

# Articles

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## Intimate Partner Violence Through the Eyes of the Military “Dependent” Spouse

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## INTRODUCTION

Irene’s hands clutch the steering wheel, guiding her car forward as she rolls up to the installation gate. She lowers her window as a soldier waves her forward, holding out her ID card for him to check. “Good morning, ma’am,” he says as he takes the card, running it under the beam of a handheld scanner. He passes the card back, clearing her way to enter the base. “Take care, Mrs. Donnelly.” Irene mutters a “thank-you” as she’s handed the card. Her last name is actually Standler, but it doesn’t matter. With her husband’s name, rank, and service information occupying almost two-thirds of her ID card, she’s almost always addressed by his name. It’s just one of the many ways

she'll be reminded this morning that her life exists as an extension of his military career.

Later, her husband's words and conduct will make this point explicit. Throughout this Article, we will examine the extraordinary challenges faced by partners of military members when their relationships become abusive. Few legal scholars have written about the phenomenon; of them, most focus on the servicemember's—not the partner's—experience. This Article seeks to fill that gap by providing a contextual analysis of abuse as a continuing process, rather than a discrete incident, and by using the military setting to throw into sharp relief the structural facilitators that too often fade into the background. By constructing this analytical framework, we seek to create analytical applications beyond the confines of a military installation to globally inform law and policy in the area of intimate partner violence.

Specifically, we argue that understanding abuse from the perspective of the person who experiences it upends current legal and social responses taken by the military, which do not begin until the moment of discrete physical violence. Irene may experience physical abuse perpetrated by her husband, and on those occasions the military police should (and do) respond. But Irene's experience of abuse has as much to do, if not more, with her identity being subsumed by her husband's career and the norms and values of military culture as it does with a physical slap. Neither military nor civilian approaches (in theory and in application) sufficiently recognize the importance of these underlying structural conditions.

Part I of this Article vividly documents a day in the life of a civilian partner of a U.S. military member. Rooted in statistics and the real experiences of intimate partners, the day ends with military police at Irene's door, responding to a neighbor's report of domestic violence. Following this prototypical case study, we diagram the military justice response that is set in motion with the departure of the abuser in handcuffs. Using Irene as a summary projection, we seek to explore the experience of women connected to the military who suffer intimate partner violence (IPV) at a much higher rate than women in the civilian population *and* who are much less likely to report it. Though homicides make the news, the day-to-day experience of most civilian partners in the military community is still enshrouded in insular culture, predicated on isolation from the larger American society. Before dissecting and critiquing the factors that facilitate the abuse partners like Irene face, we must unpack what those day-to-day conditions look like.

Part II examines the predominant framework for understanding IPV as articulated by advocates against domestic violence and feminist activists. They argue that a contextual analysis is critical to differentiating various types of violence in relationships, and in particular for identifying “coercive control.”<sup>1</sup> We agree that a contextual analysis is critical but demonstrate that most activists’ current analysis revolves, much like our legal responses, around discrete episodes of abuse rather than the ongoing process of abuse, fostered by structural conditions, that is the lived experience of many.

Part III establishes a critique of the current military approaches to addressing IPV. In it, we discuss “coercive control” factors both unique to Irene and universal throughout the military community experience, while spotlighting relevant structural issues such as the erasure of the victim experience in the military judicial process, sociocultural impediments to change like the stigma against mental health treatment, and the military’s organizational predisposition to “one-size-fits-all” solutions. Additionally, Part III includes analysis of Article 128(B), the article specific to domestic violence recently added to the Uniform Code of Military Justice.

Part IV offers a series of policy and cultural reform proposals created by the authors in response to the issues presented in Parts II and III. These proposals run the gamut from minor procedural adaptations to full reframing of the perspective the military undertakes in addressing IPV, with an emphasis on low- or no-cost sociocultural adaptations. The final section analyzes the two most successful innovations in the military’s approach to IPV, the Special Victims Counsel and Restricted Reporting program, and discusses their potential impact on civilian approaches to treating domestic abuse.

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<sup>1</sup> See discussion *infra* Part II.

## I BACKGROUND

### *A. Irene*

Statistically, Irene is a young woman, between twenty and thirty years old, college educated, and with a four-year-old at home.<sup>2,3,4</sup> In her six years of marriage to Sergeant Donnelly, they’ve permanently changed station three times, crisscrossing the continental United States as they moved from Texas to North Carolina and now to their current residence in Indiana.<sup>5</sup> She’s had to start over from scratch each time, leaving behind friends, family, and all her established community support whenever her husband relocates—often to a unit and installation she had no voice in picking. When she first arrived at their current base, the only friends she made were in the spouses’ club for her husband’s unit. Socializing with the spouses’ club is nice—they understand the tempo for the unit and the unique pressures the military mission puts on a home—but Irene is always on guard around them; offending the wrong person could jeopardize her husband’s standing, or even his career. So Irene mostly keeps to herself, using social media to stay in touch with old friends as she juggles the home, her son, and her shifts at the grocery store on base. After the frequent moves, and because employers are loathe to hire someone they know is unable to stay in a position beyond a few years, Irene works a job granted to her by the military spouse employment office as a commissary bagger. It

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<sup>2</sup> Of the 606,000 spouses of active duty military members, 91% are female, 25% were twenty-five years old or younger (with a further 25% in the range of twenty-six to thirty years old), and 42% have children under five years old in the home. U.S. DEP’T OF DEF., 2018 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 125–45 (2018).

<sup>3</sup> In examining spousal demographics, the Department of Labor found that 89% of military spouses have some college education, 30% of military spouses have a four-year degree, 15% have an advanced degree, and a full 34% of military spouses work in occupations that require licenses. U.S. DEP’T OF LAB., WOMEN’S BUREAU, MILITARY SPOUSES TALKING POINTS 1 (2018).

<sup>4</sup> Irene’s race and ethnicity are not described here because the Department of Defense did not survey and quantify racial or ethnic demographics for spouses within its 2018 Profile of the Military Community. U.S. DEP’T OF DEF., *supra* note 2.

<sup>5</sup> Active-duty servicemembers permanently change station (relocate to a new military base and begin a new job within a new unit) every two to three years on average, with 33% of active-duty military families having moved in the last year. PATRICIA K. TONG ET AL., ENHANCING FAMILY STABILITY DURING A PERMANENT CHANGE OF STATION: A REVIEW OF DISRUPTIONS AND POLICIES 1 (2018).

isn't in her field and the pay is minimum wage, but she's just happy to have some manner of financial independence.<sup>6</sup>

After passing through the installation gate, Irene heads to the medical clinic to pick up her prescription. Thanks to TRICARE, she has zero-cost medical and vision coverage for her and her son, dental coverage at an extremely discounted rate, and prescriptions that are free when she gets them filled on base.<sup>7</sup> Waiting in line at the pharmacy window, she gets bumped down a few places on the list after two soldiers walk in—even with an appointment, spouses get the lowest clinic priority, treated behind active duty members, reservists, and retirees. At last, her number is called, and she collects her medication in a brown paper bag, but not before providing the clerk with a nine-digit insurance policy—her husband's social security number. It's not the first time she's needed recite it at a moment's notice; she's had to use it to access everything from her ID card to arranging delivery of her furniture after a move.

Leaving the clinic to drive home, Irene passes gas stations, a post office, fast food restaurants, a car wash, the PX (a general retail store), the commissary (a grocery store), her church, and their son's daycare. She had to run to a specialty shop this morning, but she often goes a whole week without needing to leave the base. Everything in her community is provided within the confines of the barbed-wire-topped fencing. She makes a turn, peeling off the main road and into a neighborhood of identical rows of government-contracted housing. Living on base is free, subsidized by a special allowance, but the government-contracted homes are always a little shabby, and with her husband's coworkers as her neighbors, the walls are always a little too thin.<sup>8</sup>

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<sup>6</sup> Only 61% of active-duty military spouses are in the workforce (a statistic that combines those employed part-time, full-time, and those unemployed but seeking work). Active-duty military spouses have a 24% unemployment rate, and even when employed, earn an average of 25% less than their civilian spouse counterparts. DEF. MANPOWER DATA CTR, REPORT NO. 2018-006, THE 2017 SURVEY OF ACTIVE DUTY SPOUSES: TABULATION OF RESPONSES (2018); see also M.K. KNISKERN & D.R. SEGAL, MEAN WAGE DIFFERENCES BETWEEN CIVILIAN AND MILITARY WIVES (2010).

<sup>7</sup> TRICARE is a healthcare plan afforded to members of the Department of Defense and their families. Though plans differ according to military status, the most inclusive, TRICARE Prime, is afforded to active-duty members and their families and has no out-of-pocket costs for medical care provided on military installations. *TRICARE Prime*, TRICARE, <https://www.tricare.mil/Plans/HealthPlans/Prime> [<https://perma.cc/9DEK-WE9X>] (last updated Oct. 19, 2020).

<sup>8</sup> M.B. Pell, *Military Landlord, Under Fire Following Reuters Reports, Issues Improvement Plan*, REUTERS (Apr. 8, 2020, 5:55 AM), <https://www.reuters.com/article/us>

Irene’s husband, Sergeant Donnelly, is a noncommissioned officer serving on active duty in the U.S. Army. Statistically, he’s a young, white man, between eighteen and thirty years old.<sup>9</sup> He’s a 92A Automated Logistician Specialist, part of the 80.6% of active duty military who *don’t* serve in a combat-oriented career field.<sup>10</sup> He’s deployed at least once in his career, likely to a combat zone, although his proximity to a combat situation is directly linked to his specific duties on that deployment (a convoy driver shuttling supplies between bases in Iraq is significantly more likely to be exposed to a combat event than a warehouse manager assigned to the same location).<sup>11</sup> His job isn’t necessarily dangerous, not when he’s stateside at least, but it’s always stressful—Sergeant Donnelly works an average of fifty hours weekly, but sometimes that number is closer to sixty or seventy if the operational tempo suddenly shifts up.<sup>12</sup> On top of the day-to-day demands of his position, Sergeant Donnelly is also expected to hit certain educational milestones—an associate degree, completion of a military management school, or a specialized training course—which assist him in staying promotable with his peers. From the stresses of service, Sergeant Donnelly may have PTSD (officially diagnosed in as many as 12% of active duty members), and he may binge drink to cope with that stress (reported in about 23% of active duty members).<sup>13</sup> Mental health services, just like medical and dental care, are freely available and encouraged for all active duty servicemembers, but a lack

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-usa-militaryhousing-balfour/military-landlord-under-fire-following-reuters-reports-issues-improvement-plan-idUSKBN21Q1U0 [https://perma.cc/3P48-8JFA].

<sup>9</sup> Of the 1,304,000 active duty servicemembers, 83.5% are male, 45.6% were twenty-five years old or younger (with a further 21.1% in the range of twenty-six to thirty years old), and 69% are identified as white. U.S. DEP’T OF DEF., *supra* note 2, at 23, 37, 76.

<sup>10</sup> 137,901 active-duty enlisted servicemembers are in a combat specialty career field, and 75,209 are in a protective service career field (like military police), out of a total force of 1,123,086 active duty enlisted military members. *Occupational Outlook Handbook: Military Careers*, BUREAU OF LAB. STAT., <https://www.bls.gov/ooh/military/military-careers.htm> [https://perma.cc/YR45-UKFK] (last updated Sept. 8, 2021).

<sup>11</sup> See Resul Cesur & Joseph J. Sabia, *When War Comes Home: The Effect of Combat Service on Domestic Violence*, 98 REV. ECON. & STAT. 209, 213 (2016) (surveying active-duty military members in 2008 and finding that 76.1% had served in a combat zone in their career, with 51% reporting exposure to a combat experience).

<sup>12</sup> Karen Jowers, *McCain: Military Personnel’s 100-Hour Work Weeks Must Stop*, MILITARY TIMES (Nov. 14, 2017), <https://www.militarytimes.com/news/pentagon-congress/2017/11/14/mccain-military-personnels-100-hour-work-weeks-must-stop/> [https://perma.cc/XDQ8-UHMH].

<sup>13</sup> Cesur & Sabia, *supra* note 11.

of patient confidentiality leads many to assume they will be stigmatized if they seek them out.<sup>14</sup>

Irene doesn't consider these statistics as she pulls into the driveway; she's too busy running through her list of tasks to do that day before picking up their son. The military has made significant strides in recent years to recognize the struggles and challenges faced by spouses as they shoulder the majority of the household burden (including special appreciation events and the recognition of the Friday before Mother's Day as Military Spouse Appreciation Day).<sup>15</sup> But the fact remains that, as a culture, the military assumes that the servicemember's sole priority is their job and that the rest of the emotional labor of running a household is deferred to the servicemember's spouse.<sup>16</sup> The military's perspective has always been centered on the member, with their family as mere accompanying baggage. After all, Irene's official status on all military documentation classifies her as a "dependent."<sup>17</sup> After taking care of the house, the bills, and picking up their son, Irene sets about cooking dinner. Her phone chirps just as she's laying out plates on the table—her husband's working late again after a shipping mix-up—so it's another night of just her and the kid.

Three hours later, Sergeant Donnelly steps through the door. He's exhausted and irritable and bypasses Irene entirely as he makes his way to the liquor cabinet. She joins him, and together they drink, and complain, and drink some more. At some point the complaining shifts from their problems of circumstance (work, finances, an expensive-

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<sup>14</sup> Jerri L. Fosnaught, *Domestic Violence in the Armed Forces: Using Restorative Mediation as a Method to Resolve Disputes Between Servicemembers and Their Significant Others*, 19 OHIO ST. J. ON DISP. RESOL. 1059, 1072 (2004). ("Soldiers frequently view the mental health mission with a mixture of suspicion, stigma, and fear of career damage.' A service member's communications with a therapist or counselor may be transmitted to a service member's superiors because the military does not provide that communications with counselors or therapists are privileged. 'Anyone in the member's chain-of-command with a "need-to-know" would have access to those records.' In contrast, such mental health communications are privileged for civilians.").

<sup>15</sup> *Military Spouses Enable Mission by Maintaining the Homefront*, U.S. DEP'T OF DEF.: DOD NEWS (May 7, 2021), <https://www.defense.gov/Explore/News/Article/Article/2600076/military-spouses-enable-mission-by-maintaining-the-home-front/> [<https://perma.cc/W8H2-XZD6>]; see also Shannon Prentice, *Military Spouse Appreciation Day: Do They Even Want to be Appreciated?*, NAT'L MIL. FAM. ASS'N, <https://www.militaryfamily.org/military-spouse-appreciation-day-do-milspouses-even-want-to-be-appreciated/> [<https://perma.cc/3FAQ-LF7T>].

<sup>16</sup> See CRISTIN O. SHIFFER ET AL., BLUE STAR FAMILIES: MILITARY FAMILY LIFESTYLE SURVEY (2017).

<sup>17</sup> CONG. RSCH. SERV., R46097, MILITARY FAMILIES AND INTIMATE PARTNER VIOLENCE: BACKGROUND AND ISSUES FOR CONGRESS (2019).



sounding knock in the car’s engine) to the more personal (“Why aren’t you ever here to help?”). An argument ensues, not helped by both of them drinking. Insults are traded. Voices get louder, rising to a shout. Glasses are thrown. The fight escalates until Sergeant Donnely snaps, smacking Irene across the face and sending her stumbling against a far wall. This is a first for them—in spite of their arguments, he’d never used force before—and they’re both unsure of what comes next.

A knock at the door breaks the moment. Irene picks herself up and answers it. Two military police officers are standing on their porch, dressed in the same uniform as her husband as they introduce themselves. They tell her they’re responding to a report of a domestic disturbance called in by her neighbor—overheard through those thin government walls—and want to ask her some questions about what was going on. Per their training, the officers split up to interview Irene and her husband separately. Irene deflects during questioning, asserting that it was just an argument, nothing more. She’s confused, a little drunk, and still reeling from the fight; she just knows she doesn’t want him arrested. But the rising welt on her cheek tells a different story. The officer takes her statement, makes a few calls to dispatch to update them on the situation, and then assists his partner in arresting Sergeant Donnely. They handcuff and search him on the front lawn of Irene’s house, in full view of the neighbors. Another call is put through to Sergeant Donnely’s unit commander. After conferring with the military police, the commander issues an immediate Military Protective Order for Sergeant Donnely—no contact with Irene for seventy-two hours, to be reassessed for renewal upon its expiration.<sup>18</sup> As Sergeant Donnely is placed in the back of the squad car, one of the officers hands Irene a pamphlet that explains victim services available to her through the Family Advocacy Program on base and gives her a contact number for a government-provided counselor should she wish to speak with someone.

Irene takes the pamphlet and asks what is going to happen to her husband. He’ll be released after booking, the officer explains, at which point the protection order will be in effect and he’ll have to stay at a supervisor’s house or off base until it expires. From there, the case will be filed and prosecuted by military attorneys in the Judge Advocate General office. As a military member, Sergeant Donnely faces charges under the Uniform Code of Military Justice (specifically Article

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<sup>18</sup> 32 C.F.R. § 635.19 (2021).

128(B)—Domestic Violence), and his proceedings will be presided over by a military tribunal.<sup>19</sup> If sentenced, he's likely to face time in confinement, then be discharged from the military upon his release—meaning the end of his career, the revocation of their access to the installation, their eviction from base housing, and the cutting off of their medical benefits. As the officers depart the scene, Irene is left alone in the house, wondering what comes next for her and her family.

## *B. Standardizing Terminology*

### *1. Intimate Partner Violence*

Before further discussion of the events that will transpire in the military's response to Irene and Sergeant Donnelly, terminology should be clarified. The military uses the terms "domestic violence" and "intimate partner violence" and explains that these terms mean different things: domestic violence refers to violence committed against a current spouse, or against children or others living in the same household; whereas intimate partner violence focuses on adults currently or formerly in an intimate relationship.<sup>20</sup> This Article's argument applies to abuse endured in all adult intimate partnerships, current and former. We use the term intimate partner violence (IPV)<sup>21</sup> except for the specific instances where we discuss the military's prosecutorial procedures under the recently enacted "domestic violence" article in the Uniform Code of Military Justice.

Though we use the term IPV, we seek to complicate the meaning of "violence" within the term. The military describes domestic or intimate partner "violence" as behavior which may be charged as a legal offense.<sup>22</sup> This Article does not impose that limitation. Rather, we recognize that intimate partner "violence" may or may not be chargeable criminally and may or may not include physical aggression.<sup>23</sup> IPV may include a pattern of coercive, intimidating,

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<sup>19</sup> See discussion *infra* Section I.C.

<sup>20</sup> CONG. RSCH. SERV., *supra* note 17, at 1.

<sup>21</sup> The term "intimate partner violence" is also the standard in the field of practitioners and scholars who work and write about people who experience abuse in their relationships. LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 13 (2008).

<sup>22</sup> CONG. RSCH. SERV., *supra* note 17, at summary ("Domestic violence is defined as an offense with legal consequences under the *U.S. Code*, UCMJ, and State laws, while *domestic abuse* refers to a pattern of abusive behavior.").

<sup>23</sup> We do not view IPV as a discrete act with a requisite intent to cause injury, as most criminal statutes envision. See EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP

controlling, or threatening behaviors, with or without physical aggression.<sup>24</sup> In addition, the context within which these behaviors occur matters. Specifically, we must consider the intent of the person committing IPV, the meaning of the violence to the person experiencing it, the effect of the behavior, and the ways in which the behavior is facilitated or inhibited by structural conditions. Both the definition of IPV and the framework for analyzing it are discussed fully *infra* Part II.

## 2. Gender Neutrality

In the course of our analysis, we have attempted to use gender-neutral language whenever possible, but using gender-neutral language to describe this phenomenon can at times flatten its gendered reality.<sup>25</sup> The Article's case study above, therefore, is written to describe a specific type of IPV committed by a person who identifies as a man against his partner who identifies as a woman, but the underlying issues that facilitate abuse in Irene's case are applicable across the spectra of gender and legally recognized intimate relationships.<sup>26</sup> This leads to a final caveat, which is to recognize explicitly that the use of a case scenario that includes gendered pronouns and that occurs in a heterosexual relationship is not intended to minimize the prevalence of same-sex IPV nor to deny the occurrence of IPV by women against men in heterosexual relationships.<sup>27</sup>

### C. The Response to IPV in the Military

Assessment of any process, be it mechanical, social, or legal, first requires a foundational understanding of the process itself. Though

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WOMEN IN PERSONAL LIFE 86 (2007) ("With a few marked exceptions, crimes are conceived as discrete acts. The definition also highlights a stated or perceived intention to cause harm . . .").

<sup>24</sup> See discussion *infra* Section II.A.

<sup>25</sup> As noted by sociologist Evan Stark, "The definition of abuse is gender-neutral. But none of the thousands of studies conducted at points of service identify a substantial number of male victims." STARK, *supra* note 23, at 91.

<sup>26</sup> Herein again we reach a gap in the research knowledge of military IPV, as the heterosexual and homosexual intimate relationships are not delineated in the military's documentation process for studying IPV or prosecuting domestic violence. CONG. RSCH. SERV., *supra* note 17, at 10 (illustrating that in instances of intimate partner violence in the military, victims were categorized only by gender and military status. Additional demographic factors such as the sexual orientation of the victim, or a cross-reference of the gender of both perpetrator and victim, were not recorded).

<sup>27</sup> *Id.*

there are slight variations in the approaches each military branch undertakes in prosecuting IPV, the overall structural process is common throughout the Department of Defense (DoD) and can be summarized effectively in two parts.

### *1. Reporting and Investigation*

As with Irene, the majority of the Military's approach to "domestic violence" begins with an act of physical violence and a call to the police. Who responds next is determined first by the location of the inciting incident and then by the incident itself.

If the act occurs on base, then the response is led by the installation's military police unit (each branch has its own police career field with slight variations in operational schema, but all share jurisdictional commonalities in accordance with DoD directives).<sup>28</sup> Typically, immediate, post-incident responses fall under the purview of regular military law enforcement (such as the Army's Military Police or the Air Force's Security Forces) who handle routine policing operations and minor criminal apprehensions.<sup>29</sup> Cases necessitating lengthy, complex investigations, or involving serious crimes like homicide or sexual assault, are typically pursued by specialized investigatory services using federal agents (such as the Navy's Criminal Investigative Service or the Air Force's Office of Special Investigations).<sup>30</sup>

Jurisdiction for the incident response and subsequent investigation is derived from the status of the parties involved and the specific installation's jurisdictional agreements.<sup>31</sup> Most military installations possess exclusive jurisdiction over the actions of the military member, and some also claim the same authority over the actions of civilians occurring within the confines of the base perimeter.<sup>32</sup> On installations with concurrent jurisdiction, acts of domestic violence often require a joint response from both military and civilian police agencies, with the aggressor's status (civilian or servicemember)

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<sup>28</sup> 32 C.F.R. § 637.4 (2021).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> JEFFREY A. ROCKWELL ET AL., THE MILITARY COMMANDER AND THE LAW 94 (2019), <https://www.airuniversity.af.edu/AUPress/Display/Article/1812408/the-military-commander-and-the-law-online-only/> [<https://perma.cc/YC9T-UT5E>].

<sup>32</sup> *Id.*

-serving as the determining factor for which agency ultimately pursues the investigation.<sup>33</sup>

If the act occurs off base but involves a military member, civilian law enforcement conducts the investigatory response, and the military member may even stand trial in a civilian court, while also facing a concurrent trial process in a military court-martial.<sup>34</sup>

In addition to the investigations started by the arrival of flashing red and blue lights, domestic violence prosecutions can also be initiated at the direction of the military member's chain of command. These command-directed investigations are typically started based on a report by the victim or a concerned party and, once initiated, are transferred to the appropriate law enforcement agency for further action.<sup>35</sup> Though the initial complaint is often reported by a family advocate or medical professional, any member of the military community is able to report information regarding suspected acts of domestic violence and is often encouraged to speak out on behalf of victims who may be reluctant to come forward themselves.<sup>36</sup>

Progress in recent years led the military to create a system of a Restricted Reporting for domestic violence victims.<sup>37</sup> Adapted from a program initially developed for victims of sexual assault, a restricted report allows victims to create a confidential documentation of the abusive incident *without* subsequent prosecution.<sup>38</sup> The restricted report, filed with either a Family Advocate Program clinician or DoD medical personnel, is then held by the filing agency until the victim determines they wish to move forward with legal action, thereby granting the victim significant agency in controlling investigations stemming from their own reporting of abuse.<sup>39</sup>

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<sup>33</sup> Natalie K. Shemonsky et al., *Jurisdiction on Military Installations*, 14 AM. J. FORENSIC MED. & PATHOLOGY 39–42 (Mar. 1993).

<sup>34</sup> ROCKWELL ET AL., *supra* note 31.

<sup>35</sup> Martha Chace, *How the Military Processes Reports of Domestic Violence: A Brief Look at the Ways a Uniformed-Abuser Is Prosecuted and What Can Change to Ensure Prosecution*, 7 HLRE: OFF REC. 1, 6 (2016).

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Domestic Abuse: Military Reporting Options*, MILITARY ONE SOURCE (June 21, 2021, 11:46 AM), <https://www.militaryonesource.mil/family-relationships/family-life/preventing-abuse-neglect/domestic-abuse-military-reporting-options/> [<https://perma.cc/X5SD-VS8P>].

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

## 2. Courts-Martial and Nonjudicial Punishments

Based on the findings of an investigation or complaint, the subsequent charging of the military member follows the direction of the Uniform Code of Military Justice (UCMJ).<sup>40</sup> Under the UCMJ, the military member may face two forms of punishment: judicial and nonjudicial.

Judicial punishment for the military member stems from the findings of a military tribunal in a court-martial.<sup>41</sup> Apart from the lack of jury, the court-martial is a process most similar to the civilian court system and can be viewed as akin to a bench trial. Depending on the severity of the charged offense, the court-martial takes one of three forms: a summary court-martial, wherein a commissioned officer tries an enlisted member for noncapital offenses; a special court-martial, wherein a panel of three members and a military judge convene to try misdemeanors; and a general court-martial, wherein a five-person panel and a military judge convene to try felonies.<sup>42</sup> Acts of domestic violence run the gamut of misdemeanor physical assaults to felonious homicides, but the prototypical charge is covered as a violation of Article 128(B), Domestic Violence.<sup>43</sup>

Based on the court-martial's finding of guilt, punishment is assigned to the member, ranging anywhere from a three-month sentence in a military confinement facility (typically the installation's jail) up to a multiyear sentence in a federal prison (typically the United States Penitentiary in Leavenworth, Kansas).<sup>44</sup> Reduction in pay and rank often accompanies these sentences, and, depending on the severity of the crime and the military's personnel requirements, a dishonorable discharge from the military often follows.<sup>45</sup> Findings of guilt by a court-martial are recorded and reported in the same manner as a conviction by a civilian criminal court.<sup>46</sup>

Nonjudicial Punishment (NJP) is uniquely a military process, in which a commanding officer may issue administrative punishment to a military offender for minor offenses.<sup>47</sup> Although NJP could be likened to alternative dispute resolution within the workplace, its use in

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<sup>40</sup> ROCKWELL ET AL., *supra* note 31, at 134.

<sup>41</sup> *Id.*

<sup>42</sup> Chace, *supra* note 35, at 11.

<sup>43</sup> See discussion *infra* Section III.E.

<sup>44</sup> Chace, *supra* note 35, at 12.

<sup>45</sup> *Id.*

<sup>46</sup> MANUAL FOR CTS.-MARTIAL, UNITED STATES, R.C.M. 1110 (2019).

<sup>47</sup> 10 U.S.C. § 815(a).

resolving criminal cases represents a significant departure from familiar legal practices. Under Article 15 of the UCMJ, a commanding officer may offer a servicemember an NJP as a summary proceeding in place of a full court-martial.<sup>48</sup> The servicemember is free to decline this process, in which case judicial proceedings for the offense are commenced.<sup>49</sup> If the military member accepts the NJP offer, the member is then subject to a punishment determined by the commander, with consequences ranging from formal reprimand, to reduction in rank or pay, to short-term confinement, to discharge from the military.<sup>50</sup> The consequences that can be imposed are limited by UCMJ but are applied entirely at the whim and discretion of the commanding officer.<sup>51</sup> Crucially, the imposition of a nonjudicial punishment does not carry the weight of a criminal conviction, and other than a dishonorable discharge, there are no lasting consequences for a member prosecuted under this system when the member leaves the armed forces.<sup>52</sup> The determination of the punishment applied can be made at the *sole* discretion of the commanding officer, with no requirement for representation of the victim's wishes during the proceedings.<sup>53</sup>

Additionally, the nonjudicial punishment process can be applied to any minor offense by the military member, with the exact scope of what constitutes a "minor offense" being undefined (but that is generally applied to misdemeanor acts).<sup>54</sup> This grants commanders broad latitude to impose minor administrative punishments for serious criminal acts, and theoretically creates a misdemeanor criminal justice system at extreme risk of corruption. In practice, however, all nonjudicial punishment decisions are reviewable and revocable by the installation's chain of command, which creates at least a slight check on the commander's discretion during the proceedings.<sup>55</sup>

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<sup>48</sup> *Id.* § 815.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* § 815(b).

<sup>52</sup> Mark D. Stoup, USAF, *Dodi 5505.11: A Little Known Tool to Help Gain Off-Base Jurisdiction*, 38 REPORTER 30, 31 (2011).

<sup>53</sup> ROCKWELL ET AL., *supra* note 31, at 53.

<sup>54</sup> Major Takashi Kagawa, *Soldier's First Offense: Article 15 or Summary Court-Martial?*, ARMY L., January 2014, at 33, 34 ("[M]inor offenses are those UCMJ offenses that, if tried at a general court-martial, carry a punishment no greater than a bad-conduct discharge or one year of confinement.").

<sup>55</sup> Marshall L. Wilde, *Incomplete Justice: Unintended Consequences of Military Nonjudicial Punishment*, 60 A.F. L. REV. 115, 153 (2007).

### *D. Reasons to Care About Improving the Military Response*

#### *1. Amplifying Overlooked Voices*

The concept of voice is essential to feminist scholarship,<sup>56</sup> particularly in giving voice to women’s “lived experience.”<sup>57</sup> Yet of the large body of feminist legal scholarship addressing IPV, relatively little attention is paid to the military<sup>58</sup> and none gives voice to the experience of women connected to the military who are being abused.<sup>59</sup> The lack of attention is problematic given that women connected to the military experience IPV at a much higher rate, yet are less likely to report it, when compared to women in the civilian population.<sup>60</sup>

Giving voice to this group of women is important not merely as an academic matter but because, as discussed above, the focus of the DoD is almost exclusively on the military member, with the member’s partner or spouse often viewed as an appendage. As Sergeant Donnelly’s spouse, Irene is classified as his dependent, addressed by his

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<sup>56</sup> GOODMAN & EPSTEIN, *supra* note 21, at 90 (reviewing literature regarding centrality of voice as central to feminist theory) (citations omitted).

<sup>57</sup> Sonia Kruks, *Women’s “Lived Experience”*: *Feminism and Phenomenology from Simone de Beauvoir to Present*, in THE SAGE HANDBOOK OF FEMINIST THEORY 75 (Mary Evans et al. eds., 2014) (“Early second wave feminism regarded the ‘bringing to voice’ and sharing of women’s experiences as key to developing ‘sisterhood’ and to building women’s resistance to their subordination.”).

<sup>58</sup> Though there is a small body of scholarship. See, e.g., Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703 (2010); Chace, *supra* note 35; Faith R. Coutier, *Til Death Do Us Part: A Recommendation to Make Domestic Violence an Enumerated Article in the UCMJ*, 224 MIL. L. REV. 715 (2016); Fosnaught, *supra* note 14; Patricia Horner, *Domestic Violence in the Military: Addressing the Need for Policy Reform*, 4 L. & SOC’Y J. UCSB 25 (2004–05); Pamela Kravetz, *Way Off Base: An Argument Against Intimate Partner Violence Cases in Veterans Treatment Courts*, 4 VETERANS L. REV. 162, 200 (2012); Peter C. MacDonald & Deborah D. Tucker, *The War on Violence: Improving the Response to Domestic Violence in the Military*, 54 JUV. & FAM. CT. J. 121 (2003); Evan R. Seamone, *Educating Family Court Judges on the Front Lines of Combat Readjustment: Toward the Formulation and Delivery of a Core Curriculum on Military Family Issues*, 52 FAM. CT. REV. 458 (2014); Simeon Stamm, *Intimate Partner Violence in the Military: Securing Our Country, Starting with the Home*, 47 FAM. CT. REV. 321 (2009); Glenna Tinney & April Gerlock, *Intimate Partner Violence, Military Personnel, Veterans, and Their Families*, 52 FAM. CT. REV. 400 (2014).

<sup>59</sup> Of the excellent scholarship cited in the preceding footnote, none examine in depth the military member’s partner’s lived experiences.

<sup>60</sup> Patricia Becker & Ronet Bachman, *Intimate Partner Violence in the Military: An Investigation of Reporting Crimes to Law Enforcement Officials*, 35 J. FAM. VIOLENCE 315, 315 (2020) (describing the higher rates of IPV experienced by women connected to the military); *id.* at 322 (finding that “a military connection significantly decreased the likelihood of IPV being reported compared to IPV victimizations against the civilian population”).



name, and identified by his social security number.<sup>61</sup> Laying bare this experience is critical to comprehending IPV in the military and demonstrates the significance of structural conditions and cultural norms in comprehending IPV generally.

## *2. Declassifying and Defunding Intimate Partner Violence*

The military community is at its core an insular and rarified segment of society, one in which it's possible for community members like Irene to lead complete lives entirely within the confines of the installation fences.<sup>62</sup> Ever since the recruitment model for the U.S. military shifted from conscription to an all-volunteer force, the number of Americans with any personal connection to the military has shrunk dramatically.<sup>63</sup> In 1973, there were 2.2 million active duty servicemembers out of a general population of 211 million Americans, with the military representing roughly 1% of the total population.<sup>64</sup> This percentage has dropped significantly in the nearly fifty years since, tallying in 2018 at just over 1.1 million active duty members<sup>65</sup> out of a population of 327 million<sup>66</sup>—a 61% decline. Looking beyond active duty members to the total experiences of reservists, guardsmen, and veterans reveals that only 7% of the American population has ever served in the armed forces; this despite twenty years of continuous conflict in the global war on terror.<sup>67</sup> The division between military and civilian experiences is furthered by the generational realities of military experience. A 2011

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<sup>61</sup> See discussion *supra* Part 1.A.

<sup>62</sup> See generally Phillip Carter & David Barno, *Military Bases Are Our Most Exclusive Gated Communities*, WASH. POST: OPINIONS (Nov. 8, 2013), [https://www.washingtonpost.com/opinions/military-bases-are-our-most-exclusive-gated-communities—and-that-hurts-veterans/2013/11/08/27841b1e-47cb-11e3-a196-3544a03c2351\\_story.html](https://www.washingtonpost.com/opinions/military-bases-are-our-most-exclusive-gated-communities—and-that-hurts-veterans/2013/11/08/27841b1e-47cb-11e3-a196-3544a03c2351_story.html) [https://perma.cc/F9SE-BKMF].

<sup>63</sup> David Barno & Nora Bensahel, *When the Yellow Ribbons Fade: Reconnecting Our Soldiers and Citizens*, WAR ON THE ROCKS (July 14, 2015), <https://warontherocks.com/2015/07/when-the-yellow-ribbons-fade-reconnecting-our-soldiers-and-citizens/?singlepage=1> [https://perma.cc/6DJN-76U7].

<sup>64</sup> *Id.*

<sup>65</sup> U.S. DEP'T OF DEF., *supra* note 2, at iii.

<sup>66</sup> 2018 *National and State Population Estimates*, U.S. CENSUS BUREAU (Dec. 19, 2018), <https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html> [https://perma.cc/NYB4-CLPP].

<sup>67</sup> *Id.*

survey of active-duty military members found that over half were children of military members themselves.<sup>68</sup>

Such insularity brings about a certain mystique surrounding the military experience, one engendering misplaced ideations by civilians of a military community which is separate, unique, and elite.<sup>69</sup> This detached elitism is furthered by members of the military themselves, who often rest on the image of the military as a professional institution to place themselves mentally above their civilian countrymen.<sup>70</sup> Over the course of nearly two hundred years, the U.S. military has drifted culturally from the greater American society, developing into what even the Supreme Court labeled as “a specialized society separate from civilian society.”<sup>71</sup>

And much like other population segments in the extreme minority, there is a tendency within the community toward cloistering—a tendency that compounds community problems by removing them from the awareness and observation of the greater society.<sup>72</sup> The military as an organization perpetuates this lack of public awareness, often shunning public scrutiny of its faults in favor of addressing these problems entirely in-house.<sup>73</sup> This isolationism is furthered as much by a lack of common language as it is by geographic distancing and community dissociation—to even approach the subject of social change within the military is to first be overwhelmed by a deluge of DoD doublespeak and cryptic acronym terminology.

Breaking through these barriers to shine a spotlight on the greater problem of IPV in the military is a critical and necessary effort. Without the added pressure of continuous public scrutiny, military efforts to

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<sup>68</sup> Barno & Bensahel, *supra* note 63. (“A 2011 survey found that an astonishing 57 percent of active duty troops at that time were children of parents who had served in the military . . . The U.S. military has become a family business, generation after generation.”).

<sup>69</sup> James Fallows, *The Tragedy of the American Military*, THE ATLANTIC (Jan./Feb. 2015), <https://www.theatlantic.com/magazine/archive/2015/01/the-tragedy-of-the-american-military/383516/> [<https://perma.cc/YNH4-NBJR>].

<sup>70</sup> Barno & Bensahel, *supra* note 63.

<sup>71</sup> John P. Jurden, *Spit and Polish: A Critique of Military Off-Duty Personal Appearance Standards*, 184 MIL. L. REV. 1, 17 (2005).

<sup>72</sup> Michael Runner et al., *Intimate Partner Violence in Immigrant and Refugee Communities: Challenges, Promising Practices, and Recommendations*, FAM. VIOLENCE PREVENTION FUND, Mar. 2009, at 45, [https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/IPV\\_Report\\_March\\_2009.pdf](https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/IPV_Report_March_2009.pdf) [<https://perma.cc/7BZ8-57HH>].

<sup>73</sup> Norah O’Donnell et al., *Pentagon Whistleblowers Say They Were Fired or Suspended for Reporting Sexual Assault Cover-Ups: “People are Afraid,”* CBS NEWS (Nov. 19, 2020), <https://www.cbsnews.com/news/pentagon-military-whistleblowers-fired-for-reporting-sexual-assault-coverup/> [<https://perma.cc/DCJ8-F3KZ>] (documenting the retaliation against servicemembers who reported sexual assault by a superior officer).

address social problems within its ranks often stall out in a quagmire of half measures and broken processes.<sup>74</sup> It will take a combined effort to combat the persistent issue of IPV within the military, one that builds upon the efforts of the concerned public as much as the policies of the DoD.

And the public is right to be concerned: their taxes provide the federal funding that creates this insular, elitist community and builds the broken systems that enshrine its most pervasive issues. While many activists in the field of IPV have expended considerable effort raising awareness of persistent social ills magnifying domestic abuse, such as poverty or patriarchal misogyny, those factors are not funded through money drawn from their monthly paycheck.

The military is an artificial culture, a product of congressional legislation that is sustained by the contributions of the private citizen.<sup>75</sup> It is at once removed from, and at the same time entirely dependent on, the larger American society for its continued existence. As such, the policies, spending practices, and procedures of the DoD serve as a reflection of the priorities and values of the American citizen who permits the DoD’s practices by continuing to fund them. Viewed through this lens, the institutional failings of the military are part of the overall “product” the American public purchases every year with the Defense Appropriations Bill,<sup>76</sup> and it is the public’s prerogative to demand change if it is unsatisfied with what they have received from the DoD.

Addressing military issues such as IPV therefore serves as a sort of reassertion of the power of the private citizen—a reclamation of their individual authority to shape the values of the social contract they buy into by funding defense policy with their taxes. And while the average citizen may not hold personal objections to the spending of \$94 million on a single F-35 Joint Strike Fighter Jet,<sup>77</sup> the average citizen may find it difficult to continue financing a military justice system that utterly fails to incorporate the wishes and interests of the victim. Furthermore, in critiquing and demanding reform of the DoD’s byzantine processes, there exists a chance to experiment and test new programs for use in

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<sup>74</sup> Mark Thompson, *Military’s War on Sexual Assault Proves Slow Going*, TIME (Dec. 4, 2014, 2:05 PM), <https://time.com/3618348/pentagon-sexual-assault-military/> [<https://perma.cc/6J6T-GXFX>].

<sup>75</sup> Fallows, *supra* note 69.

<sup>76</sup> H. R. NO. 116-453 (2021).

<sup>77</sup> *Id.*

civilian society. Such an idea is not unprecedented within the history of the U.S. military, which has long served as a test bed for both technological and social innovation.<sup>78</sup>

## II

### CONTEXTUAL ANALYSIS OF IPV IS CRITICAL

#### *A. IPV Is Context Dependent*

Advocates for people who experience abuse have urged the military to adopt a broader definition of IPV.<sup>79</sup> When used by advocates, “intimate partner violence” typically refers to a pattern of abusive behaviors, rather than a discrete act of violence.<sup>80</sup> This pattern may, or may not, include physical violence,<sup>81</sup> but the lynchpin of the definition is the motive of the perpetrator: to gain, and maintain, dominance in the relationship.<sup>82</sup> This type of abusive behavior, historically called

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<sup>78</sup> Sixteen years prior to the passage of the Civil Rights Act, Executive Order 9981 abolished racial segregation across all branches of the armed forces, declaring “to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.” President Truman’s executive order followed decades of civil rights trailblazing by activists, both within and outside the military, and the prestigious records of all-Black units such as the 332nd Fighter Group (one of the units commonly called the “Tuskegee Airmen”). Herman S. Wolk, *When the Color Line Ended*, A.F. MAG., July 1998, at 74, 76–79, <https://www.airforcemag.com/PDF/MagazineArchive/Documents/1998/July%201998/0798integrate.pdf> [<https://perma.cc/L6DP-TANT>].

<sup>79</sup> See, e.g., Jacquelyn C. Campbell et al., *Intimate Partner Violence and Abuse Among Active Duty Military Women*, 9 VIOLENCE AGAINST WOMEN 1072, 1084 (2003) (arguing that overlap in various types of abuse supports a broad definition of domestic violence in the military). This Part discusses numerous ways to define and differentiate among types of abuse in intimate relationships with the understanding that there is no one, correct way, and that “all monolithic understandings of abuse are flawed,” including the Power and Control Wheel. See also JANICE L. RISTOCK, NO MORE SECRETS: VIOLENCE IN LESBIAN RELATIONSHIPS xi (2002).

<sup>80</sup> See, e.g., *About Domestic Violence*, DOMESTIC VIOLENCE AWARENESS PROJECT, <https://www.dvawareness.org/about-dv> [<https://perma.cc/J7XV-ZF3N>] (“Domestic violence is best understood as a pattern of abusive behaviors—including physical, sexual, and psychological attacks as well as economic coercion—used by one intimate partner against another (adult or adolescent) to gain, maintain, or regain power and control in the relationship.”).

<sup>81</sup> See, e.g., *What Is DV?*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/about-dv/what-is-dv/> [<https://perma.cc/MM7E-MPCS>] (“Domestic violence is a pattern of coercive, controlling behavior that can include physical abuse, emotional or psychological abuse, sexual abuse, or financial abuse (using money and financial tools to exert control).”).

<sup>82</sup> See, e.g., *Dynamics of Abuse*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> [<https://perma.cc/EHC9-8QLZ>] (“Violence in relationships

“battering” by activists, is now called “coercive control”<sup>83</sup> or “coercively controlling violence”<sup>84</sup> by leading sociologists Evan Stark and Michael Johnson, respectively. Johnson, one of the most cited sociologists in the legal literature, describes “coercively controlling violence” as “the attempt to dominate one’s partner and to exert general control over the relationship, domination that is manifested in the use of a wide range of power and control tactics, including violence.”<sup>85</sup>

A single, discrete act of physical violence without a premeditated motive may constitute a form of IPV, but this type of violence differs morphologically from coercive control. Referred to by Johnson as “situational” or “common couple violence,” some physical acts of violence are not motivated by a desire to assert dominance or control.<sup>86</sup> They may occur in response to ongoing conflict in a relationship over issues such as childrearing or finances,<sup>87</sup> or they may be due to a lack of strong communication skills to otherwise express feelings such as anger or stress.<sup>88</sup> Sometimes, this “situational” violence occurs when a couple separates but does not reoccur (separation violence).<sup>89</sup>

Additionally, a single, discrete act of physical violence may be committed by the partner who has historically been the target of an ongoing pattern of coercive control and who wishes to resist it (resistive violence).<sup>90</sup> This type of violence may be self-defensive, though it also may be “more proactive in an effort to get an impending assault over with sooner.”<sup>91</sup> It is distinct from coercive control in the sense that it is not part of an intentional, ongoing pattern of tactics designed for the

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occurs when one person feels entitled to power and control over their partner and chooses to use abuse to gain and maintain that control.”)

<sup>83</sup> STARK, *supra* note 23, at 4. The term coercive control was coined by Susan Schechter. SUSAN SCHECHTER, GUIDELINES FOR MENTAL HEALTH PRACTITIONERS IN DOMESTIC VIOLENCE CASES 4 (1987).

<sup>84</sup> Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Intervention*, 46 FAM. CT. REV. 476, 478 (2008).

<sup>85</sup> Michael P. Johnson & Janel M. Leone, *The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey*, 26 J. FAM. ISSUES 322, 323 (2005).

<sup>86</sup> Kelly & Johnson, *supra* note 84, at 479. *Cf.* STARK, *supra* note 23, at 98 (arguing that the use of physical violence is always expressive of some form of control).

<sup>87</sup> Tinney & Gerlock, *supra* note 58, at 402.

<sup>88</sup> Michael P. Johnson et al., *Intimate Terrorism and Situational Couple Violence in General Surveys: Ex-Spouses Required*, 20 VIOLENCE AGAINST WOMEN 186, 192 (2014).

<sup>89</sup> Kelly & Johnson, *supra* note 84, at 487.

<sup>90</sup> *Id.* at 484.

<sup>91</sup> Tinney & Gerlock, *supra* note 58, at 402.

purpose of diminishing a partner's autonomy, as will be discussed below, and it generally is reactive rather than planned.<sup>92</sup>

A final type of physical violence that occurs in intimate partnerships has been called pathological violence.<sup>93</sup> It is rooted in, though not necessarily caused by, mental illness or an altered mental state.<sup>94</sup> Although pathological violence is less frequently discussed in the legal scholarship addressing IPV, it is important to consider in the context of the military, where members are at increased risk for post-traumatic stress disorder, substance abuse, brain injury, and other mental health conditions.<sup>95</sup>

In sum, many types of conduct may be labeled IPV, and they are highly context dependent. Yet in large part, law—both military and civilian—ignores context, focusing on discrete physical assaults.<sup>96</sup> As a result, our military and civilian legal systems are quite adept at identifying episodic violence, regardless of type, and quite inept at identifying coercive control—the pattern of behaviors that advocates, sociologists, and other professionals in the field worry most about. Because this shortfall leaves “most abused persons still unprotected,”<sup>97</sup> this Article seeks to shine a spotlight on coercive control.

### *B. Coercive Control*

Coercive control is a pattern of acts that may include physical violence, or may set the stage for the use of physical violence, but does not *require* physical violence. In fact, many coercive control tactics look like minor indignities or even petty complaints when viewed in isolation. Coercive control is therefore better described as a process—

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<sup>92</sup> *Id.*

<sup>93</sup> ELLEN PENCE & SHAMITA DAS DASGUPTA, RE-EXAMINING ‘BATTERING’: ARE ALL ACTS OF VIOLENCE AGAINST INTIMATE PARTNERS THE SAME? 12 (2006).

<sup>94</sup> *Id.* at 13.

<sup>95</sup> Tinney & Gerlock, *supra* note 58, at 403.

<sup>96</sup> PENCE & DAS DASGUPTA, *supra* note 93, at 2 (discussing the difference between the law's view of domestic violence as “any violence between partners occurring in the context of the home” and battered women's activists' intent when they coined the terms “domestic violence” as “the space where [battering] occurred,” battering being “a pattern of coercive control, intimidation, and oppression that women often experienced at the hands of their male lovers and spouses.”).

<sup>97</sup> STARK, *supra* note 23, at 378 (describing criminal policies' focus on physical force in intimate partnerships resulting in the trivialization of coercive control and concluding: “[m]ost abused persons are still unprotected.”).

a micro regulation of everyday life, rather than discrete incidents of abuse, physical or otherwise.<sup>98</sup>

In his groundbreaking book *Coercive Control: How Men Entrap Women in Personal Life*, Evan Stark introduces women “who had to answer the phone by the third ring, record every penny they spent, vacuum ‘till you can see the lines,’ and dress, walk, cook, talk, and make love in specific ways and not in others, always with the ‘or else’ proviso hanging over their heads.”<sup>99</sup> The regulatory regimes in coercive control “run the gamut from unstated rules or expectations (‘you won’t make me jealous’) through primitive, transparently self-serving prohibitions or commands (‘If I decide that we sleep together, you will humbly comply’) to explicit designs for living that appear to have been delivered from on high.”<sup>100</sup> The tactics used by individual perpetrators are personalized, but they share the general purposes of appropriating resources, diminishing autonomy, eroding identity and social supports outside of the relationship, and subverting the right to privacy.<sup>101</sup>

Women who experience coercive control describe feeling entrapped in their relationships.<sup>102</sup> Gender inequality, and other underlying structural forces, play a critical role in this entrapment. As stated by Stark:

Asymmetry in sexual power gives men (but rarely women) the social facility to use coercive control to entrap and subordinate partners. Men and women are unequal in battering not because they are unequal in their capacities for violence but because sexual discrimination allows men privileged access to the material and social resources needed to gain advantage in power struggles.<sup>103</sup>

Material resources include housing, education, and employment; social resources include political, organizational, and employment-related networks, to name only a few.<sup>104</sup>

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<sup>98</sup> *Id.* at 84–85 (describing the problem of defining violence against women as the use of physical force, rather than the examination of the microdynamics of how men regulate women’s lives, in abusive relationships).

<sup>99</sup> *Id.* at 15.

<sup>100</sup> *Id.* at 376.

<sup>101</sup> *Id.* at 13.

<sup>102</sup> *Id.* at 100–01.

<sup>103</sup> *Id.* at 105.

<sup>104</sup> Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1011 (2000).

Given that gender inequality is the foundation upon which coercive control is edified, it is no surprise that the cornerstone of feminist advocates' definition of IPV is a "pattern of power and control" rather than discrete incidents of physical violence.<sup>105</sup> Indeed, the predominant visual model used by advocates in the field is called the "Power and Control Wheel."<sup>106</sup> It is an image of a wheel with spokes, a hub, and a rim; in the hub are the words "power and control"; and at the rim are the words "physical and sexual violence."<sup>107</sup> (See Appendix, Figure 1). In the eight spokes that lie between the rim and the hub are behaviors including (but not limited to) using intimidation, using male privilege, minimizing, denying, and blaming.<sup>108</sup> The viewer is instructed:

The wheel serves as a diagram of tactics that an abusive partner uses to keep their victims in a relationship. The inside of the wheel is made up of subtle, continual behaviors over time, while the outer ring represents physical and sexual violence. Abusive actions like those depicted in the outer ring often reinforce the regular use of other, more subtle methods found in the inner ring.<sup>109</sup>

This visual model compellingly captures the role of physical violence. According to the advocates' definition, physical violence rotates around—and holds in place—the bulk of nonphysical but deleterious behaviors that achieve power and control. People who experience abuse have repeatedly expressed that it is the conduct depicted on the inside of the wheel, and not the physical violence, that causes the most harm.<sup>110</sup>

Others, including Stark, argue that it is not merely physical violence but structural inequalities that hold in place the individual, personalized tactics that compose coercive control.<sup>111</sup> Structural constraints "allow

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<sup>105</sup> Tamara L. Kuennen, *Not All Violence in Relationships Is "Domestic Violence,"* 86 BROOK. L. REV. 43, 52–56 (2020) (documenting the ubiquity of "power and control" as the model definition of domestic violence amongst organizations against domestic violence and activists).

<sup>106</sup> Kelly & Johnson, *supra* note 84 (describing the power and control wheel as the "model that is used extensively in women's shelters and support groups" and noting that "[m]any women's advocates use the term domestic violence for this pattern.>").

<sup>107</sup> *Power and Control*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/power-and-control/> [<https://perma.cc/Q85R-JYDJ>].

<sup>108</sup> *Id.* (The other five spokes include using emotional abuse, using isolation, using children, using economic abuse, and using coercion and threats).

<sup>109</sup> *Id.*

<sup>110</sup> STARK, *supra* note 23, at 13 ("[T]he women in my practice have repeatedly made clear that what is done to them is less important than what their partners have prevented them from doing for themselves . . .").

<sup>111</sup> *Id.* at 12.



men to exploit and redirect women's resources to satisfy their needs, regulate their behavior, suppress conflict and resistance, and close off opportunities for escape."<sup>112</sup> Consequently, Stark (and others) define coercive control as a crime of restricted liberty and not a crime of assault.<sup>113</sup> The rim of the wheel (or to borrow Stark's visual, the bars on the cage) that truly entrap people are structural in nature.<sup>114</sup> To address coercive control meaningfully would therefore require reallocation of resources to dismantle these structural barriers to ensure that people experiencing abuse have equal access to housing, employment, education, healthcare, and other material and social resources that they are currently deprived of.

### *C. Predominant Approach: Contextualize Individual Couple Dynamics*

Because laws addressing IPV focus on recent, discrete episodes of physical violence, they miss the pattern of behaviors, both physical and nonphysical, that occurs over time for the purpose of dominating a partner (coercive control).<sup>115</sup> For example:

Consider the situation where partner A slaps partner B. First, imagine that when the incident takes place, there is no prior history of physical violence or of other abusive behaviors between A and B. Then, imagine that, although this incident is the first instance of physical violence, A has previously undermined B's efforts to seek employment, denigrated B's parenting in front of the children, and isolated B from her family and friends. Then, imagine a situation where A broke B's nose the week before and A is threatening to kill B and harm their children. The act of slapping is the same in each situation but the impact and consequences are very different.<sup>116</sup>

To address the gap between law and lived experience, activists and advocates have argued for a contextual approach to analyzing IPV that accounts for the circumstances and relational history underlying

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<sup>112</sup> *Id.* at 376.

<sup>113</sup> *Id.* at 13; see also Loretta Frederick, *Questions About Family Court Domestic Violence Screening and Assessment*, 46 FAM. CT. REV. 523, 524 (2008).

<sup>114</sup> STARK, *supra* note 23, at 366; see also Domestic Abuse Intervention Programs, Poster of the Power and Control Wheel, THE DULUTH MODEL, [https://www.theduluthmodel.org/wp-content/uploads/2017/03/Poster\\_CultureWheel.pdf](https://www.theduluthmodel.org/wp-content/uploads/2017/03/Poster_CultureWheel.pdf) [<https://perma.cc/5KWY-C37L>] (variations of the Power and Control Wheel that incorporate structural conditions).

<sup>115</sup> Kuennen, *supra* note 105, at 75–76.

<sup>116</sup> Nancy Ver Steegh & Claire Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454, 457 (2008).

discrete episodes of physical abuse.<sup>117</sup> Proponents of this analysis point to three critical inquiries: the intent of the perpetrator in using the abusive tactics, the meaning of the abuse to the victim, and the effect or impact of the abuse on both the victim and the children.<sup>118</sup> Stated succinctly by Ellen Pence, co-founder of the Duluth Abuse Intervention Project that produced the Power and Control Wheel, the fundamental inquiry should be, “[W]ho is doing what to whom, and with what impact?”<sup>119</sup> Activists argue that, with greater discernment, our legal (and social) responses will identify IPV both with and without coercive control, and thus more effective interventions can follow.<sup>120</sup>

Glenna Tinney and April Gerlock made precisely this argument in the context of IPV that occurs in military families.<sup>121</sup> “A contextual analysis serves to clarify what happened by determining the offender’s *intent* in his/her use of violence, the *meaning* of the violence to the victim, and the *effect* of the violence on the victim and children.”<sup>122</sup> Determining the context is especially critical in the military, they argue, because of the common and mistaken belief that IPV committed by military members always occurs in the context of pathological violence.<sup>123</sup> Although the authors acknowledge a handful of stressors

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<sup>117</sup> See, e.g., Shamita Das Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1377 (2002) (“The major problem plaguing the popular understanding of women’s violence is the tendency to remove such behavior from its complete context. . . . Because the criminal justice system approaches incidents as isolated and separate from each other, we, as a society, end up also removing behaviors from their circumstances. Once actions and behaviors are dislodged from their context, the result is a fallacious misunderstanding.”); see also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 33 (1991); Ver Steegh & Dalton, *supra* note 116; Lisa Young Larance, *When She Hits Him: Why the Institutional Response Deserves Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSL. 10, 10–11 (2007).

<sup>118</sup> See, e.g., Frederick, *supra* note 113; Gabrielle Davis, *A Systematic Approach to Domestic Abuse-Informed Child Custody Decision-Making in Family Law Cases*, 53 FAM. CT. REV. 565, 565–66 (2015); Tinney & Gerlock, *supra* note 58, at 401; Lisa Young Larance & Susan L. Miller, *Finding the Middle Ground: Reimagining Responses to Women’s Use of Force*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 437, 439 (2015).

<sup>119</sup> PENCE & DAS DASGUPTA, *supra* note 93, at 16.

<sup>120</sup> Tinney & Gerlock, *supra* note 58, at 409.

<sup>121</sup> *Id.* at 401.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 402 (“There appears to be a common belief that IPV involving a military service member or veteran who has been deployed to a combat zone always occurs within the context of pathological violence. . . . It is [also] true that a relationship between combat-related PTSD and IPV perpetration has been found consistently in research studies. . . . However, there are also those who perpetrated IPV, including battering, prior to deployment.”) (citations omitted).

unique to military families, such as frequent relocation and combat-related trauma, they argue that there is no data to suggest that IPV in the military is more dangerous, nor that risk factors are significantly different.<sup>124</sup>

#### *D. Adding Structural Conditions to the Current Contextual Analysis*

Within the present Article, we add to the current contextual approach an additional factor for analysis: the structures within which the couple lives. We do so for three reasons. First, because structural conditions are too often overlooked in the scholarship addressing IPV, especially in a discrete subculture such as the military. Second, assessing the contribution of structural factors advances our understanding of the gendered impact of IPV—both how it is used and how it is experienced differently by women and men. Finally, and most importantly, identifying structural facilitators of IPV aids in our analysis of where social and legal responses fall short.

Before proceeding further, we want to be clear that when we speak of structural conditions we speak of conditions and systems that exist outside the individual relationship but that impact, if not govern, the relationship.<sup>125</sup> These include, by way of example, access to material resources (money, food, housing, education, employment) and social resources (community, family, friends, social services). Access to these resources can be unequal for any number of reasons, including race, sex, gender, and multiple other forms of discrimination, such as law, politics, and the economy, to name but a few.

A growing body of feminist scholars who study domestic abuse have convincingly argued that too little attention has been paid to the contribution of structural conditions to the problem of IPV<sup>126</sup> and that

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<sup>124</sup> *Id.* at 408–09.

<sup>125</sup> There is a deep well of literature regarding the structural conditions that contribute to social problems, and another well of literature regarding “structural violence.” We intentionally limit our discussion of structural conditions to those explicitly stated here for the purpose of clarity and relevance to our argument that, put most succinctly, structural conditions matter in analyzing intimate relationships and IPV.

<sup>126</sup> See, e.g., Deborah M. Weissman, *The Community Politics of Domestic Violence*, 82 BROOK. L. REV. 1479, 1480 (2017) (characterizing the anti-IPV movement as “indifferent to the structural sources of domestic violence as a social problem”); see also *id.* at 1483 (“Domestic violence persists as a manifestation of gender and other forms of inequality, and social norms that oppress and repress its victims. But the mainstream responses often accomplish little to eliminate or repair damage caused by intimate partner violence. Moreover, they often serve to undermine alternate responses to structural problems that are deeply entangled in a complicated web of larger political-economic crises.”).

too much attention has been paid to the dynamics of an individual couple's relationship<sup>127</sup> and to fine-tuning the law to more discerningly and effectively redress those particular dynamics.<sup>128</sup> In short, they argue that a continued focus on individual, rather than structural, conditions is the equivalent of putting a band-aid on a broken leg.<sup>129</sup>

Assessing the contribution of structural factors is important not only in preventing IPV but in advancing our understanding of the gendered impact of Intimate Partner Violence. Both men and women are physically violent in their relationships. Empirical data on IPV in the military, specifically, makes clear that women use episodic physical violence at about the same rate as men.<sup>130</sup> General population surveys reveal the same.<sup>131</sup>

What makes physical violence by a partner a major public health concern for women is explained by some as the differential between men and women in size and strength. But this explanation falls short. For starters, it fails to explain the prevalence and devastating effects of IPV in same-sex relationships. This explanation also perpetuates stereotypes of women as “the weaker sex” and as victims. More

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<sup>127</sup> STARK, *supra* note 23, at 99 (discussing feminists' emphasis on contexts, motives, and meaning of violence in individual relationships and observing this emphasis occurs “in the face of relationships structured around sexual inequality. Oddly this reality has been ignored even by researchers who study women's violence in relationships.”).

<sup>128</sup> See, e.g., Kristin Bumiller, *The Nexus of Domestic Violence Law Reform and Social Science: From Instrument of Social Change to Institutionalized Surveillance*, 6 ANN. REV. L. & SOC. SCI. 173, 185 (2010) (demonstrating that scholarship has focused on evaluating efficacy of law, and arguing that a better question to address would be “how domestic violence is linked to underlying conditions that create violence in the home, including the conditions that perpetuate women's subordination and gender inequality . . .”) (citations omitted).

<sup>129</sup> LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* (2012) (arguing that reliance on law to address domestic violence is problematic for a host of reasons, including that law is reactive, not proactive; law doesn't reveal why men abuse or how to prevent abuse; doesn't alter structural conditions that create context for abuse; preempts creative thinking about other ways to assist women; diminishes possibility of partnership with communities who are unwilling to increase state intervention; law cannot meet needs of all victims; and law doesn't provide economic and social resources).

<sup>130</sup> Mary Ann Fogety & Lee Badger, *Patterns of Intimate Partner Violence Among Married Women in the Military: Type, Level, Directionality and Consequences*, 21 J. FAM. VIOLENCE 369, 377 (2006) (finding that of 248 self-reports of enlisted women, the researchers were disturbed that “over 60% of all violence reported in this sample was both bi-directional and of equivalent severity”).

<sup>131</sup> Note, though, that general population surveys showing gender parity in intimate partner violence are controversial. For a review of the controversy, see Tamara L. Kuennen, *Love Matters*, 56 ARIZ. L. REV. 977, 1006–07 (2014).

critically, such an explanation mistakenly equates all IPV with episodes of physical violence.

A more compelling explanation of the role of gender in IPV that uses as its starting point people's lived experience of abuse as a continuous process that occurs over time is that offered by Evan Stark: "Men and women are unequal in battering not because they are unequal in their capacities for violence but because sexual discrimination allows men privileged access to the material and social resources needed to gain advantage in power struggles."<sup>132</sup> Stark is careful to note that this analysis is not limited to heterosexual partnerships, but argues:

Coercive control is most prevalent and has its most devastating consequences in heterosexual relationships where it is "gendered" in its aim (male privilege) and its object (female subordination) by its link to structural inequalities in the larger economy. But the process of coercive control is not per se gender specific, need not be legally specified as such, and may play off a host of vulnerabilities, including those associated with race, sexual orientation, sexual identity, age or immigration status that have been socially marginalized.<sup>133</sup>

Structural conditions are what entrap people in abusive relationships, particularly those people who, as Stark describes, are marginalized. Stark's use of "entrapment" here is a term of art. Entrapment is "the unique experiential effect when structural exploitation, regulation, and other controls are personalized."<sup>134</sup> When not used as a term of art, entrapment may mean something different; it connotes images of women who are frozen, paralyzed, and helpless.<sup>135</sup> Women who, if given the resources, whether financial, legal, or emotional, would leave their partner if they could.<sup>136</sup> Analysis of structural sexism is lost in this equation, for the equation assumes that a one-time bailout will equalize access to resources and power generally. Current solutions to the problem of IPV in the U.S., such as temporary shelter, arrest of the perpetrator, or provision of emergency financial assistance, may be critical to an individual survivor's safety.

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<sup>132</sup> See STARK, *supra* note 23, at 105.

<sup>133</sup> Evan Stark, *The "Coercive Control Framework: What Makes Law Work for Women?*, in CRIMINALIZING COERCIVE CONTROL 33 (Marilyn McMahon & Paul McGorrrery eds., 2020).

<sup>134</sup> STARK, *supra* note 23, at 370.

<sup>135</sup> Kuennen, *supra* note 131, at 1010.

<sup>136</sup> *Id.* (discussing connotations of the word entrapment and its capacity, when not used as a term of art in the way that Stark uses it, to perpetuate lingering stereotypes about people who experience IPV as suffering from learned helplessness).

But these discrete, temporary fixes do little to erode gender discrimination in pay, or the objectification of women, or many of the other larger, systemic issues that contribute to—if not perpetuate—the acceptability of IPV.

The primary approach undertaken by both the military and civilian communities revolves around the use of criminal law.<sup>137</sup> This approach assumes that separating the parties, via mandatory arrest, criminal prosecution, and mandatory criminal restraining orders, will put an end to IPV.<sup>138</sup> Yet there exists vast empirical data concluding that separation is in itself a risk factor for lethality in relationships that are coercively controlling.<sup>139</sup> Putting aside momentarily this concern about the effectiveness of our legal response, the “separation solution” does nothing to alter or even address the larger structural conditions that contribute to IPV.

In sum, we view IPV as a problem for which the solution must transcend individual couples. We also appreciate that, within a given intimate relationship, people use tactics that are abusive for varying reasons and that these tactics have different meanings and impacts—and require different interventions—based on a range of circumstances that are both personal and structural. We argue that a contextual approach that considers both individual and structural factors, from the point of view of the person experiencing the abuse, is key. It is to this contextual analysis we now turn, using the experience of Irene as our starting point.

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<sup>137</sup> See Donna Coker, *Crime Logic, Campus Sexual Assault, and Restorative Justice*, 49 TEX. TECH. L. REV. 147, 155 (2016) (describing the dominant response to IPV in the United States as crime-centered and explaining “crime logics,” a term coined by the author to characterize this current approach); see generally LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE* (2018) (arguing for economic, public health, community, and human rights policies instead of criminal law as the primary solution for IPV).

<sup>138</sup> Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 53 (2006) (arguing that separation is the almost singular solution of the criminal justice system approach to IPV: “Court-ordered separation becomes a goal of prosecutors in bringing criminal charges . . .”).

<sup>139</sup> TK Logan & Robert Walker, *Separation as a Risk Factor for Victims of Intimate Partner Violence: Beyond Lethality and Injury*, 19 J. OF INTERPERSONAL VIOLENCE 1478, 1478 (2004) (reviewing this literature, and arguing that in addition to increased risk of lethality, “women separating in the context of victimization are at high risk for stress, mental health, and health problems; have increased conflict over the children and concern for child safety; and have economic, structural, psychological, and social barriers to help seeking” and urging that these not be overlooked).

## III

## EXPOSING IPV IN STRUCTURAL CONDITIONS

*A. Government-Issued Coercive Control?**1. Factors Unique to Irene and Sergeant Donnelly*

The military police who arrived at Irene’s home knew the following: a neighbor had overheard enough to call the police; Irene had told the police “it was just an argument, nothing more”; Irene has a welt on her cheek; Irene is a woman; Sergeant Donnelly is a man; the parties are married; and both had been drinking.<sup>140</sup> Based on these facts alone, the military police conclude there is probable cause to believe that an offense occurred under the UCMJ—in this case, most likely, that Sergeant Donnelly committed “a violent offense against a spouse.”<sup>141</sup>

Advocates for the predominant contextual approach argue, and we agree, that first responders can never fully understand what has occurred.<sup>142</sup> Because of this, everything that occurs post-incident, be it investigation, mediation, or prosecution, must therefore be informed by an analysis of Sergeant Donnelly’s intent in using violence, the meaning of the violence to Irene, and the effect of it on her and on their child.<sup>143</sup> These factors are critical to discerning IPV with coercive control versus without. These factors are also important in differentiating the nuances of different types of intimate violence previously discussed.<sup>144</sup> Tinney and Gerlock emphasize that this analysis must be done painstakingly and draw on sources in addition to Irene and Sergeant Donnelly themselves, and that initial conclusions by IPV responders must be reassessed over time.<sup>145</sup>

The purpose of this careful investigation into the dynamics of the couple is to provide a structure for more effective interventions. For example, Irene may need or want counseling to cope with the trauma of repeated assaults, or she may need assistance with safety planning if Sergeant Donnelly poses a high level of danger. Or she may not need

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<sup>140</sup> See *supra* Section I.A.

<sup>141</sup> 10 U.S.C. § 982b(1).

<sup>142</sup> Tinney & Gerlock, *supra* note 58, at 409 (“Most police reports and court documents have insufficient information to determine the context of the violence or the level of risk and danger. . . . Risk assessment is not something you do one time, and it is done. Risk and danger must be assessed on an ongoing basis . . .”).

<sup>143</sup> *Id.*

<sup>144</sup> See *supra* Section II.A.

<sup>145</sup> Tinney & Gerlock, *supra* note 58, at 409.

these things because the incident that led to the arrest was a one-off event that was as surprising to both parties as the narrative depicted. Sergeant Donnelly may need to enroll in a treatment program for batterers, or he may need treatment for substance abuse instead. He may need both, or he may need neither. By approaching the response to IPV with an understanding of the history underlying the violent incident that led to the arrest, complete with the level of danger the aggressor poses, and assessing the presence of coercive control, a proper determination of potential interventionist strategies can be made, all in accordance with the predominant contextualist approach.

During this contextual assessment, professionals would likely present Irene with a copy of the Power and Control Wheel<sup>146</sup> described *supra* Part II.A. (See Appendix, Figure 1). She would be asked to think about whether, in addition to hitting her on the night in question, Sergeant Donnelly had previously been physically or sexually violent (recall the rim of the Power and Control Wheel). Then Irene would be asked to think about the conduct described in the spokes of the wheel. She would be asked to recall, over the course of the whole relationship, whether Sergeant Donnelly used tactics other than violence, such as preventing her from seeing her family and friends (deemed “using isolation”) or treating her like a servant (described as “using male privilege”).

Indeed, it is likely that Irene would be given a copy of the “Military Power and Control Wheel,”<sup>147</sup> which describes military-specific examples of the same categories of abusive behavior.<sup>148</sup> On the military wheel, examples of “using isolation” include “[c]ontrolling access to her military I.D. card, family, friends, information, base/command functions, telephone, transportation, or

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<sup>146</sup> Domestic Abuse Intervention Programs, *Understanding the Power and Control Wheel*, THE DULUTH MODEL, <https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/> [<https://perma.cc/W6PD-GU9D>]. The Power and Control Wheel was developed by staff at the Domestic Abuse Intervention Program in the 1980s and some of its history can be found on the website, including that “[t]he wheel is used in many settings and can be found in manuals, books, articles, and on the walls of agencies that seek to prevent domestic violence. It has even been seen by millions on national television shows and soap operas!”; see also Kelly & Johnson, *supra* note 84, at 478 (describing the Power and Control Wheel as “a model that is used extensively in women’s shelters and support groups.”); see also discussion *infra* Section III.A.3.

<sup>147</sup> See, e.g., Christina Herron, *Resource Discovery: Power and Control Wheel Models*, MIL. FAM. LEARNING NETWORK (Jan. 25, 2016), <https://militaryfamilieslearningnetwork.org/2016/01/25/resource-discovery-power-and-control-wheel-models/> [<https://perma.cc/YZ3E-UUWA>].

<sup>148</sup> See *infra* Appendix, Figure 2.



English lessons” and “[l]iving off-base to lessen her contact with others.”<sup>149</sup> Examples of economic abuse include “[l]eaving no allotments during deployment[; n]ot sharing pay or financial records[; t]elling her what she can buy[and; p]reventing her from getting a checking account, credit cards, a job, or schooling.”<sup>150</sup> Examples of coercion include saying things like “if you report me, you’ll lose your income, base housing, the kids, [or] be deported.”<sup>151</sup> Examples of intimidation include “[t]elling her you’re trained to kill and maim” and “[p]laying with or cleaning your weapons around her.”<sup>152</sup>

What is striking about the Military Power and Control Wheel is how closely some of the tactics of abuse appear to be normal parts of military culture. For example, on the Military Power and Control Wheel, one spoke depicting abuse is “claiming military/male privilege,”<sup>153</sup> which includes “[u]sing her dependent wife status . . . to keep her in line” and “[s]aying you’re the CO and the family is your troops.”<sup>154</sup> Yet even in a non-abusive military relationship, a civilian partner is, according to *official military policy*, a “dependent.”<sup>155</sup>

According to proponents of the predominant approach to analyzing IPV, we must examine the individual couple dynamics, particularly the intent, meaning, and impact of abusive tactics. However, these proponents make no mention of analyzing the impact of institutional and cultural supports for the abusive tactics. The result is not merely that these structural conditions are missed but may indeed be masked without specific inquiry into them.

## 2. Structural Conditions Not Unique to Irene and Sergeant Donnelly

By shifting the perspective to the point of view of Irene, and not limiting the analysis to an assessment of Sergeant Donnelly’s actions on the night in question, a starkly different picture emerges. The picture is one in which, on a typical day, Irene experiences many of the abusive tactics listed on the Military Power and Control Wheel, such as being isolated from family and friends, underemployed, and dependent. But

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<sup>149</sup> See *infra* Appendix, Figure 2.

<sup>150</sup> See *infra* Appendix, Figure 2.

<sup>151</sup> See *infra* Appendix, Figure 2.

<sup>152</sup> See *infra* Appendix, Figure 2.

<sup>153</sup> The Military Power and Control Wheel retitles the original wheel’s tactic “using male privilege.” Compare *infra* Appendix, Figure 1, with *infra* Appendix, Figure 2.

<sup>154</sup> See *infra* Appendix, Figure 2.

<sup>155</sup> 32 C.F.R. § 66.3.

these experiences, from Irene's point of view, may have little or even nothing to do with Sergeant Donnely.

Recall a day in the life of Irene. First, she lives on a military base that, for the most part, is self-contained and that she rarely needs to leave. But when she does leave, to get back into the place where she lives, she must show an identification card that is two-thirds comprised of information about Sergeant Donnely rather than herself. To the guards who must wave her in, it is not important to get her name right; it is a normative custom that "Mrs. Donnely" will do. Similarly, Sergeant Donnely's social security number will suffice as her health insurance identification. When she uses that insurance to try to pick up a prescription, her ability to do so quickly depends upon how many servicemembers, veterans, or reservists are in line ahead of her. Her citizenship and identity are always secondary to members of the military. Using the vocabulary of the Power and Control Wheel, we see clearly that "military/male privilege" is not merely a tactic that one partner in a relationship might use to control another. Rather, "military/male privilege" is an institutionalized norm; it is a structural condition that exists outside the individual relationship and is embedded within the fabric of the community.

So too is the tactic of isolation. From Irene's point of view, the community within which she lives consists almost entirely of the civilian spouses of other military members. Her family, and the network of friends and support that she relied upon before she married Sergeant Donnely, are far away. Irene is three times removed from them and hundreds, if not thousands, of miles away, having been relocated three times in the course of her husband's career. When the military relocates the family again, which will typically occur every two or three years,<sup>156</sup> neither Irene nor Sergeant Donnely will have significant choice in the new location.<sup>157</sup> "Isolation" is therefore institutionalized within the normal functioning of the military as a structural condition.

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<sup>156</sup> *What to Expect: Location Assignment*, AIRFORCE.COM. (Jan. 25, 2016), <https://www.airforce.com/lifestyle/what-to-expect> [<https://perma.cc/K8GQ-7GU4>].

<sup>157</sup> In the author's experience, the ability to choose one's post varies widely depending on the branch of service and the military member's specific career field. The timing and decision to move installations is left to the needs of the member's branch, although the servicemember may be allowed to give a ranked preference of assignments prior to moving. This expressed preference is typically only nominal. Some specialized career fields, like the pilots of a specific, low-inventory plane, may have even more limited options, and spend the majority of their careers shuffling back and forth between three or four bases.

Because of the constant moves, generally to places that Irene would otherwise not choose to live, Irene's Bachelor of Arts is not particularly useful in securing a job. She is never in one place long enough to build ties in the community that might get her foot in the door for an entry-level position, but even if she were, she would be relocated before paying the dues necessary for promotion. Further, the community to which she is relocated may not have many, or any, good options for childcare. The norms and rules of the military control her opportunity for employment. In Irene's case, the military community *is* her employer, as she works for the commissary on base—one of the few positions consistently offered by the spousal employment office. "Economic control," outside of any dynamic within her marriage to Sergeant Donnely, is therefore institutionalized.

The fact is that, even in the most supportive, non-abusive relationships, the underlying structural conditions of the military create an atmosphere of implied control and suppression of the spouse's self-identity. Speaking to the direct experience of one author, my spouse—Dr. Kathryn Fay—spent the better part of my five years on active duty critically underemployed, living thousands of miles away from family, and with only one or two friends at any given duty station. Despite holding two bachelor's degrees, a master's degree, and a Ph.D., Dr. Fay was unable to find full-time employment at two of our three duty stations due to the frequency of the moves and the remoteness of each assignment. For the twelve months she was able to find full-time work within her career field, it was strictly because I was deployed to an overseas "long tour" in Qatar, which gave Dr. Fay the freedom to relocate and assume a short-term contract position. For the other four years, Dr. Fay managed to cobble together part-time employment as an adjunct professor teaching for the community colleges on the installation.<sup>158</sup> Educating airmen and sergeants in history and anthropology in a professional academic setting, she was nonetheless referred to as "Mrs. Lieutenant" or "Mrs. LT," after my rank at the time.

By shifting the perspective of the analysis to the lived experience of spouses, such as we have done with Irene, rather than working

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<sup>158</sup> As an officer, and a childless couple at the time, we were fortunate to be in the position to not have to rely on dual incomes to make ends meet. So while Dr. Fay's underemployment left her professionally frustrated and stunted many of her prospects at career advancement, we at least were never placed in jeopardy of financial destitution by her inability to find work. The same cannot always be said for junior enlisted members of the armed forces, whose take-home salaries were frequently half of my own.

backward from a specific assault that may be only a snapshot of a single moment, structural conditions become salient. A contextual analysis of IPV that asks only the intent, meaning, and impact of Sergeant Donnelly's act obscures rather than illuminates a fuller understanding of IPV.

### 3. *Connecting Individual Factors and Structural Conditions*

At the beginning of the second wave of feminism in the early 1970s, feminist activists made connections between abusive tactics within relationships and the larger institutions that supported those individual tactics.<sup>159</sup> The political project of the creators of the Power and Control Wheel was “to raise critical understanding . . . of how institutional, structural, economic, and cultural forces are implicated in violence against women.”<sup>160</sup> The activists who created the Wheel were trying to link private and public violence. At some point, however, this part of their work fell by the wayside. As the Wheel became institutionalized around the country, it was used in a way that masked the link between public and private violence.<sup>161</sup>

As initially envisioned, the Power and Control Wheel was part one of a two-step process.<sup>162</sup> Women were provided with the Wheel and asked to identify the many tactics of abuse they had experienced at the hands of their partners. After considering each of the ten “tactics of power and control” captured on the Wheel,<sup>163</sup> they were next asked “to

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<sup>159</sup> ELLEN PENCE ET AL., IN OUR BEST INTEREST: A PROCESS FOR PERSONAL AND SOCIAL CHANGE 5 (Kate Regan ed., 1987) (“The battered women’s movement has, since its earliest days, identified battering not as an individual woman’s problem, but as a societal problem linked to the oppression of all women in our society. . . . We understood from the earliest days of the movement that women were trapped in violent relationships not because they had poor self-images or were in some way defective, but because of an economic system and a community that over and over again reinforced batterers’ power over women.”).

<sup>160</sup> JOSHUA M. PRICE, STRUCTURAL VIOLENCE: HIDDEN BRUTALITY IN THE LIVES OF WOMEN 21 (2012). We focus on the creators of the Power and Control Wheel but note that many if not most activists at the start of the battered women’s movement in the 1970s shared the goal of raising consciousness about the connection between abuse within an individual relationship and the structural conditions that contributed. For a fuller discussion of this topic, *see generally* SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT (1982).

<sup>161</sup> PRICE, *supra* note 160, at 21–22.

<sup>162</sup> *Id.* at 28 (“In the second part of the workshop, women furnish responses to a chart that asks them to think of instances in which social institutions and cultural mores support the violence.”).

<sup>163</sup> *Id.* at 24 (depicting the worksheet called “Institutional and Cultural Supports for Battering” that lists the ten “Tactics of Power and Control” in the left margin: physical

think of instances in which social institutions and cultural mores support the violence. As it [wa]s conceived, women s[aw] how social institutions, such as the welfare office, housing officials, and cultural forces (such as traditional hierarchies within a community) collude in abuse."<sup>164</sup> In the decades since its development, part two has been lost in most applications of the Wheel.<sup>165</sup> As stated by sociologist Joshua Price:

As the staff of the Duluth Project first conceived it, the Wheel has two parts. I have seen the first part of the Power and Control Wheel in practically every program I have been to or heard about, including several versions in Spanish. It has been translated into forty languages worldwide, including Maori, Hungarian, and Icelandic. But generally speaking, the entire two-tiered approach, used as an educational tool, has been absent. The second part of the code, *that part that seeks to uncover and describe institutional and cultural collaboration with the batterer*, is often eliminated.<sup>166</sup>

Imagine how Irene might respond if she were asked about the institutional and cultural supports for just one of the tactics, such as using economic abuse. How does the military support Sergeant Donnelly's ability to economically abuse Irene? As discussed, its relocation policies curtail opportunities for employment and for childcare; its demands of Sergeant Donnelly make impossible his ability to help her care for their child; its official classification of her—"dependent"—reminds them both at every turn that she is financially reliant upon him.

The predominant contextual analysis of abuse is useful for understanding the risk of danger Sergeant Donnelly poses to Irene and, as discussed previously, the best interventions. But even if it were possible to accurately predict that Irene is in danger and that Sergeant Donnelly should be convicted, jailed, and issued a permanent restraining order, nothing has been done to address the underlying conditions that facilitate military members' capacity to abuse or spouses' risk of entrapment.

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abuse, sexual abuse, isolation, emotional abuse, economic abuse, minimizing and denying, using children, threats, using male privilege, intimidation); *see also infra* Appendix, Figure 3.

<sup>164</sup> PRICE, *supra* note 160, at 28–29.

<sup>165</sup> *Id.* at 25.

<sup>166</sup> *Id.* at 23, 25 (citation omitted).

### *B. Invisibility of the Lived Experience*

For decades, advocates for people who experience IPV have argued that an essential component to healing and recovery is the reestablishment of a sense of control over one's own life.<sup>167</sup> This includes control over how to respond to and make decisions about IPV in one's intimate relationship. A primary criticism of the current law enforcement response to IPV in the civilian world is that it usurps this decision-making autonomy. Some critics argue that law enforcement, through aggressive arrest and prosecution policies, actually subsumes the role of the abusive partner.<sup>168</sup> Irene, for example, does not want Sergeant Donnelly to be arrested. Nor is she asked whether a no-contact order should be put in place; instead, it is issued with no consideration of her desires or individual needs. Sergeant Donnelly's subsequent punishment is likely to be uninformed by what Irene wants for him, herself, or their child.

This deprivation of decisional and relational autonomy is exacerbated by the fact that the military is both government and employer. In the civilian world, the prosecutor who decides to file charges is not the defendant's employer; in the military, the commander of the installation doubles as both.<sup>169</sup> Sergeant Donnelly's conviction for a violent domestic violence offense likely means his discharge from the service.<sup>170</sup> For Irene, the military justice system response to Sergeant Donnelly's conduct likely means separation from her husband, the loss of his income, the loss of her income (as a dependent spouse working at the commissary), the loss of the family's housing, and the loss of the family's health insurance and other benefits.

All this may occur without any input whatsoever from Irene. Or it may occur with her input, but against her wishes. Loss of control over how the military member's employment will be affected is a leading reason why victims do not report IPV. As stated by Alysha Jones at the

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<sup>167</sup> See, e.g., SCHECHTER, *supra* note 160, at 316–19.

<sup>168</sup> LINDA G. MILLS, *INSULT TO INJURY* 49 (2003) (describing mandatory legal responses such as mandatory arrest and no-drop prosecution as a form of emotional abuse and arguing that professionals working within mandatory policies “inadvertently reproduce some of its most destructive forms.”).

<sup>169</sup> Madelaine Adelman, *The Military, Militarism, and the Militarization of Domestic Violence*, 9 *VIOLENCE AGAINST WOMEN* 1118, 1120 (2003) (“Military responses to domestic violence differ most clearly from civilian, state-based responses in that the social control mechanism doubles as the offender's employer. In the United States, the military or the military base constitutes a relatively isolated and autonomous social and legal entity that produces and is governed by its own language, norms, and laws.”).

<sup>170</sup> Velda Rogers, *Unintended Consequences*, *OR. ST. BAR BULL.*, July 2006, at 62.

conclusion of an extensive literature review of data in both Canada and the United States regarding the issue of IPV in the military:

Intimate partner violence is found to be more common in military couples than its civilian counterparts. Yet, violence in intimate relationships, especially violence against women in intimate relationships, with military men is swept under the rug, with the victims having to keep the violence a secret or face the severe consequences of disclosing to a health practitioner or military police. As a result, many victims are not treated . . . and the violence goes unevaluated . . . and abusers go without consequence . . . .<sup>171</sup>

An analysis of IPV that misses structural conditions may unwittingly absolve the legal system as a structural force that contributes to IPV.<sup>172</sup>

### *C. Barriers to Mental Health Treatment*

Another part of the necessary conversation in discussing the difficulties in combatting and correcting IPV in military communities is the subject of effective mental health treatment for servicemembers. Although the last two decades have seen an explosion of interest in researching and treating mental health issues prevalent in the military community (most notably PTSD, depression, and substance abuse),<sup>173</sup> with wide expansion of funding for awareness and access to professional treatment,<sup>174</sup> two notable and entrenched barriers remain: stigma and lack of confidentiality.

A multivariate, respondent-based study of U.S. Army soldiers found stigma to be the highest prevailing reason soldiers gave for avoiding mental health treatment options available to them, ranking well ahead of perceived ineffectiveness of treatment or a desire for self-treatment.<sup>175</sup> As an organization, the military espouses many cultural beliefs and values that can be placed at odds with an individual's desire for seeking out mental health treatment. The military places a strong

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<sup>171</sup> Alysha D. Jones, *Intimate Partner Violence in Military Couples: A Review of the Literature*, 17 *AGGRESSION & VIOLENT BEHAV.* 147, 156 (2012) (conclusion drawn after an exhaustive review of empirical data in the United States and Canada).

<sup>172</sup> For a summary of the literature examining the contribution of law to the problem of IPV, see Melissa L. Breger, *Reforming by Re-norming: How the Legal System Has the Potential to Change a Toxic Culture of Domestic Violence*, 44 *J. LEGIS.* 170, 185–87 (2017).

<sup>173</sup> Jeffrey Lieberman, *Solving the Mystery of Military Mental Health: A Call to Action*, *PSYCHIATRIC TIMES*, Dec. 17, 2018, at 1, 1–2, <https://www.psychiatristimes.com/view/solving-mystery-military-mental-health-call-action> [<https://perma.cc/5P7G-3Y35>].

<sup>174</sup> *Id.*

<sup>175</sup> Paul Y. Kim et al., *Stigma, Negative Attitudes About Treatment, and Utilization of Mental Health Care Among Soldiers*, 23 *MIL. PSYCH.* 65, 72–75 (2011).

emphasis on persisting toward an objective, ignoring individual costs for the benefit of the group, masculine self-sufficiency, and a generalized distaste for shirking duties or malingering.<sup>176</sup> Among military members, there is a strong perception that the needs of the organizational mission and operational readiness conflict with the use of mental healthcare provided to servicemembers.<sup>177</sup> Military members have a generalized fear that accessing mental healthcare services will lead to them being removed from daily duties, forcing their colleagues to take on additional work in their absence, as well as possibly placing their career progression at risk if they are perceived as “too broke to work.”<sup>178</sup> This perception is further compounded by fears of appearing “weak” for seeking out help in the first place.<sup>179</sup> These perceptions form a complex stigma in the mind of servicemembers, leading them to avoid seeking treatment for their mental health conditions despite DoD-funded awareness and access initiatives.<sup>180</sup>

And it is important to recognize that those perceptions are rooted in a foundation of fact. Unlike in the civilian workplace, military mental health records are not strictly confidential; they are accessible and reviewable by the member’s chain of command.<sup>181</sup> From a strictly operational standpoint, this makes sense; the military is a dangerous, demanding work environment, and commanders need to be aware of a servicemember’s mental status before giving them access to, say, a fully automatic grenade launcher or an aircraft equipped with a nuclear warhead. From the standpoint of the DoD, mental health issues are no different than physical health issues.<sup>182</sup> But whereas a servicemember’s inability to take part in a field exercise due to a torn ACL is relatively uncontroversial, that member’s inability to perform their duties due to treatment for a mental health issue is far more complicated. One analysis of barriers to mental health treatment noted that “the prevalence of anticipated stigma concerns among those in the military with mental health problems is consistently highest in relation

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<sup>176</sup> Marie-Louise Sharp et al., *Stigma as a Barrier to Seeking Health Care Among Military Personnel with Mental Health Problems*, 37 EPIDEMIOLOGIC REVS. 144, 145 (2015).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Susanne W. Gibbons et al., *Military Mental Health Stigma Challenges: Policy and Practice Considerations*, 10 J. FOR NURSE PRACS. 365, 368 (2014).

<sup>180</sup> *Id.* at 367.

<sup>181</sup> Dawne Vogt, *Mental Health-Related Beliefs as a Barrier to Service Use for Military Personnel and Veterans: A Review*, 62 PSYCHIATRIC SERVS. 135, 140 (2011).

<sup>182</sup> Gibbons et al., *supra* note 179.



to concerns about unit leadership treating them differently, being seen as weak, and unit members having less confidence in them if they seek help for a mental health problem.”<sup>183</sup> Another analysis found that among a sample of female veterans who sought mental healthcare outside of military-provided channels, 36% identified concern over harming their careers as a reason for their decision.<sup>184</sup>

Poor reception and use of mental healthcare options has a ripple effect on the military community, and these barriers serve to further complicate the goals of preventative treatment of those who perpetrate IPV. While addressing these issues alone will not correct the problems military spouses like Irene face daily, they must form a component of any prospective overhaul of the military’s overall approach.

#### *D. Standardized Solutions for Unique Problems*

As an institution, it is no secret that the military prioritizes order and uniformity, particularly when confronting issues requiring organizational reform.<sup>185</sup> After all, “Standardized, Repeatable, Sustainable” is a core mantra of military leadership, forming the framework many military leaders use when constructing solutions within their individual unit.<sup>186</sup> While the circumstances surrounding a particular problem may be varied and individualized at the ground level, the steps the military takes to work through a solution are largely the same and occur along a predictable pattern.<sup>187</sup>

After identifying a general problem, be it urban warfare, personnel management, or sexual assault among its ranks, the military develops a methodical approach to resolving it that uses centralized priorities flowing into a network of decentralized execution.<sup>188</sup> The solutions to these problems may be generated by strategic think tanks, battle-worn Pentagon leadership, or even by pressure from civilian activists, but

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<sup>183</sup> Sharp et al., *supra* note 176, at 156.

<sup>184</sup> Vogt, *supra* note 181, at 137.

<sup>185</sup> See DEP’T OF THE ARMY, REG. 350-70, ARMY LEARNING POLICY AND SYSTEMS 2-3(c) (2017).

<sup>186</sup> In the author’s direct experience, this exact phrase was given as the command intent to guide future reform efforts by two separate Wing Commanders, a Mission Support Group Commander, and three Squadron Commanders as they each assumed control of their respective units.

<sup>187</sup> AARON P. JACKSON, THE ROOTS OF MILITARY DOCTRINE: CHANGE AND CONTINUITY IN UNDERSTANDING THE PRACTICE OF WARFARE 11 (2013).

<sup>188</sup> DEP’T OF THE ARMY, REG. 525-29, FORCE GENERATION—SUSTAINABLE READINESS ¶ 3-7 (2019).

their implementation inevitably falls in line with the following steps.<sup>189</sup> A directive is issued from the highest centralized headquarters (such as the DoD); this directive drives the creation of subordinate regulations, which codify approaches to confront the problem.<sup>190</sup> These approaches are dispersed throughout localized units in standardized lesson plans, with the execution of these approaches made repeatable through the use of checklists.<sup>191</sup> Even a problem as relatively esoteric as personnel promotion is addressed with the same homogenized industrial precision: first a directive, then a regulation, then a checklist.<sup>192</sup>

From a martial perspective, this approach makes sense; it creates a shared framework of understanding and a common tactical language across millions of troops. It removes uncertainty in the face of common situations, with the checklists and codified tactics providing an institutional shortcut for reacting to a new situation. This approach favors predictability, with broad solutions crafted to meet the widest possible application. It is an approach favorable to warfare operations—one would hardly wish for defusing landmines to be approached with any less of a uniform, methodical application—but it carries with it certain cultural costs within the institution. This trend of standardized solution-making creates an organization bound by dogmatic lines of rigidly entrenched thinking—an inflexibility informed by institutional “frames of reference” that are challenged when confronting particularized, nuanced problems.<sup>193</sup>

Standardized, centrally created, de-centrally executed solutions also emphasize strict adherence to normative thought, which further shapes the decision-making process on the individual level. Such solutions create a bureaucratic and cultural resistance to change, one burdened

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<sup>189</sup> See Barno & Bensahel, *supra* note 63.

<sup>190</sup> DEP'T OF THE ARMY, *supra* note 188, ¶ 3-8.

<sup>191</sup> In the author's experience, checklists comprise a fundamental element of day-to-day military operations. These checklists range from minutely individualized directions for specific tasks, such as who to contact by phone in the advent of a chemical fire on the installation flightline, all the way to those governing the execution of complex programs like Anti-Terrorism Risk Reduction across an entire country. The use, and inspectable compliance with, executable checklists is such a widespread occurrence that, as of this writing, the author's military duties require certifications in the use of six separate software suites, all given to the tracking and management of different operational checklists.

<sup>192</sup> Barno & Bensahel, *supra* note 63.

<sup>193</sup> See STEPHEN J. GERRAS & LEONARD WONG, CHANGING MINDS IN THE ARMY: WHY IT IS SO DIFFICULT AND WHAT TO DO ABOUT IT 5 (2013).

by concerns of upending predictability and driven to create “one size fits all” solutions.<sup>194</sup>

As might be expected, this inflexibility has its consequences, with the U.S. military often finding itself outpaced when confronting rapidly evolving issues, such as talent recruiting and retention<sup>195</sup> or the proliferation of commercially available drone technology.<sup>196</sup> When combatting problems underpinned by nuances and individualized circumstances, or requiring agile solutions, the military often fails—defaulting to a paradigm of micromanagement, risk avoidance, and complete fixation on the near term.<sup>197</sup> Furthermore, the military often fails to recognize the consequences of this rigidity in nonfatal problems, as it often lacks the internal controls necessary to objectively measure the success of individual initiatives.<sup>198</sup>

When addressing the complex, nuanced, highly individualistic problem of IPV within its ranks, the military’s default approach is simply inadequate. Though it may be loath to do so, the military must begin its approach by shifting its understanding away from singular, standardized solutions toward a broader acceptance of a spectrum-based approach. As previously discussed, no two relationships are alike, nor are any two IPV experiences, and the complexities of human social interactions demand a flexible range of *potential* solutions to resolving violence, rather than a homogenous checklist approach. Effectively confronting IPV will require the military to create a category of varied approaches to individual cases like Irene’s, with no one approach favored over the others. This would allow commanders the opportunity to adapt their approach to meet the individual needs of the disparate cases, without feeling pressured to adhere to a particular dogmatic technique. The military must make itself ready and able to

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<sup>194</sup> David Barno & Nora Bensahel, *Can the U.S. Military Halt Its Brain Drain?*, THE ATLANTIC (Nov. 5, 2015), <https://www.theatlantic.com/politics/archive/2015/11/us-military-tries-halt-brain-drain/413965/> [<https://perma.cc/UP25-T4T7>].

<sup>195</sup> *Id.*

<sup>196</sup> Jeff Schogol, *Drones Pose the Biggest Threat to US Troops in the Middle East Since IEDs*, TOP GENERAL SAYS, TASK & PURPOSE (Feb. 8, 2021, 12:15 PM), <https://taskandpurpose.com/news/drone-threat-ieds-middle-east-mckenzie/> [<https://perma.cc/YP5J-BTP8>].

<sup>197</sup> Ben Summers, *Slow, Inflexible, and Micromanaged: The Problems of a Military That Overstates Risk*, MOD. WAR INST. (May 9, 2017), <https://mwi.usma.edu/slow-inflexible-micromanaged-problems-military-overstates-risk/> [<https://perma.cc/G4KD-LKGZ>].

<sup>198</sup> Barno & Bensahel, *supra* note 194 (“There are no objective metrics by which to determine whether military leadership is succeeding—or failing, needing replacement. . . . However the military performs, it seems simply good enough.”).

listen to outside critique and to build a framework of responses that are capable of evolution within a rapidly changing social structure.

In much the same way the military embraced a wide range of solutions to confront the multivariate problem of improvised explosive devices (IEDs) (a similarly fatal threat arising in a myriad of initially innocuous forms),<sup>199</sup> the military must also develop an equally broad breadth of tactics for confronting the problem of IPV. The sheer variety of explosive forms and trigger methods in IEDs forced the U.S. military to continuously adapt its tactics and approaches, tailoring its response to combat individualized developments on the battlefield.<sup>200</sup> When confronted with IEDs triggered by cell phones, the military developed vehicle-mounted signal jammers.<sup>201</sup> When insurgents employed IEDs triggered by the heat emitted from passing engines, the military mounted heater cores on long poles to detonate the devices well in advance of a convoy.<sup>202</sup> Efforts were further made to attack the distribution network of explosives in the combat theater, cutting off the enemy's supply of fresh IED material.<sup>203</sup> Each of these approaches was created in response to an emergent enemy tactic, and while no singular approach solved the problem altogether, when combined as a holistic spectrum of options, they created a deep "toolbox" of potential approaches to combatting the overall threat. Not that this was a simple case of military gumption and ingenuity; at every step of the way, senior leadership within the military was forced to let go of preconceived notions, traditional approaches, and outdated methodologies in order to adapt to the changing environment.<sup>204</sup>

Furthermore, the military must eschew its general predisposition for using short-term, limited metrics to quantify the success of these approaches. Though it may be tempting for senior leadership to declare the problem of IPV a nonissue when they go a year without prosecuting

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<sup>199</sup> GERRAS & WONG, *supra* note 193, at 3.

<sup>200</sup> Jason Shell, *How the IED Won: Dispelling the Myth of Tactical Success and Innovation, War on the Rocks*, TEX. NAT'L SEC. REV. (May 1, 2017), <https://warontherocks.com/2017/05/how-the-ied-won-dispelling-the-myth-of-tactical-success-and-innovation/> [https://perma.cc/DMM2-HN5T].

<sup>201</sup> *AN/VLQ-12 CREW Duke*, SRC INC., <https://www.srcinc.com/products/ew-spectrum-operations/crew-duke.html> [https://perma.cc/U92E-WUBY].

<sup>202</sup> *Rhino Convoy Protection Device*, PROJECT MANAGER CLOSE COMBAT SYS., <https://www.pica.army.mil/pmccs/CombatMunitions/Defeat/Rhino.html> [https://perma.cc/9U64-C5JW].

<sup>203</sup> Shell, *supra* note 200.

<sup>204</sup> GERRAS & WONG, *supra* note 193.

any violations of Article 128(B),<sup>205</sup> the military as an organization must endeavor to look deeper. Intimate partner violence has its roots within the very fabric of the military community, with the control exerted by servicemembers over their spouses omnipresent even in the most ideal of relationships.<sup>206</sup> As such, with the implementation of any holistic solution, it will take years of exhaustive research to judge the DoD’s overall success by any meaningful metric.

#### *E. Statutory Definition Does Not Capture Lived Experience*

In December 2019, the military finally codified an enumerated offense of “domestic violence.” Per the article:

Any person who—

- (1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;
- (2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—
  - (A) commits an offense under this chapter against any person; or
  - (B) commits an offense under this chapter against any property, including an animal;
- (3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;
- (4) with intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or
- (5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;

shall be punished as a court-martial may direct.<sup>207</sup>

Prior to January 1, 2020, Sergeant Donnely would have been subject to only a charge of a general offense, such as assault.<sup>208</sup> According to lobbyists at a hearing of the Senate Subcommittee on Military

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<sup>205</sup> See Jennifer-Leigh Ophory, *Military Domestic Violence Reports Didn’t Rise During COVID-19 Pandemic*, A.F. MAG. (Oct. 29, 2020), <https://www.airforcemag.com/military-domestic-violence-reports-didnt-rise-during-covid-19-pandemic/> [<https://perma.cc/V5SG-2ZPF>].

<sup>206</sup> See discussion of coercive control *supra* Section II.B.

<sup>207</sup> 10 U.S.C. § 928b.

<sup>208</sup> *Id.* § 928.

Personnel on September 18, 2019, an enumerated article was needed because IPV had “become a forgotten crisis in our military.”<sup>209</sup> The article would breathe new life into the issue, putting an emphasis on IPV throughout the military, particularly among commanding officers and court-martial convening authorities, and it would assist in the prosecution of state and federal firearms offenses and help civilian prosecutors in cases involving military servicemembers and veterans.<sup>210</sup> In the decade prior to the enumerated article’s codification, scholars writing about the issue of IPV largely agreed.<sup>211</sup>

From the point of view of feminist activists and scholars who advocate a contextual approach to IPV that includes the individual couple dynamics of intent, meaning, and impact, the new UCMJ article marks real progress. Section two of the offense captures more than physical violence; it captures intimidating and threatening conduct and acknowledges that this conduct may be perpetrated on other people, animals, or even property when the aim of the perpetrator is to intimidate or threaten the victim themselves (or even a member of the victim’s family). This definition navigates its way closer to capturing the spectrum of IPV under the framework of coercive control we’ve previously discussed. But overall, the UCMJ provision still misses the ongoing, pervasive nature and pattern of microregulation of everyday life that composes coercive control, and it continues the mistake of viewing the offensive conduct as episodic, rather than as a continuing process. Furthermore, in prioritizing the investigation of physical violence over other forms of abuse, Article 128(B) does nothing to address the structural conditions that contribute to IPV in the military.

#### IV NORMATIVE PROPOSALS

Spotlighting structural issues and critiquing policies is easy. Finding solutions is more challenging. Within this Section, we will propose additions to the current contextual analytical framework offered by

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<sup>209</sup> *Shattered Families, Shattered Service: Taking Military Domestic Violence Out of the Shadows: Hearing Before H. Subcomm. on Mil. Personnel*, 116th Cong. (2019) (opening statement of Chairwoman Jackie Speier).

<sup>210</sup> E-mail from Brian Clubb, Staff Att’y, Discharge Upgrade Program (Jan. 31, 2021) (on file with author).

<sup>211</sup> See e.g., Coutier, *supra* note 58. But see Chace, *supra* note 35, at 13 (arguing that the provisions for nonjudicial and judicial punishment for domestic violence are thorough and do not need to change, but rather that the provisions need to be enforced to ensure fair punishment and protection).

many anti-IPV activists by including a new method for identifying structural conditions that contribute to IPV. As the criminal justice system is in itself a force, sometimes violent, in structuring the lives of people who experience abuse, we also offer suggestions for ways to improve criminal justice responses, both military and civilian. Finally, because systemic structural change takes enormous time and political will, we offer small, but potentially powerful, reforms to address most of the previously identified problems with direct policy changes.

#### *A. Adopting a More Robust Contextual Analysis*

We have demonstrated that, to understand fully what happened between Irene and Sergeant Donnely, there is a need for contextual analysis that includes both individual couple dynamics (intent, meaning, impact) *and* structural conditions. One need not reinvent the wheel (metaphorically or literally) to effectuate analysis of the structural conditions. Rather, we argue for the reinvigoration of the original vision of the creators of the Power and Control Wheel: to link abuse in personal relationships to institutional, structural, and cultural forces that support it.

The Domestic Abuse Intervention Program's original tool, the "Institutional and Cultural Supports for Battering" chart,<sup>212</sup> was once an integral component of the Power and Control Wheel methodology.<sup>213</sup> The Power and Control Wheel is already used in social service agencies, community-based groups, intervention programs, and hundreds of other settings across the nation and across the world.<sup>214</sup> Asking people questions regarding "what institutional and community decisions" and "what cultural values and beliefs" support your partner's ability to use abusive tactics is a straightforward, easy-to-implement methodology perfectly suited to redressing some of the military's failure to identify coercive structures.

The reality is that the "Institutional and Cultural Supports for Battering" chart is one of a number of tools that could be used by the military to identify coercive structures. Though we primarily advocate for use of that chart because of what it represents, the thrust of this proposal is aimed at improving the military's internal analytical capabilities, not the endorsement of one particular tool over others. Any

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<sup>212</sup> PRICE, *supra* note 160, at 24.

<sup>213</sup> See discussion *supra* Section III.A.3.

<sup>214</sup> PRICE, *supra* note 160, at 25.

diagnostic tool grounded in an ethic of reflective and critical inquiry into structural contributors to IPV that makes visible the possibility of new and different solutions is a monumental step forward for the DoD to take.

Typical solutions to intimate abuse center on policies ensuring that victims feel safer in reporting to the police,<sup>215</sup> or that laws criminalizing IPV are strictly enforced or more punitive.<sup>216</sup> To be sure, policy recommendations to improve access to law enforcement responses are worthy for situations in which the person experiencing abuse needs the law enforced. But data shows that many people who experience abuse, and particularly marginalized people, often do not think to,<sup>217</sup> or do not want to,<sup>218</sup> report abuse to law enforcement.<sup>219</sup>

Reflective and critical inquiry regarding structural norms takes us in different directions. For example, Irene, like most civilian partners of military members, feels isolated. She doesn't often leave base because everything she requires for daily life is provided for her within the installation's fences. As previously noted, the military's tendency toward building insular communities separate from the civilian townships nearby is generally problematic.<sup>220</sup>

Research overwhelmingly demonstrates that most people who experience abuse rely on informal social support for safety.<sup>221</sup> People in a victim's social, community, or cultural network often provide transportation, childcare, financial assistance, or resources that support the survivor's safety strategies and enable them to use formal services effectively. As noted by Professor Deborah Epstein, such supporters are also critical to healing and emotional well-being:

Neighborhoods, communities, family, friends, and workplaces can provide a victim with recognition that she is a whole and complex person—a mother, a daughter, a friend, a colleague—tied to the

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<sup>215</sup> Becker & Bachman, *supra* note 60, at 322.

<sup>216</sup> Campbell et al., *supra* note 79, at 1087.

<sup>217</sup> PRICE, *supra* note 160, at 139 (arguing that many people in marginalized communities do not think to call the police).

<sup>218</sup> GOODMAN & EPSTEIN, *supra* note 21, at 75–78 (explaining why women do not want to call the police and arguing that the “fundamental unresponsiveness of mandatory policies to women’s individual needs and wishes is disempowering and dangerous for some victims.”).

<sup>219</sup> As discussed previously, women connected to the military are especially reluctant to report IPV to law enforcement. *See* Becker & Bachman, *supra* note 60.

<sup>220</sup> *See* discussion *supra* Section I.D.2.

<sup>221</sup> GOODMAN & EPSTEIN, *supra* note 21, at 100 (citing a number of empirical studies demonstrating that victims are more likely to first turn to their community before institutions for help).



world in multiple ways and part of something larger. This sense of connection is vital to the development of a healthy sense of self. Short-term interventions, no matter how sensitively delivered, cannot make up for the sudden loss of such social connections.<sup>222</sup>

A reflective and critical inquiry of the problem of structural isolation would interrogate whether it is in fact in the military's best interest to continue supporting this sort of cloistered mentality with its structural policies. Do the operational needs of the military community *require* the DoD to provide an on-installation grocery store? Does providing housing for military members on the installation significantly improve their abilities to form communal relationships and achieve mission goals? Or might it be a better overall practice to do away with on-base housing altogether and simply have military members live among the civilian communities that surround most installations?

This sort of critical inquiry is, of course, highly situational. The conclusions drawn from analysis for military installations overseas will vary completely from those made when analyzing stateside bases (which will also vary depending on those specific installations' remoteness from civilian communities). The point here is not to create a single, normative solution for all situations, but to create an analytical framework for the DoD to use in continuing its examination of the need for particular structural conditions versus the social costs they incur.

Furthermore, in our narrative, Irene described feeling that Sergeant Donnelly was "never there." Since we have already discussed her communal isolation and inability to rely on the support of long-term friendships, he is often her only real, continuous adult connection. If isolation is a structural condition that contributes to IPV, thinking about how to change the norm of isolation, *in addition to* improving law enforcement solutions, is therefore critical. The military might consider policies that shift the work-life balance of military members so that the military member might be able to take on a larger role in the household. Or it might consider subsidizing childcare to make it easier for spouses to find employment off base and in the community. Or it might reconsider whether its operational needs truly require military families to relocate as often as they currently do. If frequent relocation is necessary, perhaps there are policies that would provide military spouses with more voice and agency in choosing the location. There are any number of changes the military might consider making. The

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<sup>222</sup> Deborah Epstein, *The Domestic Violence Shelter Movement: Lessons Learned and Directions for the Future*, 13 (unpublished manuscript) (on file with author).

key is the ethic of inquiry about the connection between abuse in an individual relationship and the structural conditions that contribute to it.

### *B. Direct Proposals for Initiating Structural Change*

Much of this Article has been devoted to a discussion of realigning sociocultural reform efforts with shifting understandings borne out of necessary recontextualization of the civilian intimate partner perspective. And while theoretical deconstructions are a fundamental aspect of academic discussion, any call for reform within the military would be starkly remiss if it failed to include at least a few directly actionable regulatory changes. To that end, the authors set forth the following three immediate, or near immediate changes, for the DoD's consideration: the expansion of hiring for existing installation victim advocacy positions, the implementation of a "disinterested party" system for nonjudicial domestic violence proceedings, and the insertion of a mandatory victim consultation within both judicial and nonjudicial domestic violence prosecutions.

As always, cost is a necessary factor to consider whenever discussing social or institutional reform. All the changes proposed within this Article rely on sociocultural changes to the military's approach to IPV, which could primarily be accomplished by adjusting the regulatory guidance stemming from the DoD itself. These changes could be implemented immediately upon the publication of a new regulation and dispersed digitally throughout the totality of the military force structure for maximum effect, with minimal financial cost in implementation.

#### *1. Expanded Staffing for Victim Advocates*

Shifts in cultural perspective are difficult to undertake; as such, they need a focal point to put forth continuous pressure to ensure they take hold. Luckily enough, the DoD already has such bulwarks in place within the office of the Family Advocacy Program—the Domestic Abuse Victim Advocate (DAVA). Per the DoD's regulatory scheme, this federal civilian position is already described as "a vital member of the coordinated community response team" and "a crisis first responder when [the Family Advocacy Program] receives an initial allegation of adult partner maltreatment."<sup>223</sup> When staffed in adequate numbers,

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<sup>223</sup> DEP'T OF THE AIR FORCE, INSTRUCTION 40-301, FAM. ADVOC. PROGRAM, MED. COMMAND ¶ 5.2 (2020).

victim advocates are available to assist people, in person, 24/7.<sup>224</sup> Additionally, in keeping with the recent movement of scaling back law enforcement presence during IPV incidents, victim advocates are meant to respond alongside military police on scene to address the needs of the victim.<sup>225</sup> Use of the victim advocacy position as a frontline responder pushes the military to the cutting edge of civilian IPV reform efforts—provided, of course, that the DoD allocates enough funding to hire the numbers of victim advocates required to fulfill that role.

As written, the victim advocacy position would be a perfect starting point for reframing and reprioritizing existing military efforts as a spectrum-based initiative. This position has the benefit of already existing within the current budgetary scheme<sup>226</sup> and is already required to conduct annual training with servicemembers on family issues, sexual assault prevention, and intimate partner violence.<sup>227</sup> The victim advocacy position is ripe for expansion, and with greater funding, manpower, and a body of correctly contextualized research to draw from, could spearhead many of the structural reforms discussed above.

## 2. Use of the “Disinterested Party” in DV Nonjudicial Proceedings

Within the military, the concept of the “disinterested party” is used frequently for auditing sensitive equipment and munitions.<sup>228</sup> During accounting efforts for high-value equipment, an audit of the transactions is performed by an individual outside the owning unit’s chain of command.<sup>229</sup> This individual, with no connections to the members of the office conducting the transactions and with no direct association with the unit’s mission, is therefore perceived to be free of

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<sup>224</sup> *Id.* (“The DAVA will ensure the availability of 24-hour DAVA services either through in-person or telephonic contact. When only one DAVA is assigned to an installation and is ill, on leave, or TDY . . . [t]he minimum response required . . . is a telephonic response to conduct a risk assessment, safety plan, provide information and resources, and get the victim in touch with FAP the next duty day.”).

<sup>225</sup> DEP’T OF DEF., INSTRUCTION 6400.06, DOMESTIC ABUSE INVOLVING DoD MILITARY AND CERTAIN AFFILIATED PERSONNEL ¶ 6.2.6 (2017); *see also* FAM. ADVOC. PROGRAM, *supra* note 223.

<sup>226</sup> OFF. OF THE UNDER SEC’Y OF DEF. (COMPTROLLER)/CHIEF FIN. OFFICER, DEFENSE BUDGET OVERVIEW: UNITED STATES DEP’T OF DEFENSE FISCAL YEAR 2021 BUDGET REQUEST (2020).

<sup>227</sup> DEPT’ OF THE AIR FORCE, *supra* note 223, ¶ 5.6.1.

<sup>228</sup> DEP’T OF THE AIR FORCE, AIR FORCE MANUAL 21-200, MUNITIONS AND MISSILE MAINTENANCE MANAGEMENT ¶ 6.4.1.2-6.4.1.2.1. (2020).

<sup>229</sup> *Id.*

the organizational pressures that would lead to overlooking improprieties within those transactions.

One of the great challenges of the military nonjudicial process is eliminating the appearance of bias in allowing a servicemember's direct chain of command to dispense sentences and justice in the nonjudicial punishment process.<sup>230</sup> Though this Article does not offer direct critique of the nonjudicial punishment process (as its consequential use<sup>231</sup> and need for reform<sup>232</sup> have been addressed in thorough detail<sup>233</sup> in other<sup>234</sup> works<sup>235</sup>), we do offer a singular, substantive measure for reducing the impact of perceived bias on nonjudicial domestic violence prosecutions. Simply put, take the "disinterested party" principle used to reduce bias in investigating financial and supply transactions and apply it to nonjudicial punishment proceedings for domestic violence. Having a commander from outside the domestic violence perpetrator's chain of command (preferably a commander outside the perpetrator's career field, or even branch of service) be the one to render the decision to investigate and issue a nonjudicial punishment in the proceedings reduces some of the most obvious implications of bias in nonjudicial punishment and lends greater legitimacy to the entire process.

### 3. *Introducing a Mandatory Victim Consultation into Proceedings*

A final, initial step for the military to consider in its efforts to reform its approach to IPV—one placing it beyond merely "catching up" with civilian efforts and back on the path of social innovation—would be to

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<sup>230</sup> Eric R. Carpenter, *An Empirical Look at Commander Bias in Sexual Assault Cases*, 22 BERKELEY J. CRIM. L. 45, 48 (2017).

<sup>231</sup> Marshall L. Wilde, *Incomplete Justice: Unintended Consequences of Military Nonjudicial Punishment*, 60 A.F. L. REV. 115, 117 (2007).

<sup>232</sup> Carolyn M. Warner & Mia A. Armstrong, *The Role of Military Law and Systemic Issues in the Military's Handling of Sexual Assault Cases*, 54 L. & SOC'Y REV. 265, 266 (2020).

<sup>233</sup> David A. Schlueter, *Reforming Military Justice: An Analysis of the Military Justice Act of 2016*, 49 ST. MARY'S L.J. 1, 27 (2017).

<sup>234</sup> Anthony J. Ghiotto, *Back to the Future with the Uniform Code of Military Justice: The Need to Recalibrate the Relationship Between the Military Justice System, Due Process, and Good Order and Discipline*, 90 N.D. L. REV. 485, 515–22 (2014).

<sup>235</sup> Tricia D'Ambrosio-Woodward, *Military Sexual Assault: A Comparative Legal Analysis of the 2012 Department of Defense Report on Sexual Assault in the Military: What It Tells Us, What It Doesn't Tell Us, and How Inconsistent Statistic Gathering Inhibits Winning the "Invisible War,"* 29 WIS. J.L. GENDER & SOC'Y 173, 204 (2014).

implement a system of mandatory victim consultation in domestic violence prosecutions.<sup>236</sup>

Under this proposed system, military regulations concerning the administration of justice would be amended to include an additional mandatory step in all domestic violence prosecutions, both judicial and nonjudicial. This step would require either the unit commander (in the case of nonjudicial proceedings) or the lead prosecutor (in the case of judicial proceedings) to have a direct, face-to-face meeting with the victim in which the victim is given authority to voice their concerns and goals for the case. These concerns and goals would then be documented, forming a part of the procedural history of the case that must be referenced explicitly in either the commander's issuance of the nonjudicial punishment or the prosecution's decision to pursue trial. A further iteration of this process would see the magistrates presiding over the sentencing of servicemembers convicted under domestic violence similarly meet with the victim and reference their meeting when passing a sentence. In keeping with the overall intent of giving authority to the victim, and in order to not add another burden by forcing a meeting upon them, this procedural step must be waivable by the victim, should they choose to do so.

As a procedural step, this mandatory consultation ties in nicely with the objective of amplifying the voices of those experiencing IPV and refocusing the criminal justice proceedings on the actual victim of the crime. Structurally, it utilizes the vast discretion afforded to commanders in delivering nonjudicial punishment (to say nothing of the considerable discretion prosecutors wield when choosing to pursue charges) and injects a necessary grounding element to the proceedings. Mandating that the pursuers of military justice (both judicial and nonjudicial) meet with the victim and document both the victim's concerns and their goals costs the military nothing and it affords the victim a greater measure of dignity and authority. From a strictly utilitarian perspective, this step serves to shift the overall intent of the proceeding and refocuses sentencing on the needs of the person it is most intended to benefit.

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<sup>236</sup> "Mandatory" is used here with the understanding and acknowledgment that the application of it and similar terms to procedural matters within the field of IPV often carry patronizing and oppressive connotations for treatment of the victim. *See, e.g.*, GOODMAN & EPSTEIN, *supra* note 21. However, in the military world, the absence of the "mandatory" qualifier means that this (and other direct procedural changes) would likely go ignored in favor of expediting the judicial or nonjudicial process.

Intimate Partner Violence within the military will never be solved by a “silver bullet,” and any adequate structural reform must be understood as a composite of a vast, multilateral effort. Each of the proposals above offers but one possible step in the right direction for the military to take and is coupled with the greater understanding that the best solutions will come from new thinkers informed by the revised theoretical frameworks presented here. If the military hopes to be viewed as seriously addressing the pervasive issues of IPV, it must be willing to cultivate an environment in which internal policy makers are encouraged to innovate based on new understandings.

### *C. What Society Could Learn from the Military So Far*

Though this Article has largely taken a critical approach of the military’s response to IPV, objective analysis also requires recognition of the successes as well. Of the DoD’s programs developed in response to IPV within its ranks, two stand out for their innovation, practicality, and potential for revolutionizing the *civilian* approach to IPV: the Restricted Reporting System and the Special Victim’s Counsel.

#### *1. Restricted Reporting*

The Restricted Reporting System, first created as part of the military’s response to sexual assault, is exemplary both in its innovation and its extreme simplicity. At its core, restricted reporting is a process that allows an adult experiencing IPV to report and document an incident of abuse without triggering an investigative or prosecutorial process.<sup>237</sup> This report, documented by trained victim advocates or healthcare professionals, is protected by strict confidentiality at its inception, and it may be delivered only to law enforcement or command personnel at the choosing of the victim.<sup>238</sup> In this way, a victim may feel comfortable disclosing details of their abuse and seeking medical treatment without fear of the collateral consequences of their reporting.<sup>239</sup> Once created, these restricted reports are maintained as a sealed file capable of use in future investigations or prosecutions at the victim’s discretion, both

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<sup>237</sup> DEP’T OF DEF., INSTRUCTION 6400.06, DOMESTIC ABUSE INVOLVING DoD MILITARY AND CERTAIN AFFILIATED PERSONNEL ¶ E2.27 (2017).

<sup>238</sup> *Id.* ¶ E3.5.2.

<sup>239</sup> *Id.* ¶ E3.5.2.3.

preserving relevant evidence and preventing the defense of recent fabrication.<sup>240</sup>

As an isolated process, restricted reporting has the potential to vastly expand the civilian capability for addressing IPV. Affording people experiencing IPV a secondary outlet to document their abusive circumstances without the immediate pressure of a full prosecutorial investigation would dramatically lighten the burden of reporting. In much of the way a sexual assault nurse examination kit affords victims of sexual assault a chance to preserve evidence immediately following an incident, these restricted reports would offer an opportunity to freeze a moment of time in the victim’s life, removing the pressure to immediately report a situation. Furthermore, the strict confidentiality requirement that vests further reporting in the discretion of the person experiencing IPV is an absolute breakthrough in reasserting the victim’s autonomy in their own criminal case. Best of all, this process could be implemented with relatively minor adjustments to the mandatory reporting processes of current victim advocacy groups and healthcare professionals.

## *2. Special Victim’s Counsel*

Among the recent steps undertaken by the military in combatting IPV among its ranks, the creation of the Special Victim’s Counsel (SVC) represents the most promising step forward to correct many of the issues presented by this Article. A specialized unit within the military legal community, the SVC is specifically activated to represent victims during each stage of the proceedings.<sup>241</sup> Their express mission is to advocate the interests of the people experiencing domestic violence, offering legal representation and assistance in accessing services related to the incident.<sup>242</sup> This advocacy is purposefully extended to include advocating the victim’s interests to “civilian prosecutors, law enforcement agencies, and other civilian and government agencies where there is a nexus to the client’s status as a victim.”<sup>243</sup>

As of this Article’s writing, the implementation of the SVC program is incredibly new, and its efficacy is still unproven, but its development

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<sup>240</sup> *Id.* ¶ E3.5.2.6.

<sup>241</sup> DEP’T OF THE AIR FORCE, INSTRUCTION 51-201, ADMINISTRATION OF MILITARY JUSTICE ¶ 24.5 (2021).

<sup>242</sup> *Id.* ¶ 24.5.2.

<sup>243</sup> *Id.* ¶ 24.5.3.

shows great potential for cross-application in the civilian world. The SVC (at least in theory) ensures that those who experience IPV have a legally cognizable and protected interest in the criminal proceedings surrounding them. This offers the potential to upend the defendant-prosecutor binary in favor of a three-party system— one that grants the victims of crimes an equal voice in cases ostensibly begun in their name. Much of this Article has been spent discussing the need for reframing how the military (and to some extent, American society as well) needs to shift the lens of IPV toward the perspective of those directly affected by it. With the advent of the SVC and civilian programs like it, the voice of the victim can be amplified loudly and clearly in courtrooms across the nation.

#### CONCLUSION

Within this Article, we analyzed the military's response to IPV through the lens of the civilian partners who experience it daily. Using their perspectives as a starting point, in which intimate abuse is not a discrete incident but rather a continuing process, the structural conditions contributing to abuse become salient. Isolation, economic coercion, and exploitation of gender and other privileges are not merely discrete tactics that one partner uses against another, but ongoing practices that are institutionalized within the structures of the military community. Thus, to get a full picture of IPV, we must assess not only the dynamics particular to the individual couple but also how structural conditions support those dynamics.

Shifting perspectives in addressing IPV is particularly challenging because the primary response to the problem of IPV is to use criminal law, which currently detaches context from IPV in order to prosecute it as discrete episodes of physical violence. Reframing the narrative of abuse to the person experiencing it, and not the perspective of law enforcement responders or the military aggressor, represents a necessary correction of this approach. Furthermore, structural conditions that facilitate IPV are so embedded in the fabric of everyday life that they often fade into the background of most analyses, complicating current reform efforts within the military and civilian communities. This is most apparent in the military's typical approach to resolving social problems, which favors standardized solutions for unique problems. Thus comes the importance of intentionally, explicitly asking people who experience abuse to identify the institutional and cultural norms that support personalized abusive



tactics, so as to create a reformist framework that properly addresses these structural conditions.

Because analysis of structural conditions has largely been lost in the movement to end IPV, we used the military setting to throw them into sharp relief. As a subculture of American society, the military, with its explicit insularity and rigidly codified norms, was an ideal point of reference to develop an analytical methodology for approaching IPV within discrete social subgroups. In analyzing and exposing fundamental faults within the military's approach to domestic violence, as well as proposing some direct procedural solutions to shift this approach, we sought to create and then validate a newly contextualized framework for future reformative solutions. It is therefore our sincere belief that the ensuing analytical methodology—starting from the perspective of the person experiencing abuse, assessing both individual and structural conditions underpinning that abuse, then using that assessment to inform reformist efforts directed at resolving those specific underlying conditions—is broadly applicable to the global effort of combatting Intimate Partner Violence.

APPENDIX



Figure 1. Power and Control Wheel.

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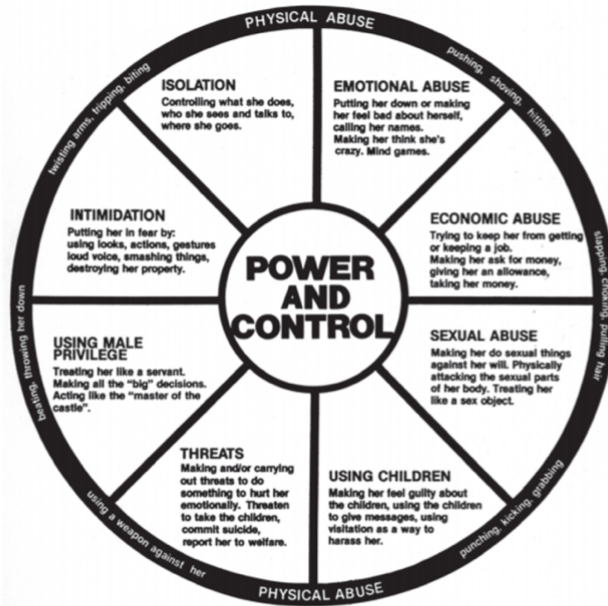
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*Figure 2. Military Power and Control Wheel.*  
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**Institutional and Cultural Supports for Battering**

Tactics of Power and Control	Institutional and Community decisions which support individual batterer's ability to use abusive tactics (police, courts, media, medical, clergy, business, education, human services).	Cultural Values and Beliefs that support batterers.
Physical Abuse		
Sexual Abuse		
Isolation		
Emotional Abuse		
Economic Abuse		
Minimizing and Denying		
Using Children		
Threats		
Using Male Privilege		
Intimidation		

Figure 3. Power and Control Wheel, with Institutional and Cultural Supports for Battering chart.