

10-1-2017

A Crime at Any Age: Intimate Partner Abuse in Later Life

Taylor Jillian Altman

Follow this and additional works at: <https://scholarship.law.berkeley.edu/californialawreview>

Recommended Citation

Taylor Jillian Altman, *A Crime at Any Age: Intimate Partner Abuse in Later Life*, 105 CALIF. L. REV. 1543 (2017).

Link to publisher version (DOI)

<http://dx.doi.org/https://doi.org/10.15779/Z38TB0XV4B>

This Comment is brought to you for free and open access by the California Law Review at Berkeley Law Scholarship Repository. It has been accepted for inclusion in California Law Review by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

A Crime at Any Age: Intimate Partner Abuse in Later Life

Taylor Jillian Altman*

Intimate partner abuse (IPA) is a problem that affects millions of women across the United States every year. Traditionally, strategies designed to help victims and reduce IPA have tended to focus on women of childbearing age. However, older women who experience abuse at the hands of male partners are often left out of the conversation. Usually grouped with family violence (which may involve abuse by adult children or other caregivers), elder IPA has received short shrift in the social science and legal literature. This Note explores in depth the unique problem of IPA among older women, which is often a continuation of the cycle of abuse begun much earlier in the couples' lives, and proposes solutions that include restorative justice, elder-ready domestic violence shelters, and expanded protection under California's Welfare and Institutions Code.

Introduction	1544
I. Elder Abuse by Family Members.....	1546
A. The Aging Population.....	1546
B. Why Elders are Vulnerable to Abuse.....	1546
C. Why Abusers Abuse	1549
II. Elder Intimate Partner Abuse.....	1550
A. The Scope of Elder IPA.....	1550
B. Barriers to Reporting Abuse	1550
C. The Cycle of Power and Control in Later Life	1551

DOI: <https://dx.doi.org/10.15779/Z38TB0XV4B>

Copyright © 2017 California Law Review, Inc. California Law Review, Inc. (CLR) is a California nonprofit corporation. CLR and the authors are solely responsible for the content of their publications.

* Taylor Jillian Altman graduated from Berkeley Law School in 2016 with a J.D. and a Certificate in Public Interest and Social Justice. During law school, she served as a judicial extern to Chief Judge Gloria Navarro of the United States District Court for the District of Nevada, and interned at the East Bay Community Law Center's Consumer Justice and Health & Welfare Clinics. She is currently an associate at Keesal, Young & Logan in San Francisco, where her practice focuses on a broad range of civil litigation matters in securities, employment, and maritime law. She also writes and publishes poetry and creative non-fiction.

III. Legal Remedies for Elder Intimate Partner Abuse	1553
A. Elder Abuse Remedies.....	1553
B. Domestic Violence Remedies	1555
1. Criminal and Civil Remedies.....	1555
2. Collaborative Justice Alternatives	1557
C. Effectiveness for the Older Population	1558
1. The Inadequacy of Elder Abuse Remedies	1559
2. The Inadequacy of Domestic Violence Remedies	1561
D. Breaking the Cycle: Interdisciplinary Approaches	1562
1. A Hybrid Domestic Violence/Elder Abuse Problem- Solving Court.....	1562
2. Easier Access to Elder Abuse Restraining Orders	1563
3. Elder-Ready Shelters and “Aging in Place”	1564
Conclusion	1565

INTRODUCTION

Eighty-two-year-old Helen has begun showing signs of dementia. She lives with Robert, her husband of nearly fifty-five years, who is now her caretaker. Helen and Robert have always been a loving couple, but lately Helen has noticed Robert getting irritated when she can’t remember a word or if she accidentally puts too much detergent in the washing machine. Sometimes he yells at her; other times he slaps her or twists her arm. Their daughter Debbie was visiting last week and noticed Helen rubbing her shoulder. When Debbie asked what happened, Helen said, “Oh, it’s just my old bursitis acting up again.”¹

Then there is sixty-year-old Fatima and her husband Shakur, who is sixty-four. Their marriage has never been easy, but they have managed to stay together for more than thirty years. When they were younger, Shakur physically abused Fatima, causing her to leave with the children at different points in time and live with relatives or in a shelter. Even though he doesn’t hit her anymore, he now insults her, making derogatory comments about her “old” appearance. Fatima tries hard not to arouse his anger, but walking on eggshells has left her exhausted and depressed.

On the surface, Helen and Fatima might seem different. Helen is eighty-two, white, and Protestant; Fatima is sixty, South Asian, and Muslim. However, the two women have something significant in common: both are victims of intimate partner abuse (IPA)² in later life.

1. The stories in the Introduction are invented narratives based on those in Bonnie Brandl, *Power and Control: Understanding Domestic Abuse in Later Life*, 24 GENERATIONS: J. AM. SOC’Y ON AGING 39, 39 (2000).

2. I have chosen to use the term “intimate partner abuse,” or IPA, rather than the more common term “intimate partner violence,” or IPV, because “abuse” suggests a broader range of experiences and behaviors. Further, although this Note and the sources I rely on focus on female abuse at the hands of

Until the late twentieth century, domestic abuse was underreported³ and largely absent from public conversation; domestic abuse in later life was even further underreported and undiscussed. “It was not until the ‘discovery’ of elder abuse in the late 1970s that attention began being paid to older persons who were the victims of domestic violence.”⁴ But even then, law and social science scholars tended to compare later-life domestic violence (DV) to child abuse rather than IPA, casting older battered women as “child-like victim[s] of family violence”⁵ because of their perceived weakness and dependency.

More recently, with the rapid aging of the American population and the greater availability of data on elder IPA, scholars have begun to shift their perspectives. Rather than likening IPA to child abuse or grouping it with other kinds of elder abuse, they have recognized it as its own unique subject.⁶ Further, they have attributed this abuse to the cycle of power and control rather than simply to caregiver stress.⁷ Accordingly, they have looked toward remedies that aim to break this cycle, many of which were originally designed for younger battered women.

The goal of this Note is to analyze the application of those remedies to older women, evaluate their success (or lack thereof), and propose new solutions. First, however, this Note will provide a general background on elder abuse by family members, including adult children and spouses/intimate partners. The Note will give an overview of the size and growth of the older American population; why elders are vulnerable to abuse; the various forms of abuse, ranging from physical abuse to financial abuse to abandonment and neglect; and the complex family relationships from which the abuse originates.

Second, the Note will present a layered explanation of elder IPA. It will discuss the differences between elder abuse and IPA, the known scope of elder IPA, and the reasons why older women may remain in abusive relationships.

male abusers, I recognize that abuse of males by females is a real (and not uncommon) problem, and that same-sex abuse is also a reality.

3. See Therese A. Clarke, *Why Won't Someone Help Me?: The Unspeakable Epidemic of Domestic Violence: An Annotated Bibliography*, 23 N. ILL. U. L. REV. 529, 529 (2003).

4. Linda Vinton, *Abused Older Women: Battered Women or Abused Elders?*, 3 J. WOMEN & AGING 5, 6 (1991).

5. *Id.* The terms “elder abuse,” “family violence,” “domestic violence,” and “elder intimate partner abuse” appear throughout this Note. “Elder abuse” is harm or serious risk of harm to a vulnerable adult by a caregiver or other person. *Administration on Aging (AoA): What is Elder Abuse?*, U.S. DEP’T OF HEALTH & HUMAN SERVS. ADMIN. FOR CMTY. LIVING, http://www.aoa.gov/AoA_programs/elder_rights/EA_prevention/whatisEA.aspx [https://perma.cc/59AG-DBTV]. I use the broad term “family violence” to refer to the various types of violence that may occur within the family, including child abuse and elder abuse. “Domestic violence” is “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.” *Domestic Violence*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/ovw/domestic-violence> [https://perma.cc/Y8DB-ACCY]. Similarly, I define “elder intimate partner abuse” as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner who is an elder.

6. See, e.g., Brandl, *supra* note 1, at 40–41.

7. See *id.*

Third, the bulk of the Note will examine existing legal remedies for elder abuse and DV in California that, when applied to the problem of elder IPA, have not worked well enough or at all. The Note will conclude with interdisciplinary strategies, such as a problem-solving court and easier access to more protective restraining orders, for breaking the cycle of power and control in later life.

I.

ELDER ABUSE BY FAMILY MEMBERS

A. *The Aging Population*

It is well known that the American population is aging. In 2013, the older population of the United States (ages sixty-five and older) numbered 44.7 million.⁸ Currently, about one in every seven people, or 14.1 percent of the U.S. population, is an older American.⁹ Those who reach sixty-five are now living longer than ever, with an average life expectancy of an additional 19.3 years.¹⁰ People eighty-five and older constitute the fastest-growing segment of the population and are disproportionately female.¹¹ According to the National Clearinghouse on Abuse in Later Life, “[t]hese demographic trends have significant implications for victimization, safety, suffering, health, and well-being of tens of millions of older Americans”¹²—especially women.

B. *Why Elders are Vulnerable to Abuse*

The broad term “elder abuse” refers to “any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult.”¹³ Elder abuse comes in many forms, including physical, sexual, emotional, and financial abuse, in addition to neglect and abandonment,¹⁴ and includes abuse by spouses and intimate partners. Abusers tend to use different types of abuse in combination—for example, neglect and financial abuse (e.g., when an adult child fails to care for an older parent and instead steals the money that the parent had put aside for medical

8. *Administration on Aging (AoA): The Older Population*, U.S. DEP’T OF HEALTH & HUMAN SERVS. ADMIN. FOR CMTY. LIVING, http://www.aoa.acl.gov/Aging_Statistics/Profile/2014/3.aspx [<https://perma.cc/B77H-5GGV>] (The most current data is from 2013.).

9. *Id.*

10. *Id.*

11. NAT’L CLEARINGHOUSE ON ABUSE IN LATER LIFE, <http://www.ncall.us> [<https://perma.cc/F3D6-QXSY>]; *A Profile of Older Americans: 2014*, U.S. DEP’T OF HEALTH & HUMAN SERVS. ADMIN. FOR CMTY. LIVING, <https://www.acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2014-Profile.pdf> [<https://perma.cc/7VAX-ZX6C>] (“The 85+ population is projected to triple from 6 million in 2013 to 14.6 million in 2040.”).

12. NAT’L CLEARINGHOUSE ON ABUSE IN LATER LIFE, *supra* note 11.

13. *What is Elder Abuse?*, *supra* note 5.

14. Bonnie Brandl & Tess Meuer, *Domestic Abuse in Later Life*, 8 ELDER L.J. 297, 300–01 (2000).

care).¹⁵ Recent research indicates that about one in ten older adults who live at home experiences elder abuse every year.¹⁶

Older people are vulnerable to abuse for a variety of reasons.¹⁷ First, they may be physically weakened by ailments such as heart disease, diabetes, Parkinson's disease, or a general loss of muscle tone and physical ability due to age. Lack of mobility, isolation, and dependence on caregivers can contribute to loneliness and depression in older people¹⁸ and make them less able to defend themselves or seek help in an abusive situation.

Second, their cognitive abilities may be diminished. The simplest explanation for cognitive decline in older people is dementia, "a general term for memory loss and other intellectual abilities serious enough to interfere with daily life."¹⁹ Sixty to 80 percent of all cases of dementia are attributable to Alzheimer's disease.²⁰ Brain changes during Alzheimer's cause memory loss, confusion, impaired judgment and decision making, and difficulty carrying on a conversation.²¹

Further, recent neurological research suggests that older people may suffer a general cognitive decline as they age. Structural changes in the brain can cause memory loss and may make elders more credulous and trusting.²² There is also evidence that people begin to display a positive cognitive bias as they grow older;

15. NAT'L CLEARINGHOUSE ON ABUSE IN LATER LIFE, AN OVERVIEW OF ELDER ABUSE: A GROWING PROBLEM (2013), http://www.ncall.us/sites/ncall.us/files/resources/1_Overview.pdf [<https://perma.cc/AX5M-K3RH>].

16. *Id.*

17. In the following paragraphs, I do not mean to suggest that all older people suffer from physical and cognitive deterioration, or experience such deterioration in the same way. Even within age cohorts, the differences in ability are sometimes marked; for example, one seventy-year-old woman might be able to solve crossword puzzles and hike three miles a day, while another may be unable to express herself clearly or walk without assistance.

18. See, e.g., Conor Ó Luanaigh & Brian A. Lawlor, *Loneliness and the Health of Older People*, 23 INT'L J. GERIATRIC PSYCHIATRY 1213, 1214 (2008); K.B. Adams et al., *Loneliness and Depression in Independent Living Retirement Communities: Risk and Resilience Factors*, 8 AGING & MENTAL HEALTH 475, 481–83 (2004).

19. *What is Alzheimer's?*, ALZHEIMER'S ASS'N, http://www.alz.org/alzheimers_disease_what_is_alzheimers.asp#basics [<https://perma.cc/7YVN-A488>]; see also David N. Kirkman, *Lawyers and Elderly Victims of Telephone Fraud*, 7 N.C. ST. B.J. 24, 28 (2002) ("[G]eriatrician Dr. Margaret Noel . . . says that all of us experience cognitive decline as we grow older but we are also more susceptible to age related dementing illness that is very subtle in its onset. Roughly half of the population over 85 is estimated to have cognitive loss severe enough to impair their daily function, including their 'better judgment.'"); Henriette van Praag et al., *Exercise Enhances Learning and Hippocampal Neurogenesis in Aged Mice*, 25 J. NEUROSCIENCE 8680, 8680 (2005) ("Aging causes changes in the hippocampus that may lead to cognitive decline in older adults.").

20. *What is Alzheimer's?*, *supra* note 19.

21. See 10 *Early Signs and Symptoms of Alzheimer's*, ALZHEIMER'S ASS'N, http://www.alz.org/alzheimers_disease_10_signs_of_alzheimers.asp [<https://perma.cc/RJ7L-7LES>].

22. See, e.g., Elizabeth Castle et al., *Neural and Behavioral Bases of Age Differences in Perceptions of Trust*, 109 PROC. NAT'L ACAD. SCI. 20848, 20851 (2012) (finding that adults' "gut" reactions to facial untrustworthiness appear to diminish with age); Erik Asp et al., *A Neuropsychological Test of Belief and Doubt: Damage to Ventromedial Prefrontal Cortex Increases Credulity for Misleading Advertising*, 6 FRONTIERS NEUROSCIENCE 1, 7–9 (2012).

that is, they are more able to remember and express positive emotions.²³ While a positive focus can protect the elder from feelings of sadness and hopelessness, it can also make her less likely to see beyond an abuser's superficial charm.²⁴

Other risk factors for abuse in later life include a history of abuse at the hands of one's spouse or partner; the substance abuse and/or psychological problems of abusive family members who act as caregivers; and an abusive family member who isolates the elder from her community of peers.²⁵ For some older women, community violence is also a risk factor for abuse. According to a 2009 study of older women at an inner-city hospital, "[violence] in the home was more likely to occur when there was violence in their neighborhood and when the environment was not conducive to the older woman in the family being respected."²⁶

Finally, because of a lack of training, professionals working with elders may miss the signs of elder abuse, and elders themselves (particularly women) often hesitate to report abuse for fear of getting a family member in trouble²⁷ or losing the family member's caregiving services. Moreover, when they actually do report abuse, particularly financial abuse, older people tend to make poor witnesses because of memory problems and other cognitive issues that make it difficult to describe to the police exactly how and when they were abused.²⁸

23. See, e.g., Susan Turk Charles et al., *Aging and Emotional Memory: The Forgettable Nature of Negative Images for Older Adults*, 132 J. EXPERIMENTAL PSYCHOL. 310, 310 (2003) ("The relative number of negative images compared with positive and neutral images recalled decreased with each successively older age group."); Mara Mather et al., *Amygdala Responses to Emotionally Valenced Stimuli in Older and Younger Adults*, 15 PSYCHOL. SCI. 259, 259 (2004) ("As they age, adults experience less negative emotion, come to pay less attention to negative than to positive emotional stimuli, and become less likely to remember negative than positive emotional materials.").

24. Not all elders in abusive situations are overly trusting, however. In some cases, an elder will see beyond the abuser's superficial charm, but the problem is that she is unwilling to communicate her distrust to others for fear that they will not believe her. See Brandl & Meuer, *supra* note 14, at 297 (describing a hypothetical situation involving a seventy-eight-year-old woman whose abusive alcoholic son is "charming and attentive" in the presence of neighbors).

25. *Frequently Asked Questions*, NAT'L CTR. ON ELDER ABUSE, <https://ncea.acl.gov/faq/index.html> [<https://perma.cc/4TF9-3DLY>].

26. Anuradha Paranjape et al., *When Older African American Women Are Affected by Violence in the Home: A Qualitative Investigation of Risk and Protective Factors*, 15 VIOLENCE AGAINST WOMEN 977, 983-84 (2009).

27. *Research: Statistics/Data*, NAT'L CTR. ON ELDER ABUSE, <https://ncea.acl.gov/whatwedo/research/statistics.html> [<https://perma.cc/5XAJ-HEM5>]; see also Terry Fulmer et al., *Elder Mistreatment in Women*, 33 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 657, 658 (2004) ("Although the rate of intimate partner violence is much lower for older women than younger, older women are less likely than younger women to report their victimization to the police. . . . Older women who are victims of intimate partner violence may not be identified by social workers, police, health care workers, or Adult Protective Service (APS) agencies. There is evidence that APS agencies and domestic violence researchers focus mainly on women who are 18 to 45 years old[.]").

28. See *Scams and Safety: Common Fraud Schemes: Fraud Against Seniors*, FBI, <https://www.fbi.gov/scams-safety/fraud/seniors> [<https://perma.cc/7N5B-HVSC>].

C. Why Abusers Abuse

Elder abuse can occur both in institutional settings, such as nursing homes and assisted living facilities, and at home. This Note focuses on the abuse that happens at home and at the hands of family members or intimate partners. According to the National Center on Elder Abuse, “most cases of elder abuse are perpetrated by known and trusted others, particularly family members.”²⁹

Traditionally, caregiver stress was thought to be the primary cause of elder abuse.³⁰ To be sure, caring for a parent, grandparent, or spouse can be overwhelming. The traditional theory posits family members as well-meaning individuals who occasionally lash out at their loved ones when under pressure.³¹ Such lashing out can take various forms including hitting the older person, stealing her money and possessions, or neglecting to attend to her basic needs.

But focusing on caregiver stress to the exclusion of other causes of elder abuse can have adverse consequences. For one, the theory of caregiver stress places blame on the victim for being too demanding, too difficult to care for, or even too sick,³² as though she could control her illness or level of need. For another, this theory tends to discourage the involvement of the criminal justice system, advocating instead for “stress reduction and improved communication” between caregivers and elders.³³ As a result, serious abuses may go unpunished and undeterred.

The more modern view is that the primary cause of elder abuse, specifically violence within the family, is the cycle of power and control.³⁴ To fully understand elder abuse, one must see it not through the lens of caregiver stress but rather through that of DV.³⁵ Abusive relationships between older partners often exhibit the same power imbalances and follow the same patterns as those between younger partners.³⁶ In fact, some abusive relationships formed in early adulthood may change little over the course of the partners’ lives, remaining just as abusive at age eighty as at age eighteen. In other cases, the abuse may even escalate during the so-called golden years. The following Section will explore these concepts in more depth. Unlike the theory of caregiver stress, the modern view tends to portray the justice system as an ally and to encourage its participation in protecting older survivors.

29. *Research: Statistics/Data*, *supra* note 27.

30. Brandl & Meuer, *supra* note 14, at 305.

31. *Id.*

32. *See id.*; Bonnie Brandl & Jane A. Raymond, *Policy Implications of Recognizing that Caregiver Stress Is Not the Primary Cause of Elder Abuse*, 36 GENERATIONS: J. AM. SOC’Y ON AGING 32, 35 (2012).

33. Brandl & Meuer, *supra* note 14, at 305.

34. *Id.* at 304–05.

35. *See id.* at 305.

36. Brandl, *supra* note 1, at 39.

II.

ELDER INTIMATE PARTNER ABUSE

Elder abuse encompasses—but is not synonymous with—elder intimate partner abuse. Even the subcategory of family violence is too broad to describe elder IPA. Moreover, the term “family violence” may obscure the fact that intimate partners, not just family members (e.g., adult children), can be abusers. This Section will explore the extent of the elder IPA problem, barriers to reporting it, and the cycle of power and control in later life.

A. *The Scope of Elder IPA*

It is well established that older women experience intimate partner abuse at much lower rates than younger women.³⁷ However, women over fifty “are much less likely to report intimate partner violence to police, making the exact scope of the problem unknown.”³⁸ They are also less likely to be identified as IPA victims by police and social workers because intervention programs and research tend to focus on women of childbearing age.³⁹ Even today, few studies of intimate partner abuse have centered on women age fifty-five and older.⁴⁰

B. *Barriers to Reporting Abuse*

Older women are often unwilling or unable to report IPA for a variety of reasons. Some older battered women have cognitive or physical impairments and may depend on their abusers for caregiving services. Some live in rural areas and may not have access to DV resources.⁴¹ Many are driven by feelings of love or protectiveness for their abusers or the belief that, with help, they will change their behavior.⁴² A 2005 focus-group study suggests that victimization behaviors, including powerlessness, self-blame, secrecy, protecting the family, and hopelessness, serve as internal barriers to reporting abuse to the authorities.⁴³ One participant cited invisibility as a driving force behind her decision to keep her abuse a secret:

37. See, e.g., Callie Rennison & Michael R. Rand, *Nonlethal Intimate Partner Violence Against Women: A Comparison of Three Age Cohorts*, 9 VIOLENCE AGAINST WOMEN 1417, 1417 (2003); Telephone interview with Melinda Shrock, MFT, Deputy Conservator for Contra Costa Cty. (Nov. 24, 2015) (stating that most battering happens between the ages of eighteen or twenty to forty and that there is less abuse before entering and after exiting these age ranges).

38. Fulmer et al., *supra* note 27, at 658.

39. See *id.*

40. Rennison & Rand, *supra* note 37, at 1417.

41. See Etty Vandsburger & Bethany Imbody Robinson, “*They Could Not Believe That a 65-Year-Old Man Would Still Beat His Wife*”: Professionals’ Perspectives on Addressing Abuse and Neglect Among Older Adults Living in Rural Southwest Virginia, 38 AGEING INT’L 245, 247 (2013).

42. NAT’L CLEARINGHOUSE ON ABUSE IN LATER LIFE, UNIQUE CHALLENGES IN ABUSE IN LATER LIFE CASES (2013), http://www.ncall.us/sites/ncall.us/files/resources/3_Unique_Challenges.pdf [<https://perma.cc/6NTG-VD85>].

43. Richard L. Beaulaurier et al., *Internal Barriers to Help Seeking for Middle-Aged and Older Women Who Experience Intimate Partner Violence*, 17 J. ELDER ABUSE & NEGLECT 53, 67 (2005).

I think the elderly are not treated with the same respect that you give to someone else who is younger. When they ask for something, when they complain . . . you say there goes that old person complaining again There is a lack of respect for their feelings and their necessities. You don't look out for them. You leave them talking to themselves.⁴⁴

Further, ageist stereotypes about older women (e.g., that they are nonsexual beings and therefore are incapable of having intimate relationships, or that “grandmas” are not beaten) marginalize them, creating barriers to the reporting of abuse and their recognition as victims.⁴⁵ Even the terms “elderly,” “old,” and “senior citizen” can ostracize older women. Jennifer Leach of the Federal Trade Commission, who works to fight elder financial abuse, states that “older” is a preferable term, as it is more respectful,⁴⁶ and it does not create such a sharp divide between groups of people based on their relative ages.

C. *The Cycle of Power and Control in Later Life*

Intimate partner abuse looks remarkably similar in both earlier and later life. Researchers have noted in older battered women's stories “the same power and control issues and the escalating cycle of violence frequently described by younger battered women.”⁴⁷ Researchers Bonnie Brandl and Tess Meuer write, “As is true for abuse of younger battered women, abusers feel justified, thinking they have a moral right to control their victim. They also hold rigid stereotypes about the victim over whom they have power.”⁴⁸

The cycle of power and control is depicted as a wheel whose center is “Power and Control” and whose rim is “Violence” (physical and/or sexual). The spokes of the wheel are the various ways that power and control manifest in relationships (e.g., “Using Coercion and Threats,” “Using Emotional Abuse,” and “Using Children,” the latter for purposes of “relay[ing] messages” and “using visitation to harass [the victim]”).⁴⁹ These manifestations tend to recur, hence the metaphor of the wheel. Following a period of abuse, the abuser may feel remorse and vow to stop the violence, but after a period of calm, the abuser will exhibit the same destructive behaviors. As part of the cycle, abusers may

44. *Id.* at 66.

45. See Patricia Brownell, *Neglect, Abuse and Violence Against Older Women: Definitions and Research Frameworks*, SE. EUR. J. PUB. HEALTH 1, 3–4 (2014), <http://www.seejph.com/index.php/seejph/article/viewFile/28/23#pdfjs.action=download> [<https://perma.cc/WL4B-5K57>] (“Older women have lacked status as battered women in domestic violence research and activism. Older women are often excluded in studies of violence against women and often completely absent as though older women do not belong in the category of women.”).

46. Telephone interview with Jennifer Leach, Consumer Education Specialist, Fed. Trade Comm'n (Nov. 5, 2014).

47. Virginia Drake & Patricia E. Freed, *Research Applications: Domestic Violence in the Elderly*, 19 GERIATRIC NURSING 165, 166 (1998).

48. See Brandl & Meuer, *supra* note 14, at 302.

49. See *The Duluth Model*, DOMESTIC ABUSE INTERVENTION PROJECT, <http://www.theduluthmodel.org/pdf/powerandcontrol.pdf> [<https://perma.cc/5V9H-NAMN>].

exploit weaknesses in their victims to create dependence, thereby preventing the victims from leaving.⁵⁰

Despite some important differences between older and younger victims, when the cycle continues later in life, it is often called DV “grown old.” Fatima’s story in the Introduction is an example of this type of relationship. For older victims, some of the spokes of the wheel may look a bit different. Instead of “Using Children,” for example, an abuser might use power of attorney; similarly, he may resort to “Ridicule of [cultural/religious] values” or “Abuse of dependency [and] neglect,” which can manifest as denial of medical care or access to a wheelchair, glasses, or medications.⁵¹

As another example of these differences, older women may be more vulnerable in abusive relationships than younger women, due to physical fragility and economic dependency,⁵² or because of the longer duration of the abuse. Many older women today grew up in an age when society was ignorant of DV, and thus they may have been unaware that they were being abused, or they may have been pressured into staying with their abusers.⁵³ One older woman in a 2003 study confided, “I went to Domestic Relations because I thought he just can’t keep [abusing me]. But of course everyone said you have to stay with him. How are you going to raise five children?”⁵⁴ When these battered women finally report the abuse in later life, they have already been suffering for decades. And they may be more reluctant to leave than younger women because of shame⁵⁵ or because, lacking the self-esteem of their younger years or the ability to develop skills for autonomy, they have more to lose.⁵⁶

Further, older women may be at a greater risk for harm because the cycle of power and control can intensify in later life. A relationship that has always been emotionally abusive can turn physically abusive, or vice versa,⁵⁷ as the partners grow older. The male partner may suffer from an age-related illness, like dementia, which can cause aggression.⁵⁸ In other cases, a formerly equal, harmonious relationship may experience strain when the female partner

50. Telephone interview with Melinda Shrock, *supra* note 37. Shrock recounts the story of a woman (not an elder) who got her boyfriend addicted to methamphetamine so that he would keep coming back to her for the drug.

51. Brandl, *supra* note 1, at 40.

52. Rachely Yechezkel & Liat Ayalon, *Social Workers’ Attitudes Towards Intimate Partner Abuse in Younger vs. Older Women*, 28 J. FAM. VIOLENCE 381, 382 (2013).

53. See Therese Zink et al., *Cohort, Period, and Aging Effects: A Qualitative Study of Older Women’s Reasons for Remaining in Abusive Relationships*, 9 VIOLENCE AGAINST WOMEN 1429, 1435 (2003).

54. *Id.*

55. Telephone interview with Marissa Seko, Family Violence Intervention Unit Coordinator, Family Violence Law Center (Nov. 20, 2015).

56. Zink, *supra* note 53, at 1438.

57. Telephone interview with Melinda Shrock, *supra* note 37. Shrock states that it is common for abuse to turn from physical to verbal in a couple’s later years.

58. Yechezkel, *supra* note 52, at 382.

suddenly becomes dependent, as in Helen's story in the Introduction.⁵⁹ New intimate relationships in later life can also trap women in the cycle of power and control.⁶⁰ In fact, the cycle can escalate so far as to put the partners at risk for homicide or homicide-suicide.⁶¹

To summarize, the full scope of the elder IPA problem is unknown because of significant underreporting. Yet researchers are beginning to understand the dynamics of abusive relationships in later life by viewing them through the lens of power and control, and advocating for solutions that involve the justice system. The next Section will explore legal remedies available to victims of elder abuse and DV when they are able and willing to report, and how well these remedies have worked for older victims.

III.

LEGAL REMEDIES FOR ELDER INTIMATE PARTNER ABUSE

Elder intimate partner abuse exists at the intersection of elder abuse and DV. In California, a number of legal remedies already exist for both problems.⁶² Elder abuse typically falls under the Welfare and Institutions Code, while DV falls under a variety of state laws, including the California Evidence, Family, Government, Penal, and Welfare and Institutions Codes.⁶³ Most existing DV remedies, however, were developed with younger victims in mind. This Section will examine legal remedies for both elder abuse and DV in California and assess their effectiveness for older battered women.

A. Elder Abuse Remedies

The Welfare and Institutions Code is the primary means by which law enforcement and courts address elder abuse in California.⁶⁴ This set of statutes provides a comprehensive definition of “[a]buse of an elder or a dependent adult”;⁶⁵ criminal penalties for the physical and financial mistreatment of elders,

59. See Drake & Freed, *supra* note 47, at 167.

60. *Id.* at 166 (clinical vignette about a sixty-five-year-old widow whose new male partner controlled every aspect of her life and severely beat her).

61. *Id.* (sixty-five-year-old woman killed abusive male partner when he attacked her, and was sentenced to thirty-five years in prison); Sonia Salari, *Intimate Partner Homicide Suicide in Later Life: Understanding Motives and Risks*, 21 DOMESTIC VIOLENCE REP. 1, 2 (2015) (eighty-three-year-old man killed himself and seventy-nine-year-old female partner after she decided to end their two-year relationship; studies show that there are as many as twenty deaths per week from elder murder-suicides).

62. In fact, according to DV expert Nancy Lemon of the University of California, Berkeley, School of Law, California has the most DV statutes of any state.

63. See, e.g., CAL. EVID. CODE § 1109 (2016); CAL. FAM. CODE § 6251 (2016); CAL. GOV'T CODE § 12528 (2016); CAL. PENAL CODE § 368 (2016); CAL. WELF. & INST. CODE § 15610.07 (2016).

64. Telephone interview with Elizabeth Combs, Att'y, Legal Assistance for Seniors (Nov. 16, 2015).

65. WELF. & INST. § 15610.07 (“(1) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. (3) Financial abuse.”).

including fines, jail time, or a combination of both,⁶⁶ and mandatory reporting of known or suspected elder abuse to law enforcement by employees of care facilities and “[a]ny person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult.”⁶⁷

On the civil side, the Code provides remedies such as “reasonable attorney’s fees and costs,”⁶⁸ punitive damages,⁶⁹ and protective orders (including any of a number of restraining orders).⁷⁰ Marissa Seko, an advocate at the Oakland, California-based Family Violence Law Center (FVLC), would recommend to an older victim that she try to obtain a protective order (also called an elder abuse restraining order) under the Welfare and Institutions Code, as it affords more protection than a regular DV restraining order.⁷¹ Specifically, an elder abuse restraining order can enjoin the abuser from a wide variety of behaviors: “abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . destroying personal property, contacting, either directly or indirectly . . . or coming within a specified distance of, or disturbing the peace of, the petitioner [victim].”⁷² Upon a showing of good cause, the protective order may even protect other members of the household.⁷³ Additionally, a protective order under the Welfare and Institutions Code takes into account the financial abuse that the victim may face as part of the cycle of power and control.⁷⁴

However, Elizabeth Combs, an attorney at Legal Assistance for Seniors in Oakland, points out that the Welfare and Institutions Code does not specifically provide remedies for DV.⁷⁵ Elder intimate partner abuse, she says, is normally conceptualized within the framework of family law.⁷⁶ In Alameda County, where she practices, cases involving the mistreatment of older people come before either elder abuse judges or family law judges.⁷⁷ Elder abuse judges hear cases of abuse by caregivers, including family members and hired healthcare workers.⁷⁸ In general, these relationships are non-intimate, so the cases are not

66. *Id.* §§ 15656(a)–(c).

67. *Id.* § 15630(a); *see also* CAL. PENAL CODE § 11160(a)(2) (2016) (mandating health practitioners to report injuries from “assaultive or abusive conduct”).

68. CAL. WELF. & INST. CODE § 15657(a) (2016).

69. *Id.* § 15657(c).

70. *Id.* § 15657.03.

71. Telephone interview with Marissa Seko, *supra* note 55.

72. WELF. & INST. § 15657.03(b)(4)(A).

73. *Id.* This added protection is especially important when other elders (e.g., siblings) or grandchildren live with the elder and may also be victims of abuse.

74. Telephone interview with Marissa Seko, *supra* note 55; *see* WELF. & INST. § 15657.03. Unlike a regular DV restraining order, *see* CAL. FAM. CODE §§ 6200–6219 (2016), an elder abuse restraining order does not require a close relationship between the abuser and abused (e.g., domestic partners or close relatives), and it specifically addresses isolation, neglect, and financial abuse.

75. Telephone interview with Elizabeth Combs, *supra* note 64.

76. *Id.*

77. *Id.*

78. *Id.*

complicated by shared property or children.⁷⁹ In intimate partner abuse cases, Combs states, family law judges are better equipped to assess the nuances of the relationship between spouses or partners.⁸⁰

Combs believes, nevertheless, that the Welfare and Institutions Code could address some elder IPA cases because of its loose definition of “dependent adult,” thus bringing these cases within the purview of family law judges.⁸¹ Further, while there is nothing in the Code that specifically addresses elder IPA, there is also no language that *prevents* it from addressing the problem.⁸² Combs can thus envision an expansion of the Code’s protections for older battered women.⁸³

B. Domestic Violence Remedies

1. Criminal and Civil Remedies

Both civil and criminal remedies are available for victims of DV. On the criminal side, the FVLC maintains a partnership with the Oakland district attorney’s (DA’s) office, often cross-referring cases with the DA, as well as a partnership with the Oakland Police Department.⁸⁴ The FVLC obtains DV police reports and follows up with victims, offering crisis counseling, safety planning, and shelter advocacy.⁸⁵ FVLC advocates also address victims’ legal needs, often helping them obtain restraining orders.⁸⁶ Should the DA decide to prosecute the abuser, the victim is eligible for a criminal protective order as part of the ongoing criminal case.⁸⁷ Because these protective orders last for a maximum of only three years, and the protection ends if the DA chooses to drop the case, the FVLC helps victims weigh other legal options, and advises them on their legal rights.⁸⁸

Victims may also pursue civil actions. Among other robust remedies for DV, the California Family Code allows for the issuance of restraining orders, including emergency restraining orders.⁸⁹ Because DV restraining orders can last up to five years, they are a good option for battered women in general, and in particular, for older battered women who are ineligible for the more protective

79. *Id.*

80. *Id.*

81. *Id.*; CAL. WELF. & INST. CODE § 15610.23(a) (2016) (“Dependent adult means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.”).

82. *See* Telephone interview with Elizabeth Combs, *supra* note 64.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *See* CAL. FAM. CODE §§ 6200–6219 (2016) (“Domestic Violence Prevention Act”).

elder abuse restraining orders.⁹⁰ Unlike criminal protective orders, DV restraining orders can include other family law orders pertaining to child support, custody, and divorce; and they can protect the victim at her workplace and in specific situations with other family members (e.g., dinner at her parents' house on Sunday nights).⁹¹

DV orders also offer the victim more control and predictability. A battered woman need not wait for a criminal protective order, which hinges on the DA's discretion in pursuing charges against her abuser; rather, she can go to the local courthouse herself and ask for a DV restraining order.⁹² And, if she believes she is out of danger, she can file papers to ask the judge to drop the order.⁹³

But dropping a restraining order is risky, warns Melinda Shrock, Deputy Conservator for Contra Costa County and a former DV advocate.⁹⁴ In the so-called honeymoon phase following a period of abuse, when the batterer displays kindness toward the victim, the victim may feel safe and even powerful.⁹⁵ "It's an incredible release of energy," she says, but that feeling of freedom can lead a victim to make problematic choices.⁹⁶ Shrock recounts the story of an 80-year-old man with an abusive alcoholic wife: during a honeymoon phase, when she curtailed the abuse, he would go out with his friends and gamble.⁹⁷ Eventually, he worked up the courage to get a restraining order against his wife; however, during a honeymoon phase, he asked a judge in Alameda County to drop the order.⁹⁸

Yet, before granting his request, the judge recommended that he take Shrock's six-hour DV education class.⁹⁹ Although not legally required to attend the class, victims typically interpret the judge's recommendation as a mandate.¹⁰⁰ It was a controversial program, says Shrock.¹⁰¹ But the class was a watershed for many DV sufferers. After gaining insight into the cycle of power and control, they often elected to keep their restraining orders.¹⁰²

90. Telephone interview with Marissa Seko, *supra* note 55.

91. *Id.*

92. See *Ask for a Restraining Order*, CAL. COURTS: THE JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/1264.htm> [<https://perma.cc/FP75-L3ZC>].

93. See *FAQs: FAQs—Abuse & Harassment*, CAL. COURTS: THE JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/1046.htm> [<https://perma.cc/QT3V-QSGG>].

94. Telephone interview with Melinda Shrock, *supra* note 37.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* In California, education and reform opportunities are available for abusers as well. Under the Penal Code, batterers convicted of a misdemeanor DV offense and given probation must attend a fifty-two-week batterer intervention program, one of the longest in the country. See CAL. PENAL CODE § 1203.097 (2016); ADMIN. OFFICE OF THE COURTS, JUDICIAL COUNCIL OF CAL., FACT SHEET: RESEARCH STUDY OF BATTERER INTERVENTION SYSTEMS (2007), <http://www.courts.ca.gov/documents/rsbis.pdf> [<https://perma.cc/Y5AJ-4EEJ>].

2. Collaborative Justice Alternatives

Collaborative justice is emerging as a way of dealing with DV. California has been acknowledged as a leader in collaborative justice, which “emphasizes partnerships with stakeholders in and outside the courts, improved community access to the justice system, greater accountability for offenders[,] and better community outcomes.”¹⁰³ To resolve cases in collaborative justice courts, judges work closely with prosecutors, defense attorneys, probation officers, and treatment providers.¹⁰⁴

Some of California’s earliest experiments in collaborative justice included DV courts, of which there are currently two main types.¹⁰⁵ The first is criminal, which aims to improve victim safety, hold batterers accountable, and monitor batterers to ensure that they comply with court orders and attend mandatory batterers’ programs under the California Penal Code.¹⁰⁶ The second type is civil, which often focuses on connecting victims (i.e., restraining order petitioners) with shelters and advocacy programs.¹⁰⁷ Some DV courts offer a combination of criminal and civil services.¹⁰⁸

Collaborative justice courts have many benefits. Shrock, who worked at a collaborative justice DV court in Berkeley, California, from 1995 to 2002, describes it as “problem-solving”; essentially, the court was a classroom for abusers, with an open-minded judge.¹⁰⁹ Judges in problem-solving courts, she says, are generally more active and knowledgeable than those in regular courts,¹¹⁰ which means that they take a greater interest in participants’ wellbeing and the outcome of each case.

Participating in the court program was transformative for both abusers and victims. Before their cases were heard, abusers had an opportunity to watch and learn from their peers.¹¹¹ If an abuser missed court dates or failed to comply with court orders, the judge would remand his case to the Alameda County Superior Court, where it would be handled by the traditional justice system.¹¹² “The

103. ROBERT V. WOLF, JUDICIAL COUNCIL OF CAL., CALIFORNIA’S COLLABORATIVE JUSTICE COURTS: BUILDING A PROBLEM-SOLVING JUDICIARY 2–3 (2005), http://www.courtinnovation.org/sites/default/files/CA_Story_1.pdf [https://perma.cc/25Z8-Q8UR].

104. *Id.* at 5.

105. *Id.* at 3.

106. *Id.* at 15.

107. *Id.* at 16.

108. *Id.*

109. *Id.* (Shrock states that, because Berkeley has a great deal of community oversight of the police and courts, the city was highly receptive to a collaborative justice court.); see *Problem-Solving Courts: Resource Guide*, NAT’L CTR. FOR STATE COURTS, <http://www.ncsc.org/Topics/Problem-Solving-Courts/Problem-Solving-Courts/Resource-Guide.aspx> [https://perma.cc/JW3L-TV7S] (“Generally, a problem solving court involves a single judge that works with a community team to develop a case plan and closely monitor a defendant’s compliance, imposing proper sanctions when necessary.”).

110. Telephone interview with Melinda Shrock, *supra* note 37.

111. *Id.*

112. *Id.*

remands came with admonishment and those in the courtroom understood [that] the judge would not accept non-compliance,” explains Shrock.¹¹³ In general, because of the swiftness of the criminal justice system’s response, the impact of remand was to reduce recidivism and violations of temporary restraining orders.¹¹⁴ As a result, victims felt heard and empowered.¹¹⁵

In the problem-solving court, abusers were also able to see their peers’ successes. If an abuser cooperated with the court proceedings and successfully completed the mandated batterers’ program, he had the privilege of attending a graduation ceremony presided over by the judge.¹¹⁶ For some men, this was the only award or recognition they had ever received.¹¹⁷ Their partners (victims) sometimes attended the ceremony and witnessed their accomplishment.¹¹⁸ In other cases, where such a transformation was not possible, the judge kept a restraining order in effect but allowed victims to uncheck certain boxes and leave others checked.¹¹⁹ This practice enabled peaceful, agreed-upon contact between the couple while still giving the victim a measure of safety and control.

Although the problem-solving court no longer exists as a result of Alameda County’s trial court unification,¹²⁰ it represented a shift away from the traditional criminal justice system toward collaborative justice. The problem-solving court’s success holds some promise for breaking the cycle of abuse in later life, and it should be reintroduced in a modified form. This idea will be discussed further in *Breaking the Cycle: Interdisciplinary Approaches*, *infra*.

C. Effectiveness for the Older Population

Once an older battered woman surmounts the various obstacles to reporting her abuse, where should she go first? To whom can she turn for help? Is the legal system adequately equipped to handle her problems? Unfortunately, DV discourse, educational materials, and legal remedies focus almost exclusively on women in their twenties and thirties.¹²¹ Although these women have the highest reported levels of abuse,¹²² older women are generally left out of the

113. E-mail from Melinda Shrock, MFT, Deputy Conservator for Contra Costa Cty., to Taylor Altman (Dec. 4, 2015, 05:54 PST) (on file with author).

114. *Id.*

115. *Id.*

116. Telephone interview with Melinda Shrock, *supra* note 37.

117. *Id.*

118. *See id.*

119. *Id.*

120. E-mail from Melinda Shrock, *supra* note 113; *see Trial Court Unification*, SUPERIOR COURT OF CAL., CTY. OF ALAMEDA, <http://www.alameda.courts.ca.gov/Pages.aspx/Trial-Court-Unification> [<https://perma.cc/UNK7-UXP7>] (describing the unification of the Alameda County trial courts, which began in 1998 and “transferred Municipal Court functions to the Superior Court, eliminated the six former Municipal Court Districts in Alameda County, and consolidated case jurisdiction, judges and staff of the Municipal Courts with the Alameda County Superior Court”).

121. Carol Seaver, *Muted Lives: Older Battered Women*, 8 J. ELDER ABUSE & NEGLECT 3, 13 (1996).

122. *Id.*

conversation and, as a result, do not have a voice. Ageist, sexist, and ableist barriers may be to blame. Social scientist Carol Seaver summarizes these barriers in an article aptly titled “Muted Lives”:

[D]espite expansion to include every ethnic group, efforts to meet the needs of older women have been slight. There is also little outreach to women with disabilities. The domestic violence movement has been slow to include older women in its ranks as equals, rather than as objects of study or clients to be helped.¹²³

As mentioned earlier, elder IPA exists at the nexus of elder abuse and DV, but legal remedies in each of these areas, let alone remedies that try to bridge the gap, have been woefully inadequate. This Section will explore some of the failures of these remedies.

1. *The Inadequacy of Elder Abuse Remedies*

For the most part, legal remedies for elder abuse are tailored to dependent elders in family violence situations (i.e. elders abused by adult children or other caregivers), not to elders abused by intimate partners. In Alameda County, elder abuse cases are heard by elder abuse judges who often do not have the training to deal with the dynamics of an abusive intimate partner relationship.¹²⁴ And legal aid organizations such as the Oakland-based Legal Assistance for Seniors, while instrumental in helping abused elders escape the cycle of family violence, do not have the resources to handle elder IPA cases. Instead, the organizations refer these cases to family law attorneys or judges.¹²⁵

Further, the Welfare and Institutions Code, California’s primary anti-elder-abuse enforcement mechanism, does not adequately protect older battered women. Despite the Code’s broad mention of “abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, [and] harassing,”¹²⁶ elder abuse restraining orders may not be a good fit, or may be out of reach, for older battered women. These orders, *see supra* Elder Abuse Remedies, are often more difficult to obtain than regular DV restraining orders.¹²⁷ They are designed for certain abusive situations, including physical or financial abuse, neglect or abandonment, and deprivation of basic necessities or services, that may not adequately describe an older battered woman’s circumstances.¹²⁸ It can also be difficult to qualify for an elder abuse restraining order due to age and dependency status. The orders are designed for people age

123. *Id.*

124. Telephone interview with Elizabeth Combs, *supra* note 64.

125. *Id.*

126. CAL. WELF. & INST. CODE § 15657.03 (2016).

127. *See* telephone interview with Marissa Seko, *supra* note 55.

128. *See Elder and Dependent Adult Abuse*, CAL. COURTS: THE JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/selfhelp-elder.htm> [<https://perma.cc/BD5J-XTZP>]; Brandl & Meuer, *supra* note 14, at 311.

sixty-five and over, and for dependent adults ages eighteen to sixty-four.¹²⁹ Thus, a battered woman will not be eligible for an elder abuse restraining order if she is under sixty-five and does not have a mental or physical disability that precludes her from normal life activities or self-protection.¹³⁰

The Welfare and Institutions Code also states that anyone responsible for the care or custody of an elder must report elder abuse, whether suspected or observed, to law enforcement or adult protective services (APS).¹³¹ APS are “social service agencies mandated to investigate cases of elder abuse or abuse of a vulnerable adult.”¹³² In California, most non-profit organizations and social services agencies, and their employees acting in a professional capacity, are mandated reporters to APS.¹³³ Melinda Shrock, for example, is a mandated reporter in her capacity as Deputy Conservator for Contra Costa County.¹³⁴ Organizations that are not mandated reporters are relatively rare, but they include the Family Violence Law Center, which must get clients’ permission to speak with APS or the police department.¹³⁵

Though effective in theory, mandatory reporting can cause problems for older battered women. First, it may lead advocates to make assumptions about what victims want. Not all older battered women are cognitively impaired or legally incapable of making their own decisions.¹³⁶ Second, in states where lawyers and other professionals are mandated reporters, ethical issues may arise. It is not always clear, for example, when abuse must be reported to the authorities. If an older battered woman simply wants to discuss her problems at home but does not want to involve APS, professionals must weigh their responsibilities under the ethical codes of their disciplines and their duties under their states’ mandatory reporting statutes.¹³⁷ Relatedly, mandatory reporting may have a chilling effect on the reporting of elder abuse and IPA, although it is nearly impossible to say to what extent.¹³⁸

129. *Elder and Dependent Adult Abuse*, *supra* note 128.

130. *Id.*

131. CAL. WELF. & INST. CODE § 15630 (2016); *see* Brandl & Meuer, *supra* note 14, at 311 (“[A]ll states have an elder abuse/adult protective service reporting system(s).”).

132. Brandl & Meuer, *supra* note 14, at 313.

133. Telephone interview with Marissa Seko, *supra* note 55.

134. Telephone interview with Melinda Shrock, *supra* note 37.

135. *See* telephone interview with Marissa Seko, *supra* note 55 (Due to attorney-client privilege and confidentiality, the FVLC is not a mandated reporter.).

136. *See* Brandl & Meuer, *supra* note 14, at 309–11.

137. *Id.* at 313. Researcher Rachely Yechezkel adds another dimension to the ethical dilemmas of mandatory reporting: lack of knowledge and training may cause social workers to mistake the physical signs of abuse for the signs of normal aging, and therefore to decide not to intervene. *See* Yechezkel & Ayalon, *supra* note 52, at 383.

138. Brandl & Meuer, *supra* note 14, at 313.

2. *The Inadequacy of Domestic Violence Remedies*

New research suggests that social workers are more likely to recommend legal, as opposed to therapeutic, remedies to older DV sufferers.¹³⁹ There are several possible explanations for this phenomenon. First, social workers may perceive older women as having more complex health problems (including disabilities) than younger women, and conclude that older women therefore need stronger legal intervention to help them leave the abusive relationship.¹⁴⁰ Second, the duration of older women's suffering may lead social workers to favor legal remedies that can finally put a stop to the cycle of violence.¹⁴¹ Third, social workers may be influenced by paternalism. Believing that older women are weak, vulnerable, and unable to help themselves, some social workers may feel the need to impose outside solutions or shift responsibility to the legal system.¹⁴² Ageism may also play a role: "Past research has shown health professionals to hold a differential treatment towards old vs. young adult and to favor the care of the latter even under similar circumstances."¹⁴³ In other words, older women may not receive the care they need because the medical establishment is biased toward the young.

But legal remedies are not always right for the older victim. Most DV remedies, as we have seen, were developed for women of childbearing age. The majority of participants in the DV problem-solving court in Berkeley were in their twenties, thirties, and forties.¹⁴⁴ And Shrock recalls that most people in her DV education class ranged in age from eighteen to forty.¹⁴⁵ Likewise, legal aid centers and direct service organizations such as the FVLC receive requests for help from older women but are not always equipped to meet their special physical and emotional needs.¹⁴⁶ Finally, mandatory reporting statutes for DV, like those for elder abuse, often create ethical dilemmas for professionals and fail to protect DV victims in general, let alone older victims of IPA.¹⁴⁷

Additionally, legal advocates often recommend DV shelters in conjunction with civil and criminal remedies, but these shelters, at least in the Bay Area, are

139. Yechezkel & Ayalon, *supra* note 52, at 388.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 383.

144. Telephone interview with Melinda Shrock, *supra* note 37.

145. *Id.*

146. Telephone interview with Marissa Seko, *supra* note 55 (Although Seko says that the FVLC crisis line receives "semiregular" calls from elders, the FVLC generally refers elder abuse cases to other legal service organizations, such as Legal Assistance for Seniors, that are better positioned to meet older victims' array of needs.).

147. See Ariella Hyman et al., *Laws Mandating Reporting of Domestic Violence: Do They Promote Patient Well-being?*, 273 J. AM. MED. ASS'N 1781, 1781 (1995).

not elder-ready.¹⁴⁸ Despite being open to people of all ages and circumstances,¹⁴⁹ DV shelters may present barriers to older women. First, because they are structured as family living environments, where each family shares a kitchen and living room, shelters are not set up to accommodate caregivers or elders with more intense medical needs.¹⁵⁰ Second, women are expected to assist with communal chores, such as preparing meals and cleaning, which might be difficult for older women with physical limitations.¹⁵¹ Yet, in some ways, older survivors may be better off than their younger counterparts because they have the alternative of senior housing options in the event that a regular DV shelter is not a good fit.¹⁵² Senior housing facilities may be better equipped to meet older survivors' unique needs and can offer a more permanent living situation.

Perhaps it is not entirely accurate to say that legal remedies have failed older battered women. Some, in fact, have come within the orbit of success—the problem-solving court, the DV education class, and elder abuse restraining orders—but they must be tailored to older women in IPA situations and combined with other remedies to make them truly effective. The next Section will propose several ideas for how to accomplish this.

D. Breaking the Cycle: Interdisciplinary Approaches

Breaking the cycle of intimate partner violence in later life will take some ingenuity on the part of the legal system and social services agencies. There are several possible ways to address the problem of elder IPA. A new court system could harness the best aspects of the former DV court in Berkeley and a specialized elder abuse court in Oakland. Elder abuse restraining orders could be easier to obtain. And DV shelters could become elder-ready.

1. A Hybrid Domestic Violence/Elder Abuse Problem-Solving Court

Superior Court Judge Julie Conger, now retired, had a revolutionary idea while on the bench of Alameda County. Disheartened by seeing elders forced to sit through violent testimony in her DV court, she decided in 2002 to establish the Elder Protection Court in Alameda County, “the only court in the country that handles civil and criminal complaints involving elderly victims in the same

148. Telephone interview with Marissa Seko, *supra* note 55. Some Bay Area shelters are culturally appropriate, *e.g.*, the Asian Women's Shelter in San Francisco, which is open to all women but has a special focus on Asian languages and culture. ASIAN WOMEN'S SHELTER, <http://www.sfaws.org> [<https://perma.cc/EL3G-83A5>].

149. *See, e.g.*, A SAFE PLACE, INC., <http://www.asafeplacedvs.org> [<https://perma.cc/6L7C-TYQ5>]; RUBY'S PLACE, <http://www.rubysplace.org/wp/about-us> [<https://perma.cc/BL4D-QUL7>] (“All services are accessible and available to clients from diverse cultures, backgrounds, experiences, and lifestyles.”).

150. Telephone interview with Marissa Seko, *supra* note 55.

151. *Id.*

152. *Id.*

central location.”¹⁵³ The court, still in existence, is for people ages sixty-five and older, as well as dependent adults.¹⁵⁴ Most adults who come for the court’s restraining order sessions—held in the late morning “to give seniors time to get up and going”—are seeking relief from abuse (often financial) inflicted by family members and other caregivers.¹⁵⁵ A case manager is on duty to guide elders through the complicated court process.¹⁵⁶ Shorter wait times and greater privacy for personal matters are two additional features of the Elder Protection Court.¹⁵⁷

A court that combines the collaborative justice aspects of the DV court in Berkeley with the elder-ready features of the Elder Protection Court would be ideal for elder IPA victims. The court, led by a sensitive judge like Judge Conger, might feature restraining order sessions paired with educational opportunities similar to Shrock’s class. In the class, a victim could learn about the cycle of power and control before deciding to drop a restraining order against her abuser. Additionally, the court may feature the criminal reform aspects of the DV court. It may help older batterers to avoid jail or prison,¹⁵⁸ to eliminate the violence from their relationships, and to celebrate their accomplishments in a batterer intervention program/support group just for older men. At the very least, the Elder Protection Court could hold periodic sessions dedicated to elder IPA cases.

2. *Easier Access to Elder Abuse Restraining Orders*

As noted earlier, elder abuse restraining orders are sometimes difficult for an older victim of IPA to obtain, due to criteria such as dependency status and the type of abuse she has experienced. Because elder abuse restraining orders provide such a high level of protection, older IPA survivors should have better access to them.¹⁵⁹ Increasing access would involve (1) expanding the definition of “dependent adult” in the California Welfare and Institutions Code to include

153. *Theft of Elder Nation: An Editorial Series Elder Court is Crucial*, E. BAY TIMES (Dec. 10, 2007), http://www.contracostatimes.com/opinion/ci_7682288 [<https://perma.cc/ZLQ5-B275>] (Judge Conger received a grant from the California Judicial Council.); *see also* Lygia Navarro, *A Friend in the System*, E. BAY EXPRESS (Dec. 21, 2005), <http://www.eastbayexpress.com/oakland/a-friend-in-the-system/Content?oid=1080004> [<https://perma.cc/8FNU-LKMA>] (discussing Judge Conger’s Elder Protection Court).

154. *Theft of Elder Nation*, *supra* note 153.

155. *Id.*

156. *Id.*

157. Nancy E. O’Malley, *Elder/Dependent Adult Protection*, ALAMEDA CTY. DIST. ATT’Y’S OFFICE, http://www.alcoda.org/victim_witness/elderdependent_adult [<https://perma.cc/A9UA-R6M2>].

158. Brandl & Meuer, *supra* note 14, at 314 (“Domestic violence in later life poses very difficult considerations for the criminal justice system. For example, will the criminal justice system arrest and incarcerate an elderly man who has abused his elderly wife, knowing that the man is frail and has special medical needs?”).

159. Although I can envision the development of a new type of restraining order, I believe that it makes more sense, at present, to apply California’s powerful Welfare & Institutions Code toward the problem of elder IPA.

older battered women,¹⁶⁰ and (2) including intimate partner battering in the types of abuse that make a victim eligible for restraining order protection.¹⁶¹

But until such changes are effected in the law, the best course of action for an elder IPA survivor is to request more than one type of restraining order, such as elder abuse and DV orders, for maximum protection.¹⁶² Further, the victim's employer or elder care facility could request an order, hopefully in concert with the victim, to prevent her abuser from harassing her at her job or home.¹⁶³

3. *Elder-Ready Shelters and "Aging in Place"*

One of the greatest barriers that DV shelters pose to older women is that they are not equipped to assist the women with daily living tasks such as bathing, dressing, grooming, and taking medication.¹⁶⁴ However, Linda Vinton of Florida State University describes a successful community effort in St. Augustine, Florida—a city with a high proportion of older residents—to make DV shelters elder-ready.¹⁶⁵ The Elder Domestic Violence Collaborative Project aimed to:

- (a) create collaborative partnerships with appropriate community groups to ascertain gaps in services for the elderly victims of domestic violence;
- (b) prepare a domestic violence center to become elder ready;
- (c) create partnerships with community-based facilities, such as assisted living facilities, to provide space for an older victim of domestic violence; and
- (d) retrofit a safe room in a senior center to provide respite and safety for elder victims awaiting case management.¹⁶⁶

Among its many accomplishments, the Project brought together social, health, justice, and economic assistance organizations to launch an awareness campaign on the sides of city buses ("DOMESTIC VIOLENCE: A Crime at Any Age") and train over 100 volunteers on elder DV.¹⁶⁷ A staff member from the local DV shelter ate lunch at a senior meal site once a week and encouraged older people to use the shelter if needed.¹⁶⁸ Additionally, the Project secured the help of local assisted living facilities in providing up to three days of help with daily living tasks for elder DV survivors.¹⁶⁹

Such a collaborative effort may be possible in the Bay Area, with its plethora of shelters, legal assistance organizations, and educational institutions, along with a high level of community engagement, particularly in cities like

160. See CAL. WELF. & INST. CODE § 15610.23(a) (2016).

161. See *id.* § 15610.07(a)(1).

162. See *Elder and Dependent Adult Abuse*, *supra* note 128.

163. CAL. CIV. PROC. CODE § 527.8 (2016).

164. Linda Vinton, *A Model Collaborative Project Toward Making Domestic Violence Centers Elder Ready*, 9 VIOLENCE AGAINST WOMEN 1504, 1510 (2003).

165. *Id.* at 1508.

166. *Id.*

167. *Id.* at 1509.

168. *Id.*

169. *Id.* at 1510.

Berkeley. For some elders, however, shelters are not an option, either for personal reasons or lack of accessibility. In these cases, Victim Services Advocate Martine Barbier of the San Francisco District Attorney's Office refers victims to the Richmond Senior Center on Geary Boulevard.¹⁷⁰

Housed in a nondescript building that abusers may not readily recognize, the Richmond Senior Center does not offer a place to sleep—and thus is not a replacement for shelters—but provides elders with protection and culturally appropriate services during the day.¹⁷¹ This senior center and a related organization, the Institute on Aging¹⁷² in San Francisco, are part of a larger movement that helps older people “age in place.”¹⁷³ “Ageing in place” means bringing care and resources to elders, allowing them to continue living at home rather than moving to nursing homes or assisted living facilities. According to Barbier, one of the greatest benefits of these organizations is that they help older battered women feel that they are not alone and do not have to rely solely on their abusers.¹⁷⁴

CONCLUSION

Older battered women are often left out of the national conversation on DV. Legal and therapeutic remedies for intimate partner abuse, designed for women of childbearing age, do not always provide adequate protection and assistance to older victims. And remedies targeted to older victims tend to focus on violence by other family members, not on abuse by husbands and other intimate partners.

In order to provide older women with the support they need, our justice system and social services agencies need to understand that DV in later life is usually a consequence of the cycle of power and control; many older victims are seeking help after decades of abuse. Agencies and organizations must understand the complex reasons—including shame, self-blame, and lack of financial independence—why older battered women stay with abusive partners and do not report their abuse. Through a collaboration of social workers, clinicians, legal advocates, lawyers, and judges, our communities will not only bring a long-hidden problem into the light but also mobilize existing resources to solve the problem. Problem-solving courts, increased access to elder abuse restraining orders against violent partners, and elder-ready shelters will help ensure that survivors of elder IPA receive the dignity and protection they deserve.

170. Telephone interview with Martine Barbier, Victim Servs. Advocate, S.F. Dist. Att’y’s Office (Dec. 15, 2015).

171. *See id.*

172. INST. ON AGING, <http://www.ioaging.org> [<https://perma.cc/973R-JD3H>].

173. *See Age in Place*, NAT’L AGING IN PLACE COUNCIL, <http://www.ageinplace.org> [<https://perma.cc/57LP-4HEL>].

174. Telephone interview with Martine Barbier, *supra* note 170.

