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EPILOGUE: MAKING RECONCEPTUALIZATION OF VIOLENCE AGAINST WOMEN REAL

*Elizabeth M. Schneider**

This symposium, *Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues*, highlights the enormity of the problem of domestic violence and the range of important activist and academic work that has been done and is being done on these issues. As the contributions to this symposium document, the good news is that there is an explosion of activist efforts and a virtual "cottage industry" of academic work on issues of violence against women in fields of law, social work, medicine, and other "helping" professions. The new federal Violence Against Women Act defines violence against women as a civil rights violation,¹ and stalking has been recognized as a national problem.² The bad news is that the social task of making this reconceptualization of violence against women real,

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¹ The Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, 108 Stat. 1796. VAWA amends the Omnibus Crime Control and Safe Streets Act of 1968 (the Omnibus Act) in part by adding a new "Part T." 42 U.S.C. § 3711. Part T comprises §§ 2001-2006, to be codified at 42 U.S.C. §§ 3796gg-5.

VAWA establishes the Violence Against Women Office at the Department of Justice, to which Bonnie Campbell, former Attorney General of Iowa, was recently appointed as director. Among other provisions, VAWA also creates a 24-hour hotline for battered women, creates civil liability for domestic violence and rape, initiates preventive measures, such as prohibiting individuals with restraining orders against them from purchasing guns, and authorizes a six-year program with \$800 million in funding to fight domestic violence through the year 2000. *See Statements on the Violence Against Women Act by President William J. Clinton, Attorney General Janet Reno, Health and Human Services Secretary Donna Shalala, Ms. Sarah M. Buel and Ms. Bonnie Campbell at the White House*, FED. NEWS SERV. WASH. PACKAGE, Mar. 21, 1995, available in LEXIS, News Library, Curnws File [hereinafter *Statements on the Violence Against Women Act*]; see also U.S. DEP'T OF JUSTICE, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 BRIEFING BOOK (1994) [hereinafter *BRIEFING BOOK*].

² Many states have passed laws which make stalking a crime. See, e.g., Robert P. Faulkner & Douglas H. Hsiao, *And Where You Go I'll Follow: The Constitutionality of Antistalking Laws and Proposed Model Legislation*, 31 HARV. J. ON LEGIS. 1, 1-2 (1994) (explaining that at least 43 states have enacted "antistalking" statutes since the stalking and brutal murder of "My Sister Sam" co-star Rebecca Schaeffer and in response to the perception that existing civil and criminal remedies are ineffective in dealing with repeated threats and threatening conduct); James C. Wickens, Comment, *Michigan's New Anti-Stalking Laws: Good Intentions Gone Awry*, 1994 DET. C.L. REV. 157, 164 (1994) (discussing the recent recognition of stalking as a national problem and the widespread growth of antistalking legislation in the United States).

so that it is understood as a genuine social problem, one for which there is public approbation and recognition of social harm, has only just begun. In this Epilogue, I celebrate important developments on both the activist and academic fronts that reflect this process of reconceptualization. I then briefly examine why the extraordinary work of activists and academics has not translated into public policy, and explore what it will take to accomplish meaningful social change and genuine social reconceptualization that will shift our societal norms with respect to violence against women.

Activist efforts over the last twenty-five years have made a dramatic difference in the range of social, human, and legal services available for battered women.³ A committed battered women's movement has developed shelters, implemented innovative programs for battered women, established hotlines, filed lawsuits, lobbied for legal reforms and legislation, developed public education campaigns, medical and social work protocols, and much more. The women and men who have participated in this work are among the most talented, creative, and hardworking organizers and thinkers on issues of social change that I have ever met. They are also people who have devoted much of their life to this work. Several years ago, a National Coalition Against Domestic Violence conference honored activists who had worked on issues of domestic violence for twenty years or more, and there were many people in the room who had done so. We have made enormous progress in the range of services and programs that address the needs of battered women, and should recognize and acknowledge these accomplishments.

In the academy, there has also been an explosion of scholarship, symposia, and conferences on these issues.⁴ As an activist, now aca-

³ See Jeanine Ferris Pirro, *Disquieting the Silence: The Responsibility of Change*, 58 ALB. L. REV. 1253 (1995) (discussing the legal and social evolution of domestic violence); Bonnie Rabin, *Violence Against Mothers Equals Violence Against Children: Understanding the Connections*, 58 ALB. L. REV. 1109 (1995) (discussing the effect of domestic violence on children and the courts' evolving perception of battered women as mothers); Katherine Hancock Ragsdale, *The Role of Religious Institutions in Responding to the Domestic Violence Crisis*, 58 ALB. L. REV. 1149 (1995) (discussing the church's former complicity in domestic violence and its current efforts to take a meaningful position to end domestic violence).

⁴ For example, just in the last two years see THE PUBLIC NATURE OF PRIVATE VIOLENCE (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994); *Symposium on Domestic Violence*, 21 HOFSTRA L. REV. 1191 (1993). See also Linda L. Ammons, *Discretionary Justice: A Legal and Policy Analysis of a Governor's Use of the Clemency Power in the Cases of Incarcerated Battered Women*, 3 J.L. & POL'Y 2, 2-4 (1994) (arguing that when a state's constitution gives a governor plenary discretionary clemency authority, he or she can and should use that power to review cases of incarcerated battered women who have killed their abusers in self-defense and citing situations where this has been done to commute and/or reduce sentences of battered women); Beth I.Z. Boland, *Battered Women Who Act Under Duress*, 28 NEW ENG. L. REV. 603, 605 (1994) (describing recent efforts to allow the

demic, who is working on two books on domestic violence—a study of the role of feminist theory and practice in work on domestic violence, and a law school casebook on domestic violence⁵—I can barely keep

introduction of evidence concerning the “effects of exposure to prolonged abuse” to support a battered woman’s claim that she committed criminal acts under duress or coercion from her batterer); Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 6 (1994) (arguing that the “defense of battered woman syndrome” reaffirms the perception that women lack the same capacity for rational self-control that is possessed by men and thereby exposes women to forms of interference against which men are secure); Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 295 (1994) (comparing domestic violence to torture which is recognized as violative of international standards of respect for human rights and proposing a human rights standard that would place domestic violence on the level of an international violation); Kimberle Williams Crenshaw, *Panel Presentation on Cultural Battery*, 25 U. TOL. L. REV. 891, 893 (1995) (arguing that “violence occurs within a context that varies according to the race, class, and other social characteristics of the woman”); Faulkner & Hsiao, *supra* note 2; Marjory D. Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State*, 3 CORNELL J.L. & PUB. POL’Y 221 (1994) (discussing New York state appellate and trial courts’ process of evaluating evidence of domestic violence in making child custody and visitation determinations, and the efficacy of batterers’ treatment programs); Deborah A. Klis, Comment, *Reforms To Criminal Defense Instructions: New Patterned Jury Instructions Which Account for the Experience of the Battered Woman Who Kills Her Battering Mate*, 24 GOLDEN GATE U. L. REV. 131, 137-39 (1994) (discussing current criminal defenses available to a battered woman who kills her aggressor and proposing reforms to criminal defense instructions to enable a battered woman to assert an effective defense); Nina Martin, *Reasonable Women—A Lawyer and a Lobbyist Fight for a Law To Redefine “Reasonable” When Battered Women Kill*, 14 CAL. LAW. 58, 61 (1994) (describing lobbying efforts to pass a bill that would treat a battered woman as a victim of felony false imprisonment so that her killing her abuser would be “reasonable” and thus, self-defense); Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 233 (1994) (discussing violence against latinas within the latino community and exploring the impact of culture, community, and language as “points of departure for understanding the experiences of latinas”); Miriam H. Ruttenberg, *A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, 2 AM. U. J. GENDER & L. 171, 172 (1994) (arguing that mandatory arrest laws perpetuate racist law enforcement in the domestic violence area); Robert F. Schopp et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 U. ILL. L. REV. 45 (1994) (concluding that the use of “battered woman syndrome” to support a legal defense is misleading and may harm the credibility of women in their claims of self-defense); Merle H. Weiner, *Domestic Violence and the Per Se Standard of Outrage*, 54 MD. L. REV. 183, 189 (1995) (arguing that a per se standard of outrage should be applied to satisfy the “outrageous” requirement for the tort of intentional infliction of emotional distress when a batterer violates an injunction issued for a woman’s protection).

⁵ The first book explores issues of feminist theory and practice in work on battered women and draws on my scholarship on domestic violence. See Elizabeth M. Schneider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 WOMEN’S RTS. L. REP. 149, 153-63 (1978) (advising attorneys representing battered women who have committed homicides after sexual or physical abuse of ways in which to defend the women effectively); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex-Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 635-42 (1980) (arguing that individualization of self-defense law can help to equalize treatment for battered women raising self-defense claims); Elizabeth M. Schneider, *Describing and Changing: Women’s Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN’S RTS. L. REP. 195, 198-200

up with the legal literature on domestic violence, no less the literature in other related fields such as social work and sociology, medicine, and women's studies. Much of this scholarship is visionary in attempting to reconceptualize the traditional legal frameworks for understanding domestic violence.⁶ There are now

(1986) (suggesting that homicide cases in which expert testimony is offered to support a battered woman's self-defense claim "pose a dilemma of how we describe both victimization and agency in women's lives"); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 593-98 (1986) (examining the role of rights in claims for women's equality and reproductive choice and for protection from sexual harassment and battering); Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 974 (1991) (discussing the ways in which legal concepts of noninterference and privacy have tacitly allowed domestic violence to persist); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 520 (1992) (asserting that feminist theory founded exclusively upon particularity analysis is inadequate to capture the full range of women's experience and challenging feminist theory to forge a conceptual link between particularity and generality in order to develop more inclusive feminist theory and more effective feminist practice); Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, 26 NEW ENG. L. REV. 843 (1992) (describing course on "Battered Women and the Law" and other legal educational projects on woman-abuse as opportunities to explore the interrelationship between theory and practice and scholarship and activism).

The casebook on domestic violence, *Cases and Materials for Battered Women and the Law* (Foundation Press, forthcoming 1996), is co-authored with Professor Clare Dalton of Northeastern University Law School. It is based on materials that I developed for the course on "Battered Women and the Law" that I taught at Harvard Law School in 1991 and that Professor Dalton has developed for courses at Northeastern and American University Law Schools from 1990-1995. For a discussion of the Harvard course, see Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, *supra*, at 843.

⁶ See, e.g., Marguerite Angelari, *Hate Crime Statutes: A Promising Tool for Fighting Violence Against Women*, 2 AM U. J. GENDER & L. 107 (1994); Andrea Brenneke, *Civil Rights for Battered Women: Axiomatic and Ignored*, 11 LAW & INEQ. J. 1 (1992); Copelon, *supra* note 5, at 291 (arguing that domestic violence should be considered violative of international standards of respect for human rights); Faulkner & Hsiao, *supra* note 2, at 1 (describing various state antistalking statutes and proposing model legislation to avoid constitutional invalidation); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991) (arguing the "separation assault," i.e. batterers' assault to prevent departure of their spouses, provides a common thread of understanding to cultural and legal paradigms subordinating women); Martha R. Mahoney, *Victimization or Oppression, Women's Lives, Violence and Agency*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE, *supra* note 4, at 59 (exploring the ways in which institutional and societal identification of battered women as either "victims" who stay in abusive relationships or "agents" who leave leads to a limited view of the range of battered women's experiences and a resulting ineffectiveness of the legal system in addressing domestic violence); Isabel Marcus, *Reframing Domestic Violence: Terrorism in the Home*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE, *supra* note 4, at 11 (redefining the concept of "domestic violence" as "terrorism within the home" in order to emphasize the social consequences and resemblance to political terrorism); Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207 (1992) (arguing that extreme domestic battery should be considered involuntary servitude which is prohibited by the Thirteenth Amendment); Elizabeth A. Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act*, 17 HARV. WOMEN'S L.J. 157 (1994) (arguing that acts of gender-based violence should be recognized as hate crimes under the Hate Crimes Statistics Act of 1990, and

courses on domestic violence in a wide range of professional schools, law schools, medical schools, and social work and public health programs.⁷

However, much of the innovative efforts and exciting work that is going on in both the activist and academic worlds is not effectively utilized and developed into policy initiatives because there are few opportunities for activists and academics to meet and work together.⁸ Activist worlds and academic worlds do not intersect nearly as much as they should. Activists do not have the opportunity or luxury to read a symposium like this, and they do not have the resources to attend conferences, since they are trying to save battered women's lives. Although many academics who write about domestic violence also have experience in practice, activists are not able to play a direct role in shaping the academic agenda, in asking the questions for which academics can help provide answers.

There have been enormous obstacles that stand in the way of this work and that seriously limit its effectiveness and outreach. Most significant are resource limitations and serious funding problems that the battered women's movement faces. Although work in this area has been enormously innovative, there has been little government or private funding to support it. Until very recently, there was virtually no governmental support for work on domestic violence at the federal level. The recent passage of the Violence Against Women Act, the establishment of the Office of Domestic Violence in the Department of Justice to monitor the Act, and speeches made by President Clinton, Attorney General Janet Reno, and Secretary of Health and Human Services Donna Shalala, are a start.⁹ But these concerns have not yet been translated into resources for battered women or a broad range of policy initiatives.¹⁰ Nor have states addressed these issues at the highest levels of policymaking.

that certain types of violence against women, such as rape, are inherently gender based); Steven Bennett Weisburd, "On the Basis of Sex": *Recognizing Gender-Based Bias Crimes*, 5 STAN. L. & POL'Y REV. 21, 42-43 (1994) (concluding that legislatures should recognize some form of gender-based bias crime category).

⁷ In March 1994, I served as a consultant on professional education for the American Medical Association National Conference, "Family Violence: Health and Justice" in Washington, D.C. There were educators at this conference from virtually every profession.

⁸ In a report to the Ford Foundation that I wrote in 1990, I argued that this was a major problem in work on battered women. Elizabeth M. Schneider, *Legal Reform Efforts for Battered Women Past, Present and Future* (unpublished manuscript, on file with the *Albany Law Review*); see Elizabeth M. Schneider, *Building Bridges Between Theory and Practice, Activism and Scholarship*, 40 CLEV. ST. L. REV. 493 (1993).

⁹ See *Statements On the Violence Against Women Act*, *supra* note 1.

¹⁰ Although the Violence Against Women Act contains provisions for funding, funding is largely in the area of law enforcement, rather than for prevention or shelters and other

There has been an extraordinary amount of recent public attention in the media focused on issues of domestic violence generally and on specific cases of battered women who have been killed despite outstanding orders of protection, and battered women who have killed their assailants. However, issues of domestic violence are now absorbed into the public consciousness and no longer seem shocking. The O.J. Simpson trial is a good example. This case places the issue of domestic violence squarely in the public domain, and has received more publicity than any trial in recent history. Yet the issue of, and reality of, domestic violence has been entirely lost in the media saturation.

The O.J. Simpson case is an extraordinary opportunity to educate the public as to the link between physical abuse and patterns of coercion, control, and "separation assault", so chillingly familiar to battered women or anyone who has worked with battered women. It also provides the opportunity to explore stereotypes of battering men and battered women in this culture. However, these themes, and many others, have been lost in the media barrage.¹¹ I have elsewhere discussed the deep problems of denial and resistance to integrating insights about domestic violence into both individual behavior and social policy that stand in the way of social change, and the way in which these attitudes are reinforced by traditional concepts of privacy.¹² Thus, despite an increasing amount of publicity and educational programs, domestic violence is absorbed into the public consciousness as a given.

What would it take to make things different, to make domestic violence subject to social sanction, to shift the burden of social response from acceptance, even, at best, painful and resigned acceptance, into affirmative public rejection? A generous interpretation of the reasons for social passivity towards domestic violence is that it is widely viewed as both inevitable and intractable, simultaneously too personal (because it affects intimate relationships) and too deeply

empowering services. Women must already be "in the system" in order to benefit from these funds. For example, the Law Enforcement and Prosecution Grant Program will provide funds to develop and strengthen law enforcement and prosecutorial strategies to combat violent crimes against women, and will develop and strengthen victims' services in cases involving violent crimes against women. See BRIEFING BOOK, *supra* note 1.

¹¹ For discussion of the O.J. Simpson case and the role of the media, see Sheryl McCarthy, *The Role of the Media in Domestic Violence Cases: A Journalist's Perspective*, 58 ALB. L. REV. 1235 (1995); Wendy Rozol, *Fracturing Domesticity: Media, Nationalism, and the Question of Feminist Influence*, 20 SIGNS: A JOURNAL OF WOMEN AND CULTURE 646 (1995). For a discussion of feminism and the media generally, see articles in Forum, *Feminism and the Media*, 20 SIGNS: A JOURNAL OF WOMEN AND CULTURE 642 (1995).

¹² Elizabeth M. Schneider, *The Violence of Privacy*, *supra* note 5, at 974.

political (because it is deeply ingrained in our social structure) to easily change. The slogan of the National Organization for Women's (NOW) April 1995 demonstration in Washington, D.C., protesting violence against women, "The Power to STOP VIOLENCE Against Women Begins With Me," highlights this contradiction between the "private" and "public" dimensions and the dilemma it poses concerning how to accomplish social change.¹³ On the one hand, this slogan is a useful ideological step in that it places the responsibility squarely on individuals to stop violence in their daily lives and seeks to empower individuals to act. On the other hand, it ignores the responsibility of government to declare violence against women a public problem, reinforces the historic link between domestic violence and privacy, and emphasizes individual solutions, individualism, and perhaps inadvertently, individual self-blaming at the expense of collective action. While individuals do have the power to stop violence in individual circumstances and to actively participate in social condonation, government has the power, responsibility, and authority to transform social norms, provide resources and ensure safety. In some sense, this slogan, while emphasizing the importance of individual action, perfectly reflects the privatization solutions for social problems that have characterized the 1990's. Unless we turn this historically private problem into a public problem at every level of government, the process of reconceptualization that has begun will not be realized in prevention, safety, and resources for battered women.

As I have reflected over the years on other examples of social problems where there has been a shift in social norms, two come to mind. The first, drunk driving, is an example of a dramatic transformation in social attitudes, largely led by MADD (Mothers Against Drunk Driving).¹⁴ Now, people routinely discuss the question of who

¹³ NOW estimated the number of demonstrators to be 250,000, making this the largest rally ever held protesting violence against women. Jennifer Gonnerman, *Lights, Camera, Protest*, VILLAGE VOICE (New York, N.Y.), Apr. 18, 1995, at 14.

¹⁴ Drunk driving was not so long ago referred to as "America's 'socially accepted form of murder.'" Mark Starr, *The War Against Drunk Drivers*, NEWSWEEK, Sept. 13, 1982, at 34, 34. After her daughter was killed by a drunk driver in 1980, Candy Lightner founded Mothers Against Drunk Driving (MADD). *Id.* In 1988 then-Surgeon General C. Everett Koop held a Workshop on Drunk Driving and later personally endorsed the National Coalition to Prevent Impaired Driving. *National Coalition Launched To Push General's Proposals*, ALCOHOLISM AND DRUG ABUSE WEEK, Feb. 7, 1990, at 6, 6. In 1990 Students Against Drunk Driving (SADD), a national coalition of students, was formed to include young people in the efforts against drunk driving. *A Sadd Compromise*, BOSTON GLOBE, Apr. 14, 1993, at 12.

Since the inception of these groups, virtually every state has responded to the outcry against drunk driving by enacting legal and policy initiatives such as raising the legal drinking age, increased penalties for drunk drivers and repeat offenders, sobriety checkpoints, social host

will be a "designated driver" and accept the fact that they cannot drink if they are going to drive, and these norms are reflected in greeting cards, public safety campaigns, and highway signs. Similarly, the anti-smoking campaign has had a major impact in shifting public attitudes against smoking, passing laws like New York City's recent ordinances, and creating a public sensibility about the dangers of smoking.¹⁵ While both of these examples involve behaviors that affect health and behaviors that may be less deeply ingrained individually or as part of the larger fabric of society than domestic violence, they are instructive. Perhaps if domestic violence were viewed primarily as an issue of health, both for individuals and for the larger society, change would be more effective.¹⁶ Perhaps there should also be social sanctions that deal with intimate violence more directly—for example, the sanction of taking away a drivers license, notifying an employer, or posting a name in a supermarket or community center if there is a battering conviction or outstanding order of protection. Although each of these seemingly radical ideas pose serious civil liberties problems and present dilemmas for battered women who may still be dependent on battering men, they are suggestive of the kinds of public actions that might be considered if our society wanted to make violence impermissible.

In conclusion, this is a long haul and we have just begun. We need to both affirm our successes and reflect on their limitations. Reconceptualization is an important start, but we must do more, strategize more proactively, and engage government more directly in order to make this process of reconceptualization real for battered women.

liability, and educational and prevention programs. Starr, *supra* at 34. One example of the dramatic social change brought about by this grassroots movement against a "socially accepted" evil, is the fact that within two years of MADD's inception, 27 states had passed tough drunk driving bills, and twenty states had raised the legal drinking age. *Id.* See generally TOM ADAMS, GRASS ROOTS: ORDINARY PEOPLE CHANGING AMERICA (1991); JOSEPH R. GUSFIELD, THE CULTURE OF PUBLIC PROBLEMS; DRINKING-DRIVING AND THE SYMBOLIC ORDER (1981).

¹⁵ Currently, five states, including Maryland, a tobacco growing state, have enacted comprehensive smoking bans. Justin Gillis, *Smoking Ban Puts Maryland at Forefront of National Movement*, WASH. POST, Apr. 4, 1995, at B5. The other four states are California, Utah, Washington, and Vermont. *Id.* Twenty-three other states are considering similar smoking bans. *Id.* The federal government is considering a nationwide workplace smoking ban to be administrated by the Occupational Health and Safety Administration (OSHA). *Id.* Like New York City, many counties and municipalities also ban smoking in the workplace and in public places. Marcia Coyle, *Blowing Smoke*, THE NATIONAL LAW JOURNAL, July 5, 1993, at 11.

¹⁶ Although the link between battering and women's health is widely known, a recent article dramatically highlights the impact of battering on women's health by concluding that battering may be the single most important cause of female suicidality, particularly among black and pregnant women. Evan Stark & Anne Flitcraft, *Killing the Beast Within: Woman Battering and Female Suicidality*, 25 INT'L J. HEALTH SERVICES 43 (1995).