall be given to localities which, inter alia, "demonstrate a commitment to strong enforcement of laws, and prosecution of cases, involving domestic violence."[120]

The positive aspects of criminalization and mandatory arrest are the philosophical bases for this section of the VAWA. The emphasis is on the identification and prosecution of the abuser. The VAWA assumes the legitimacy of the fear of further violence and retaliation, and seeks to facilitate the acquisition of orders of protection against abusers.

4. Chapter 5—Youth Education and Domestic Violence

Chapter 5 allocates appropriations for the selection and implementation of four model programs aimed at educating youth about domestic violence. Each program targets four different youth populations by school-age, i.e.

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[117] Id. sec. 40231, § 2101(b). Mutual orders of protection where both parties file a claim must be supported by findings of mutual aggression. Id. § 2101(c)(3).

[118] Id. sec. 40121, § 2101(c)(1).

[119] Id. sec. 40257, § 317(d).

[120] Id. sec. 40231(a)(3), § 2102(b)(2).

separate programs would be developed for primary schools, middle schools, secondary schools, and higher education institutions. Educational, legal, and psychological experts on battering, as well as victim advocate organizations, including battered women's shelters, will participate in the selection, implementation, and evaluation of these programs.[121]

Prevention is clearly the focus of this section, yet, the most meaningful aspect of this subtitle is the Legislature's recognition of the need for educational programs which cut across all age groups. For example, the inclusion of advocates in the development and implementation of youth education programs is important to ensure that the programs will not merely provide lip service to the issue or become a purely academic exercise.

5. Chapter 6—Community Programs on Domestic Violence

This chapter amends the Family Violence Prevention and Services Act, 42 U.S.C. 10401 et seq., as amended by § 40251, and adds a new section entitled, § 318, "Demonstration Grants for Community Initiatives." This new provision authorizes the Secretary to award grants for up to three years to nonprofit private organizations to "establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence."[122] Grantee candidates shall include community representatives and may include domestic violence advocates.[123]

The apparent intention of this section is to create an active community program. For example, the grantee must bring together community leaders to coordinate anti-domestic violence strategies, and to improve and expand existing community efforts.[124]

6. Chapter 9—Data and Research

Chapter 9 establishes and provides the financial basis for federal and state research ventures. Section 40291 of Chapter 9 authorizes the Attorney General to request the National Academy of Sciences to develop a research agenda for the purpose of "increas[ing] the understanding and control of violence against women, including rape and domestic violence."[125] This

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[121] The Violence Against Women Act authorizes $400,000 for fiscal year 1996 for the implementation of this section. Id. sec. 40251, § 317(d).

[122] Id. sec. 40261, § 318(a).

[123] Id. sec. 40261, § 318 (b)(2)(E).

[124] Id. sec. 40261, §§ 318 (c)(1), (c)(2).

[125] Id. sec. 40291(a).

agenda must focus on "preventive, educative, social, and legal strategies, including addressing the needs of underserved populations."[126] The VAWA commands the National Academy of Sciences to "convene a panel of nationally recognized experts on violence against women," representing a broad cross section of professions, such as law, medicine, and service providers.[127] The agenda must be completed and a report presented to the Committee on the Judiciary of the House of Representatives within one year of the VAWA's enactment.[128]

Section 40292 of this chapter requires the Attorney General to study and propose to the states and Congress how the states may collect "centralized databases on the incidence of sexual and domestic violence offenses within a State."[129] The study should be based upon consultations with experts in the field, and their recommendations must be presented in the report.[130] This study shall be completed within one year and presented to the Committee on the Judiciary of the Senate and the House of Representatives.[131]

Finally, Section 40293 mandates that the Secretary of Health and Human Services, through the Center for Disease Control Injury Control Division, conduct a study

> to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommended health care strategies for reducing the incidence and cost of such injuries.[132]

C. Subtitle C—Civil Rights for Women

Subtitle C establishes a new civil remedy for violence against women. The purpose of this provision is:

> to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause

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[126] Id.

[127] Id.

[128] Id. sec. 40291(c).

[129] Id. sec. 40292(a).

[130] Id. sec. 40292(b).

[131] Id. sec. 40292(c).

[132] Id. sec. 40293(a).

> of action for victims of crimes of violence motivated by gender.[133]

Previous drafts of this section contained illuminating Congressional findings in support of the new remedy. First, they declared that crimes motivated by gender are bias crimes. Second, they acknowledged the dichotomy in the law which proscribes sex discrimination at the workplace but yet neglects to address gender crimes committed in the home or on the street. Third, the findings asserted that criminal remedies, both state and federal, do not adequately provide for the vindication of victim's rights. The Senate version also declared that the existing institutional gender bias which permeates the criminal justice system is an obstacle to ensuring victims' equal protection rights.[134]

The legal right guaranteed by this new remedy is the right of all persons "to be free from crimes of violence motivated by gender...."[135] Crimes motivated by gender are those "committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender;...."[136] Subtitle C specifically excludes "random acts of violence unrelated to gender or. . . acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender...."[137]

Prohibited conduct includes both public and private actions. Thus, state actors may be held liable for gender-related violence.

> (c) CAUSE OF ACTION—A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right . . . [to be free from crimes of violence motivated by gender] . . . shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.[138]

No other civil rights statute provides the full range of relief which the VAWA offers. The VAWA furnishes both restitutionary relief and punitive damages, mirroring the Civil Rights Act of 1992 ("CRA") which provides for punitive damages.[139] However, the VAWA exceeds the CRA's remedies. Unlike the CRA, which contains interval damages

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[133] Id. sec. 40302(a).

[134] S. 11, 103rd Cong., 1st Sess. § 302(a)(4) (1993).

[135] Violence Against Women Act of 1994 sec. 40302(b).

[136] Id. sec. 40302(d)(1).

[137] Id. sec. 40302(e)(1).

[138] Id. sec. 40302(c).

[139] Civil Rights Act of 1992, 42 U.S.C.A. § 1981(a) (West Supp. 1993).

caps—applicable only in sex discrimination cases—based on the size of the defendant's employee workforce, the VAWA does not place a ceiling or cap on the amount of damages—compensatory or punitive—which a plaintiff may obtain.[140]

Subtitle C also provides for attorney's fees.[141] The provision for recovery of attorney's fees helps to ensure that domestic violence cases will be litigated. The attorney's fees section is important because it both facilitates the availability and piques interest of legal counsel in these cases. The intent is to generate a more consistent and thorough advocacy for victims of domestic violence.

This section of the VAWA is perhaps the most controversial. Its fundamental importance lies in its recognition that women have a civil right to be free from gender-based violence. By providing women with a civil remedy for gender-based violence, this section places control of the situation in the woman's hands. She can determine whether to pursue a civil action against the perpetrator of violence. Of course, as has historically been the case in other civil rights areas, it also provides legal ammunition for an anti-violence strategy launched by women's advocates.

The VAWA also accepts, as a legal premise, that gender-based violence exists and that there are categories and types of acts which are committed against women based solely on their gender. Although it fails to define the scope of conduct which constitutes gender-based violence, the VAWA does provide a mechanism whereby the plaintiff herself can present evidence to establish the nature and intent of the act as gender based: actions targeted at women because they are women.

D. Subtitle D—Equal Justice for Women in the Courts Act

Subtitle D contains two chapters, one applicable to state courts, the other to federal courts. This part of the VAWA targets federal and state judges and court personnel for education and training on violence against women and laws redressing gender-based crimes through the issuance of education and training grants.

Chapter 1, "Education and Training for Judges and Court Personnel in State Courts," authorizes grants for the purpose of developing, testing, presenting, and implementing legal education and training model programs

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[140] See, e.g., Violence Against Women Act of 1994 sec. 40113, §§ 2248(b)(1)(A), (b)(3); Id. §§ 2259(b)(1)(A), (b)(3).

[141] Id. sec. 40303.

for state judges and court personnel.[142] The VAWA also requires that law enforcement officials, victim's advocates, legal experts and experts on gender bias in the courts be included in the development of these programs.[143]

Chapter 2, "Education and Training for Judges and Court Personnel in Federal Courts," encourages circuit judicial councils to undertake studies, and similar education and training programs for federal judges and court personnel on the issue of gender bias in the federal judicial system. Specifically, Chapter 2 encourages the circuit judicial councils to "conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms."[144]

Chapter 2 allows individual federal circuits to determine whether a gender-related issue merits study and analysis. This is a weak statement on bias at the federal level, and is inconsistent with Subtitle D's provisions suggesting issues for study. It is also inconsistent with, and undermines the thrust of the VAWA itself. The VAWA emphasizes that gender bias is real and prevalent and requires that legislative action be taken immediately in order to secure equality for women.

This language contained in Chapter 2 is particularly troublesome, as well as perplexing, since the original Senate version contained language which recognized systemic gender bias in the criminal justice system. One of the findings in Senate Title III specifically stated that:

> [E]xisting bias and discrimination in the criminal justice system often deprives victims of gender-motivated crimes of equal protection of the laws and the redress to which they are entitled . . . .[145]

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[142] Id. sec. 40412. The Violence Against Women Act provides a nonexhaustive list of the types of issues which should be addressed by these programs, including: rape and sexual assault by strangers and nonstrangers; the social and economic impact on society of rape, sexual assault, and domestic violence; the historical evolution of laws and attitudes on sexual assault and domestic violence; stereotyping of sexual assault and domestic violence victims; application of rape shield laws; rape trauma syndrome and post-traumatic stress syndrome; reasons rape victims refuse to testify; the nature and incidence of domestic violence; self-defense and the battered woman syndrome; reasons why victims do not leave their batterers; the implications of mutual orders of protection, dual arrest policies; and mediation in domestic violence cases. Id.

[143] Id. sec. 40413.

[144] Id. sec. 40421(a).

[145] S. 11, 103rd Cong., 1st. Sess. § 302(a)(4) (1993). Although no specific mention is made in this finding of bias in the federal system, even if the finding referred solely to state criminal justice systems there is no doubt that gender bias prevalent at the local level would exist in the federal criminal system. It would be disingenuous to suggest without further justification that the federal system is completely innocent and unmarked by such bias, or that it has been purged clean of any

The weak commitment in Chapter Two to federal education is further marked by language which permits, rather than mandates, the Federal Judicial Center to include information on gender bias in the courts in its educational and training programs for newly appointed judges.[146]

The need for education, sensitization, and training of those involved in domestic violence matters, as part of the judicial system at the state and federal levels, is well-documented by studies of gender discrimination in the courts[147] and studies of the treatment of domestic violence cases.[148] While Chapter Two responds to such educational needs, it provides only a first step in a larger national strategy to uniformly and adequately respond to violence issues.

E. Subtitle G—Protections for Battered Immigrant Women and Children

This subtitle amends the Immigration and Nationality Act[149] and provides specifically for abused immigrant women and children. Under this new section, battered women and children may file petitions apart from and independent of their spouse or, in the case of an abused child, the parent. This provision is critical because it permits immigrant domestic violence survivors to seek legal status in this country without relying on the abusive spouse or parent. This provision provides survivors with the opportunity to leave a battering situation without fear of reprisal based on their immigration status. Subtitle G facilitates termination of a marriage to a batterer by allowing immigrant domestic violence survivors to petition, even after the marriage ends, so long as the marriage was entered into in good faith.[150]

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historical gender discrimination. This is especially true in light of the finding which immediately precedes the one quoted in the text. That finding states that "State and Federal criminal laws do not adequately protect against the bias element of gender-motivated crimes . . . nor do these laws adequately provide victims . . . the opportunity to vindicate their interests . . ." Id. § 302(a)(3) (emphasis added).

[146] Violence Against Women Act of 1994 sec. 40421(d)(1).

[147] See, e.g., Eaton & Hyman, supra note 69; Five Year Report of the Judicial Committee on Women, reprinted in 19 Fordham Urb. L. J. 313 (1992).

[148] See Eaton & Hyman, supra note 69.

[149] 8 U.S.C. § 1101–1144 (1991).

[150] Violence Against Women Act of 1994 sec. 40701(a)(1)(C)(iii)(I), 40701(c). Provisions for immigrant domestic violence survivors were originally only set forth in the House version of the Violence Against Women Act. Its ultimate inclusion in the final legislation is a positive response to the needs of this population.

F. Lost Opportunities—The Development of a National Agenda on Domestic Violence

The final VAWA, of course, is the product of political compromise. The VAWA domestic violence provisions finally agreed upon represent a significant step in the direction of empowering survivors of domestic violence and take into account the actual experiences of survivors. However, a provision for a national governmental body to consider the issue of violence against women has been excluded from the final law. This exclusion is a crucial loss for survivors and advocates.

In the prior Senate and House versions of the VAWA, the draft legislation established a national federal governmental body on violence against women, the purpose of which was to define and implement a national agenda. The structure of this national body was conceptualized differently in the Senate and House versions. Nevertheless, both versions recognized the need for such an entity. The Senate version was better designed to address the issues facing a national governmental body, and the VAWA should be amended to include such an entity, along the lines of the draft Senate version, with the modifications outlined below.

The Senate version established an entity called the National Commission on Violence Against Women ("National Commission").[151] The National Commission would be authorized to sponsor activities for "promoting a national policy on violent crime against women, and for making recommendations on how to reduce violent crime against women."[152] The National Commission would have been authorized and entrusted with the responsibility of formulating the contours of a national response to violence against women.

The National Commission's mandate was to evaluate and make recommendations in both broad and specific categories. It was to address state and federal law enforcement procedures relating to violent crimes against women and the adequacy of state and federal laws concerning sex crimes and domestic violence.[153] To that end, the National Commission could have conducted hearings, accepted testimony, administered oaths, and received evidence.[154] The National Commission also would have had access to information from executive departments and agencies.[155]

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[151] S. 11, 103rd Cong., 1st. Sess. § 141 (1993).

[152] Id. § 142(a).

[153] Id. § 142(b).

[154] Id. § 146(a).

[155] Id. § 146(c).

The National Commission, as envisioned in the Senate draft, would have been composed of fifteen members, five appointed by the President, five by the Senate, and five by the House.[156] The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Bureau of Investigation would be standing members, albeit nonvoting members, appointed by the President.[157] The other two remaining presidential appointees would be members of the general public experienced in this area, one of whom would be versed in the provision of services to female victims of sexual assault or domestic violence.[158] The Senate version further provided that "to the greatest extent possible" these representatives should include persons from law enforcement, judicial administration, public health, social work, victim advocacy groups, as well as to victims themselves.[159]

The Commission's final report would have included its activities, findings, conclusions, and recommendations with suggestions for potential legislative and administrative efforts. The report would have been

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[156] In contrast, the House version proposed the establishment of an advisory board, the Interagency Advisory Board on Violent Crime Against Women (hereinafter "Board"), limited to evaluating the federal system and assessing, reviewing, and recommending appropriate action by the federal government regarding its policies and practices with respect to violence against women. The House version did not provide for the assessment of state programs and policies, or for the review of interstate initiatives, or for consideration of possible federal strategies to combat domestic violence.

The Board's proposed membership differed drastically from that contained in the Senate version. The Attorney General was charged with the appointment of all thirteen Board members, after consultation with the Secretaries of the Departments of Health and Human Services, Housing and Urban Development, and Education. Board members must be individuals who have "expertise in national or state efforts to combat violence against women or who have experience in national or state advocacy service organizations that specialize in sexual assault or domestic violence." Five would have expertise in the provision of services to domestic violence survivors, four would be experts in law enforcement or judicial administration, with mandatory representation of the police, prosecutors, judges, and survivors' civil legal advocates. Corrections, medical service providers, state government, and local government would each be represented by one member. In addition, several agency representatives from the Department of Justice, Department of Health and Human Services, Department of Housing and Human Development, and the Department of Education would have served as ex officio members of the Board. The Board would conduct hearings, and accept testimony and evidence in furtherance of its mandate. The Board would prepare an annual report for submission to the Attorney General and the Secretaries from the various agencies.

[157] S. 11, 103rd Cong., 1st. Sess. § 143(a)(1)(A)(i) (1993). The Attorney General, Secretary of Health and Human Services and the Director of the Federal Bureau of Investigations have voting power in the event of a tie.

[158] Id. § 143(a)(1)(A)(ii)-(iii).

[159] Id. § 143(a)(3)(A)-(B).

submitted within one year to the President and to the appropriate congressional committees.[160]

The work of the National Commission would be a necessary step towards the creation of a uniform, coherent national policy on violence against women. However, the National Commission as envisioned in the Senate draft contains certain flaws. First, it would be established for no longer than one year and thirty days, with the possibility of up to a one year extension at the President's discretion.[161] This would be too little time for the National Commission to effectively respond to the problem of domestic violence in the United States. The work of the National Commission would need to be expansive and critical and would require a fair amount of time to complete. A more feasible alternative would be a one or two year deadline for purposes of the preparation of an initial report on the status of current federal and state efforts in the area of violence against women, with a second deadline for providing preliminary recommendations. This schedule would provide the National Commission with the opportunity to properly define the process it would employ to obtain information on relevant issues. It also would allow for some initial "start-up" time for the orientation of the National Commission members.

Second, under the Senate proposal, the National Commission's powers would be strictly limited to investigatory examinations and the promulgation of recommendations. It would not be authorized to promote or disseminate information regarding preventive measures on violence against women. In its position as the national investigator on such violence, it would have the unique opportunity to access and disseminate information which would otherwise be unavailable or unknown to localities and advocates. The National Commission could thus play a significant role not only as a clearinghouse on violence against women, but also as a promoter of national awareness and discussion of solutions to the problem of domestic violence.[162]

Third, there should be additional mandatory language regarding the composition of the National Commission. Specifically, it should discard the language on the inclusion of representatives from areas of law enforcement and service providers. Instead, the VAWA should set forth a minimum number of positions designated for victims, advocates, and service providers. Names should be considered from those proposed by advocates

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[160] Id. § 144(a)-(b).

[161] Id. § 148.

[162] Under the Senate proposal the National Commission's function with respect to public information would be limited to evaluating and recommending efforts for national public awareness and disseminating information about violence against women. See id. § 142(b)(5).

and providers. The three standing members should be designated as advisors to the National Commission, rather than members. Those three positions could then be filled with persons whose expertise in and commitment to the prevention and criminalization of violence against women are well established. Any specific interest these three government officials may have can always be presented to the National Commission in their advisory capacity or through responses to the National Commission's initial report, as discussed below.

Fourth, the National Commission should promulgate a series of reports that are responsive to different issues on violence against women. Areas which merit their own review and documentation include criminalization and its impact on women and abusers, enforcement, strategies for the development of women's autonomy and self development, and the strengths and weaknesses of the "battered women" shelter system. Fifth, there should be an opportunity for response to the National Commission's reports from governmental officials, legislators, and advocates.[163]

IV. LAW 54 AS A MEASURE FOR THE SUCCESS OF THE VAWA

Legislative responses to violence against women are susceptible to criticism in that they do not tackle the underlying problem—the oppression of women as a group within society and the powerless position of individual women in male/female relationships. As women and other anti-violence activists have demanded legislative reform to address this violence, legislators and lawyers have designed legislation based on traditional law enforcement approaches. The goals of this legislative "revolution" are familiar: deterrence and punishment. They include criminalization of physical abuse in intimate relationships and the imposition of civil penalties for abusive conduct, regardless of the relationship of the parties. These "remedies" have proved to be fraught with difficulties, which have undermined their effectiveness. It is therefore imperative that anti-violence legislation in the United States be designed not in a vacuum, but rather with the experience and wisdom of other legislative efforts in mind. Hence, this Article's discussion of Law 54 is used as a basis for considering the potential strengths and pitfalls of the VAWA.

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[163] These criticisms of the National Commission as it was set out in the Senate proposal do not address the potential cost of the National Commission's work nor the current $500,000 appropriation set forth in the Senate's section 147. However, the expansion of the duration of the National Commission's term, as well as of its functions and powers, would necessarily increase the costs associated with its work.

A. Measuring Success

This Article suggests that Law 54 and the VAWA are similar in many ways. Therefore, Law 54 thus serves as a useful and legitimate comparative basis upon which to examine the VAWA. In this section, I suggest further that Law 54 provides useful standards for measuring the success of the VAWA; Law 54's tortured, albeit short, history may help ensure that the negative experiences of survivors of the violence, as chronicled by the Puerto Rican experience are not relived as a result of the implementation of the VAWA.

Puerto Rico's Law 54 has been the basis for a wide range of social, political, and legal reform within Puerto Rican society. As detailed in this Article, obstacles to its full unfettered implementation and acceptance by government agencies and the general population exist. Notwithstanding these barriers, Law 54 has achieved one major public policy objective. Currently, it is utilized as a legal recourse by women survivors of violence perpetrated by current or former spouses and intimate partners. In addition, the process of Law 54's implementation has galvanized women and anti-violence advocates in their efforts to combat the incidence of violence against women. The VAWA similarly seeks to provide women with legal remedies to the violence in their lives. However, the success of the VAWA has yet to be determined both by the responses of the legal system and through women's efforts to utilize its provisions.

The standards by which we measure success, however, define the rules for evaluating success. The concept of "success" represents a complex set of considerations. It has different meanings for different constituencies and in different contexts. It is not one dimensional and must be defined with reference to the socio-political climate in which legislation is passed and utilized. Success, at least in the legislative context, must be measured against the intended and desired social reform goals of those constituencies struggling for justice and equality. By this measure, in the area of domestic violence, the most relevant constituents are survivors of the violence. Their appraisal of "success" is fundamental.

If the success of Law 54 is measured based only on statistical evidence of its utilization, then we must conclude that it has achieved significant success. If, however, we consider the charges and complaints of Law 54's opponents who object to its criminalization components, then it has failed because too many men are being penalized under the Law for conduct which is "socially abhorrent" but not criminal in nature. The inquiry does not end here, however. We must also consider the survivors' impressions of the Law's "success," as defined by their individual and collective experiences. According to the limited information available from the Commission's reports, these women are dissatisfied with official and public

reactions to the Law. Their dissatisfaction profoundly impacts on the quantum of "success" as we measure the benefits derived by a particular constituency.

Success, or lack of success must be determined by assessing the following: the quality of services provided to women by the various government officials charged with enforcement of Law 54; the context in which these services are provided; the dialogue between government officials and women exercising their rights under Law 54; and the final outcomes of those interactions. Under this compendium of measures, success could be equated with the provision of immediate services to survivors of domestic violence, and the incarceration of abusers. This measure ignores officials' resistance to Law 54, and the actions of police, prosecutors, and judges which attempt to disempower women who seek redress under Law 54 or who, for whatever reason, ultimately do not pursue prosecution. By ratifying a measure which thus emphasizes women's assessment as *the* standard for measuring the Law's success, women's experiences are placed at the center of the legislation.

Women's experiential standard *is* a legitimate measure of success of the VAWA. The alternative would perpetuate the subterfuge that the mere existence of legislation alone constitutes success, and that statistics or gender-based visions of the goals of domestic-violence legislation define the parameters of the success paradigm. Puerto Rico's experience with Law 54 is sufficient evidence of the need to measure success within the context of women's experiences.

B. The Law 54 Measures

In spite of strong language and good intentions, the mere enactment of laws criminalizing and condemning violence against women by intimates is no guarantee that the laws will be effectively utilized, or that women will fully benefit from them. The Commission's reports demonstrate, and the comments and conduct of government officials reveal, that officials' resistance and ignorance can derail statutory implementation and the empowerment of women.

The measures relied upon in reaching this conclusion with respect to Law 54 have been diverse. All, however, are based on women's observations and perceptions of government action and inaction. By way of example, consider the obstacles articulated by women and advocates in the Commission's reports. The power-based relationships between judge and survivor, prosecutor and survivor, and police and survivor, and the dialogue manifested in these official interactions, are part and parcel of the measure of success. If Law 54 restrains or penalizes dialogues in these

power relationships that challenge women's invocation of Law 54 or hesitance to prosecute or seek incarceration, then Law 54 has been successful.

If Law 54 requires police to arrest without resistance or visible denigration of an arrest, there is success. If Law 54 promotes the proper incarceration of abusers, without an unbalanced imposition of punishment based on gender, there is success. If Law 54 promotes and supports the work of the Commission and non-governmental entities in providing women with safe retreats from the violence, as well as forums for discussions leading to empowerment and autonomy, there is success. If Law 54 requires all government subdivisions and agencies to publicly support the legislation and to condemn violence against women as immoral and unjust, there is success.

C. The VAWA Measures

Undoubtedly, the above analysis of Law 54's implementation makes the case for the establishment of a government entity to oversee and further the goals of legislation. Advocates of Law 54 have had to justify its existence since the Law was initially debated in the Puerto Rican Legislature. It continues to be attacked as unjustified, unnecessary, ill-advised, misguided, and dangerous to the maintenance of the Puerto Rican family. In this sense, advocates have had to fight for the very life of Law 54.

The United States has had a similar experience with respect to state initiatives for domestic violence legislation. The challenge to criminalization and de-emphasis on incarceration are typical responses of law enforcement personnel in the United States to any legislation attempt in this regard. The VAWA necessarily transforms the discourse on domestic violence because, like Law 54, it brings domestic violence from the private to the public arena and positions it within a highly visible milieu: the federal system. Moreover, the VAWA is set forth as an integral component of a comprehensive crime bill. The VAWA is cast as part of the war on crime, and as a result, bears the imprimatur of a legitimate federal criminalization strategy.

Furthermore, the VAWA employs a carrot-and-stick strategy by providing financial incentives to the states: to limit law enforcement discretion through the promotion of mandatory arrest and the discouragement of dual arrest and mutual orders of protection; to initiate community anti-violence projects; and to develop anti-violence education programs for children. In the past, funding has proven to be an effective sweetener with respect to the implementation of legislative change. There

is no reason to believe it will not be similarly effective with respect to the VAWA.

The VAWA also encourages, and often mandates, the strategic inclusion of advocates and service providers in the planning stages of programmatic development initiatives. Consequently, the VAWA provides a certain aura of credibility to such advocates and service providers which may avert the devaluation of their knowledge and expertise. In addition, the VAWA provides for programs which focus on the past experiences of women and their representatives, and which seek to integrate such experiences into anti-violence strategies.

These are all positive features of the VAWA. Yet, it has certain troublesome aspects which are foretold by the implementation history of Law 54. The enacted VAWA abandoned the concept of a federal entity charged with considering domestic violence as a national issue. There is no longer any serious discussion of a commission or board on domestic violence. The VAWA's consignment of various studies on domestic violence at the federal level are commendable, and the review of the health consequences of domestic violence is visionary. Nevertheless, the failure to include a section creating a national entity as described in this Article is a loss and may indeed result in the obstruction of the implementation of the VAWA.

In addition, the present VAWA system depends on the work and commitment to the VAWA of federal officials and agencies. However, there is no single monitoring component identified in the enacted VAWA. The Puerto Rican experience makes clear that without such oversight, the legislation is doomed to face destructive opposition.

Without the Commission's aggressive efforts to ensure the proper implementation of Law 54, the legislation's continued forceful existence would be doubtful. It is clear from the experiences of the Commission, as set forth in its reports, that legislation such as Law 54 or the VAWA cannot survive without a government watchdog; the Commission both plays the role of the gatekeeper, and provides for official government enforcement, a necessary component of domestic violence legislation. Hence, the establishment of an entity with authority and appropriate resources within the structure of the VAWA is both warranted and crucial.

As the history of Law 54 and of anti-violence efforts in the United States demonstrate, police, prosecutors, and judges can and do undermine anti-violence legislation and strategies by disavowing the severity of the violence and rejecting the appropriateness and efficacy of criminalization. As we see from the case in Puerto Rico, much of this resistance is informed by gender-based stereotypes and patriarchy. Proliferation of misinformation about violence against women and anti-violence strategies has also driven much of the resistance machinery.

Therefore, efforts to educate and limit law enforcement officials' discretion are critical to the success of domestic violence legislation. For this reason, Subtitle D, Chapters 1 and 2 of the VAWA must mandate ongoing training which is consistent and supportive of criminalization. Rather than merely encouraging or suggesting that training and education for judges and court personnel be provided, a mandatory curriculum should be developed and utilized. While the concepts contained in Subtitle D move us in the right direction, a stronger statement is necessary.

Finally, to the extent that the VAWA provides services and legal remedies for women, for the sole purpose of ensuring their individual safety, it succeeds in freeing women from the tethers of their traditional gender roles when they are endangered by physical, emotional, or psychological violence. As discussed previously, Law 54 only partially renounced the connection to family in the domestic violence situations. The Law's concern with the safety and survival of the Puerto Rican family unit, however, compromises its anti-violence goals. Further legislation and correlative administrative provisions which focus on women's autonomy is needed and expected as women and anti-violence activists wrestle from lawmakers the reins of statutory construction.