

Title: A Family Lawyer's Guide to Effectively Engaging Cases of Emotionally Abused Muslim Arab Immigrant Women.

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ABSTRACT.

It is critical for lawyers to understand the full cultural and religious contexts of emotionally abused Arab women when assisting in their family law cases. This paper analyzes the intersections of culture, faith, and abuse, and then offers legal and cultural recommendations. The author first gives a background to the unique obstacles/situations faced by emotionally abused Muslim Arab women. The author also identifies several specific types of emotional abuse confronted by Muslim Arab women and how lawyers can effectively recognize them. Lastly, the article provides recommendations to effectively engage abused Arab women. This guide will aid a lawyer in divorce proceeding cases with deference to culture and religion.

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Introduction:

It is critical for lawyers to understand the full cultural and religious contexts of emotionally abused Arab Muslim victims when assisting in family law cases. A 2007 study of Arab community beliefs regarding women found that up to 25% of women believed wife beating is justified in certain circumstances, such as infidelity, insulting the husband, and disobedience¹. Today, practitioners understand that if there is physical abuse, emotional abuse is typically present as well². In addition, because of the negative connotation associated with abuse, Muslim family advocates argue these estimates highly under-represent³ the true incidence of intimate partner violence (IPV). In fact, M. Basheer Ahmed, a psychiatrist, estimates that for every case of reported abuse, almost fifty cases are not reported, and less than two percent of victims actually seek help⁴. Also, Yasmeen Turk, a Muslim domestic violence victim advocate, reported that most victims do not recognize emotional abuse when discussing their plight with counselors⁵.

There are many cultural barriers that compel Arab women to accept spousal abuse. Ostracism of women who report the abuse, the stigma of breaking family honor over their individual welfare, being a divorced woman, and misinterpretations of the Quran, silences many

¹ See generally Wahiba Abu-Ras, *Cultural Belief and Service Utilization by Battered Arab Immigrant Women*, 13 VIOLENCE AGAINST WOMEN 1002-1028 (2007).

² HelpGuide.Org Home Page, http://www.helpguide.org/mental/domestic_violence_abuse_types_signs_causes_effects.htm.

³ Maha ALKHATEEB & SALMA ABUGIDERI, CHANGE FROM WITHIN: DIVERSE PERSPECTIVES ON DOMESTIC VIOLENCE IN MUSLIM COMMUNITIES 70 (2007).

⁴ Nooria Faizi, Comment, *Domestic Violence in Muslim Community*, 10 Tex. J. Women & L. 209 (2001)(citing Interview with M. Basheer Ahmed, Psychiatrist, in Arlington, Tex. (Nov. 17, 2000)).

⁵ Interview with Yasmeen Turk, Domestic Violence Advocate, Texas Council on Family Violence, in Austin, Tex. (Feb.13, 2009).

people to create the illusion that the husband has the right to harm his wife consequently allowing quiet acceptance of the abuse⁶. According to a domestic violence counselor in Virginia, the Arab women who actually seek their services are “close to breaking.”⁷ Even if an Arab woman resorts to counseling, that does not necessarily mean she will opt for a divorce or leave her husband. One counselor in Texas, reported spending at least five years with a client discussing the possibility of leaving her abuser⁸. It is important for lawyers to understand that due to the unique cultural norms of social stigma and religious misinterpretations surrounding Arab women, it is not always possible to seek out a divorce from an abuser. Thus, a lawyer must be prepared to offer Arab women options that reflect cultural and religious understanding and awareness. Because, emotionally abused Arab women may not identify the harm as problematic, it is critical for a lawyer to understand their client’s full cultural and religious background when assisting in family law cases.

This paper is divided into three parts: the first provides a lawyer with substantial background on the obstacles facing Arab women of emotionally abusive relationships. Section two provides a framework for lawyers to effectively recognize instances of emotional abuse when the victim may not, and the third part provides recommendations on how to apply cultural competence in handling the legal matters of emotionally abused victims. The phrase “emotional abuse”, for the purpose of this paper will be defined as isolation, threats, intimidation,

⁶ Alkateeb & Abugideiri, *supra* note 3, at 70.

⁷ Telephone Interview with Salma Abugedir, Domestic Violence Counselor, Co-Director of Peaceful Families Project (Feb. 2, 2009).

⁸ Turk, *supra* note 6.

humiliation, and spiritual abuse⁹. It is important to note that although Arab women include both Christian and Muslim faiths and both share overlapping circumstances, this paper will focus on plight of Muslim Arab women. The larger population of the subgroups are Muslim and an understanding of religious perspective is crucial to effectively handling the divorce proceeding. It is assumed that the lawyer has a background in domestic violence, thus this paper will focus on the specific circumstances of Arab Muslim women's emotional abuse. Although children and immigration issues are crucial to most divorce proceeding cases, they are beyond the scope of this article. The author encourages a family lawyer to research more about these topics and how they interrelate to victims and their situations.

I. OBSTACLES FACING VICTIMS

This part will briefly analyze three general situations and obstacles that emotionally abused women face. Although there are similar trends in the backgrounds facing emotionally abused Arab women, it is important to remember that Arab cultures are highly diverse and American Muslim communities are also diverse in their understanding and reaction to domestic violence¹⁰. Thus, it is critical for lawyers to judge each situation with regard to the particular circumstances surrounding their client.

A. Distrust of American Legal and Social System:

⁹ ALKATEEB & ABUGIDEIRI, *supra* note 3, at 97-98 (explaining the various categories of abuse faced by Muslim women in general, however, this article chooses specific definitions to effectively formulate clear and precise recommendations).

¹⁰ ALKATEEB & ABUGIDEIRI, *supra* note 3, at 19.

It is not uncommon to find a culture of suspicion of the law and legal system among Arabs. A misunderstanding of the purpose of law and the legal system has been perpetuated since 9/11 and has lead many victims to remain isolated, withdrawn, and avoid mainstream society, as well as social and other services¹¹. Victims frequently worry that contacting police or using legal services to deal with an abusive relationship may expose their entire family to harassment, immigration problems, or their husbands will be treated unfairly because of their national origin¹². In addition, IPV victims may find themselves bewildered by the negative aftermath of reporting to the legal authorities as well as backlash from other Muslim community members¹³. Salma Abugideiri, a Domestic Violence Victim's Advocate in Virginia, reports that clients who were unfamiliar with the law were devastated when the abuser was arrested, or to find that they could not drop charges once a police report was filed¹⁴. Other clients, Abugideiri reports, received criticism from religious authorities or family members for using the legal system against the abuser¹⁵. The abuse was overshadowed by what was perceived as the ultimate betrayal of going to the Western legal system¹⁶. It is also important for a lawyer to understand that many Muslims do not believe the Western legal system is suited to understand and solve their particular problems¹⁷. Nooria Faizi argues that many Muslim women will not be open with non-Muslims about their domestic problems because of this misunderstanding or fear of tarnishing the image of Islam¹⁸. A lawyer needs to be vigilant to the view of the legal system

¹¹ Wahiba Abu-Ras, *Cultural Beliefs and Services Utilization by Battered Arab Immigrant Women*, 13 VIOLENCE AGAINST W. 1022 (2007).

¹² *Id.*

¹³ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 106.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Faizi, *supra* note 5, at 219.

¹⁸ *Id.*

that Arab women have, and the cultural situation an Arab woman is in when dealing effectively with her legal fears, such as protective orders or divorce. However, a lawyer must still be cautious not to allow domestic violence to continue, in particular, if it jeopardizes the life or physiological health of the victim.

B. Family Honor & Social Stigma

Family honor and the burden of upholding it are essential elements that affect most emotionally abused Arab women. In a 2003 Arab community study on domestic violence in a Detroit suburb, Sociologist Abu-Ras reported that both female and male Arab attitude toward female behavior is focused on shame and honor¹⁹. In a case study of an honor killing by Palestinians in Israel, Glazer and Abu-Ras, explained a woman can bring dishonor to the family in several ways, including asking for a divorce, challenging men's authority, and criticizing her husband²⁰. The female's sexual purity and subordination to male dominance are essential to family honor²¹. While in many cultures women may use self-blame and justification as a means of rationalizing and coping with violence, in Arab culture women are expected to accept their marital problems²². Two major reasons are given, one, maintaining family unity, and two, avoiding divorce, which is the source of shame and dishonor²³. A 2000 study of Palestinian women in Israel found Arab women seemed to struggle between protecting their children from

¹⁹ Wahiba Abu-Ras, Barriers to Services for Battered Arab Immigrant Women in a Detroit Suburb, 3 So. WORK RES. & EVALUATION 49-66 (2003).

²⁰ Wahiba Abu-Ras & Glazer, *On Aggression, Human Rights, And Hegemonic Discourse: The Case of Murder For Family Honor in Israel*, 30 SEX ROLES 269-285 (1994).

²¹ Id.

²² ABU-RAS, *supra* note 12, at 1003.

²³ Id.

violence and wanting to preserve the family's reputation and honor by being discreet²⁴. In that study, the author notes that Arab culture is group-oriented and it is understood that a woman's need come after that of her children and family of origin²⁵. In addition, Haj-Yahia argues that although an abused woman may receive temporary protection from her family, she will likely lose it if the family believes her husband's argument, especially if it falls along the lines of fulfilling the traditional expectations of a wife or mother. Moreover, the wife is expected to remain loyal to her husband, and refrain from defiling the family's honor, in particular if the family believes the community at large would justify the husband's action and blame the mother for failing to properly educate her daughter on women's responsibilities²⁶. Additionally, a victim is expected to keep the family image of unity²⁷ by staying silent about the abuse. A domestic violence victim's advocate in Austin, Texas, explained to the author that many women are fearful of hurting the family honor, which may adversely affect their younger sisters or other family members' marriage options²⁸. Thus, it is important for lawyers to realize that Arab women will likely demonstrate a need to protect "family honor" even in the face of abuse. A lot of times emotional abuse is regarded as less severe than physical.

C. Misunderstanding the Faith

²⁴Mohammed Haj-Yahia, *Wife Abuse and Battering in the Soci-cultural Context of Arab Society*, 39 *FAMILY PROCESS* 247-248 (2000).

²⁵ *Id.*

²⁶ *Id.* at 249.

²⁷ Adrien Katherine Wing, *Conceptualizing Violence: Present And Future Developments in International Law: Panel III: Sex and Sexuality: Violence and Culture in the New International Order: A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 *ALB. L. REV.* 964 (1997).

²⁸ Turk, *supra* note 6.

1. Determinism, Predestination, and Patience:

Lawyers must understand that religion plays a particularly important role in the lives of Arab Muslim immigrant women and, in general, for Arabs and Muslims alike²⁹. Victims often cite religion as a basis for enduring abuse and refusing to leave the abuser. Typically they have grossly distorted views of “God’s will” in reacting to abusive marriages. Many victims of abuse, as well as their social and sometimes religious communities, believe in two notions: ‘Qada & Qadr’ (Determinism and Predestination) and ‘Sabr’ (patience)³⁰. The basic idea of these philosophies as understood by these women is that God has decreed their marriages to these abusive husbands and a good, pious woman would be patient with the will of God³¹. Many of these women understand that the abuse in the marriage is in direct conflict with the description of marriage in the Quran, but will nonetheless have conflicting emotions regarding what to do³². Women often choose to endure the abuse while focusing on patience, perseverance, and prayer, so that God may intercede³³.

Some victims will wonder if leaving their home and seeking safety is a sin against the will of God consequently resulting in continued suffering after death³⁴. Still other women may question themselves and believe that the abuse is a punishment from God for a past sin³⁵. Unfortunately, sometimes when these women seek guidance from religious leader in their Muslim communities, they may find their distorted misinterpretations of religion are only

²⁹ Personal Experience of author

³⁰ Shaykh Seraj Hendricks-Authority and Abuse of Power in Muslim Marriages, http://www.zawaj.com/articles/marriage_abuse_power.html.

³¹ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 95.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

reinforced. Muslim women are often told to be patient and pray for the abuse to end³⁶. A victim may even find herself victimized again by being blamed for not pleasing her husband well enough or placing herself above that of the family's privacy and unity³⁷. Lawyers must understand these women tend to be religiously conflicted and need to be handled with compassion and without passing religious judgment. It is of utter importance that a lawyer who does not share the same religious or cultural background, not to be seen as insensitive or uninformed of their plight.

2. Batterer's Manipulation of Religion

A lawyer should be prepared to deal with and understand that Arab Muslim abusive men frequently choose to use distorted views of religion as a means for justifying their behavior. The most widely misused Quranic verse in reference to batterers is verse 34, Chapter 4: Al-Nisaa' (The Women) as translated into English by 10th Edition of Abdullah Yusuf Ali's The Meaning of the Quran:

*Husbands are the protectors and maintainers of their (wives), because Allah (God) has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): For Allah is Most High, great (above you all)*³⁸

³⁶ Id. at 81.

³⁷ Kamran Memon, *Wife Abuse in the Muslim Community*, at http://www.zawaj.com/articles/abuse_memon.html.

³⁸ *Al-Nisaa'* 4:34 (The Quran).

This verse is widely used by abusers as a God given right to superiority over women, and the justification to hit their wives³⁹. Although the scope of this article is emotional abuse, if a husband is physically abusing his spouse, he will most likely be emotionally abusing her as well⁴⁰. Thus, a background understanding of this verse is needed to fully rebuff their deceit. In this verse, the highly controversial Arabic word of “*daraba*” is used in the “beat” position. Unfortunately, does not have an English equivalent, and therefore upon translation can be understood many ways. The most common translations of “*daraba*” in verse 4:34 are to “hit” or “strike.”⁴¹ However, the word can also mean: turn a woman out of her marital home, verbally chastise her, travel, set up, to give examples, to take away, to ignore, to condemn, to seal, to draw over, to cover, and to separate⁴². Thus, an understanding of the context and overall principles of the Quran and the examples of the Prophet Mohammed (peace be upon him (pbuh)) should be utilized to be able to give full meaning⁴³.

In looking at specific examples of the Prophet Mohammed’s own marital discord and the steps the prophet took and in addition to the overall framework of the Quran, Abdulhamid Abusulyman a contemporary researcher, concluded that “*daraba*” actually means to temporarily separate from the wife⁴⁴. He explains that temporary separation will give both spouses an opportunity to reflect, while “hitting” and definitely an interpretation of “beating” may only

³⁹ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 71.

⁴⁰ See generally, Diane R. Follingstad et al. , *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J.of Fam.Violence 107-120 (1990) (research concluding 99% of victims experience emotional abuse).

⁴¹ Alkhateeb & Abugieiri, *supra* note 1, at 71

⁴² *Id.* at 71-72.

⁴³ *Id.* at 72.

⁴⁴ ABUDULHAMID ABUSALYAMAN, MARITAL DISCORD: RECAPTURING THE FULL ISLAM SPIRIT OF HUMAN DIGNITY 9 (2003).

escalate the situation⁴⁵ and cause more disharmony. This would be in direct conflict with the mandated principles of harmony and compassion mandated in the Quran. Lawyers need to be prepared that many batterers will openly use this verse in justifying their abuse. An Imam in Virginia explained that batterers have even used verses of the Quran to justify their claims to him⁴⁶. In any instance, the Quran clearly lays out a five-step process to marital discord through verses 4:34 to verse 4:35: (1) the husband and wife talk discuss the issue, (2) to sleep separately, (3) chastise or separation, (4) arbitration with each being represented by their family members, (5) reconciliation or divorce⁴⁷. Each step must be executed and the parties must adhere to the correct order of the steps⁴⁸.

II. RECOGNIZING EMOTIONAL ABUSE

A. Background

This part is primarily to give a family law attorney an understanding and framework for specific types of emotional abuse that Arab Immigrant women may face and how to recognize the emotional abuse when the victim may not. As a general note, various cultures define abuse in accordance to the norms of that society, thus generalization of what constitutes emotional abuse maybe inappropriate⁴⁹. However, domestic violence is a universal phenomena occurring in all societies, classes, and ethnicities⁵⁰. A key difference is not the underlying dynamics of

⁴⁵ *Id.*

⁴⁶ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 193.

⁴⁷ *Id.* at 54.

⁴⁸ *Id.*

⁴⁹ *Id.* at 105.

⁵⁰ *Id.* at 92.

power and control itself, as the methods abusers use to gain power and control and coerce their victims⁵¹.

Understanding and recognizing the methods of abuse is important for several reasons. First, understanding the cultural norms of the society will help facilitate trust and bonding between the lawyer and the client. Second, such knowledge may help the lawyer understand why the client wants to take some legal options and not others, such as a fault-based divorce, but not any community property. Third, not only does the lawyer need to understand various cultural and religious practices to competently represent these victims, but some steps may put the victim at greater harm. As will be discussed in later parts of the article, Arab women are susceptible to physical violence from their own family members, that may go as far as honor killings if found to have shamed the family.

B. Physical Ailments

Since Arab victims are socialized to accept the abuse and not seek help, many will complain of physical ailments instead. Thus, a lawyer should inquire into the physical health of victims when discussing their marital life. Counselor Patricia Evans, in The Verbally Abusive Relationship, explains victims have used various forms of physical ailments to describe their emotional pain⁵². These ailments can vary from unusual dreams, feeling exhausted and overwhelmed by their lives, back aches, constant illnesses, exhaustion when waking up in the

⁵¹ Dena Hassounah-Phillips, *American Muslim Women's Experiences of Leaving Abusive Relationships*, 22 HEALTH CARE FOR W.INT'L 426 (2001).

⁵² Patricia Evans, *The Verbally Abusive Relationship, How to Recognize it and How to Respond* 77 (Adams Medi Corporation (2nd ed. 2003)).

morning, body aches, and headaches⁵³. Physical ailments are usually readily recognized and discussed by Arab women as it is not shameful to discuss their physical health. Subsequently, if an Arab woman who should be in prime health discusses unusual health problems, a lawyer should start to inquire about abuse.

C. Facilitating Infidelity Rumors

Given the high importance of family honor and social stigma, an abuser can readily distort the reputation of his spouse with unsubstantiated infidelity rumors. Such rumors and accusations are particularly important for a woman to be completely clear of to receive support from her family and social community, and thus can be emotionally devastating⁵⁴. One victim who sought a divorce from an abusive man found herself at a loss of family support:

My mother is saying things. She thinks that I found someone. She thinks the reason why I divorced my husband is because I was getting married to somebody else. And so, she calls me a slut⁵⁵.

This is a tool in inflicting emotional abuse, it can become very dangerous to the woman's safety, given the custom of honor killings.⁵⁶ It should be noted, Arab immigrants in the United States have practiced honor killings⁵⁷, although it is a very rare occurrence. Facilitating infidelity rumors is frequently used against women to compel them to accept lifestyles they

⁵³ *Id.* at 77-78.

⁵⁴ Hassouneh-Phillips, *supra* note 48, at 426.

⁵⁵ *Id.* at 425.

⁵⁶ ABU-RAS & GLAZER, *supra* note 21.

⁵⁷ Peter King, Arab Immigrants: A Clash of Cultures-Girl is Slain, L.A. Times, Oct. 14, 1985, at Sec.1.

would otherwise not choose, such as, polygamy⁵⁸. For example, one victim reported that after having six children and complying with all of her husband's requests, he took a second wife. Her husband refused to divorce her and warned her that if she pursued a divorce or complained to anyone he would tell people that he suspected her of having an affair. The woman complied with his demands and stayed in the marriage with traumatizing emotional effects⁵⁹. The abuse can also be a tool at the beginning of the marriage as a method of employing dominance over the wife. The author of this paper recalls a victim explaining that after her first physical relations with her husband on their wedding night, he proceeded to call his family in front of her, and confirm that she had bled, thus proving her virginity⁶⁰. The victim was completely oblivious to the dominance her husband was trying to wield against her.

A lawyer must approach this situation cautiously, due to the sensitive subject matter and understandable suspicion by Arab women of "Western" social systems. Lawyers should try to first create a bond of trust with victims before asking questions to identify this type of abuse. The lawyer can attempt to identify the abuse, using simple, innocent questions, such as "*Has he threatened to ruin your reputation in your community or with your family?*" Sometimes the threats of sexual infidelity will be openly made toward the victim, other times the victims may not realize the impact of abuse. Given their beliefs about their obligation of sexual purity, some of these women may not find anything wrong with the batterer's actions towards them. Such as the victim whose husband openly called his family. By keeping open lines of communication and assuring secrecy, a victim may feel empowered to share stories that although she may not recognize as abuse, she would understand are threats or flat out lies targeted at her reputation.

⁵⁸ SALMA ABUGIDEIRI, CLINICAL IMPLICATIONS OF DOMESTIC VIOLENCE AMONG ARAB AMERICANS (forthcoming 2009).

⁵⁹ *Id.*

⁶⁰ Author personal experience and conversation with Immigrant Palestinian Woman.

D. Spiritual Abuse

Spiritual abuse is exceptionally difficult for most Arab victims to recognize and defend against. A lack of proper religious guidance and having been socialized to patriarchal systems help facilitate this type of abuse. Therapist Patricia Evans, explains that abusers often assert power over their victims by disguising themselves as God⁶¹. They may explain to their victims that it is “God’s will” that in some cases some people (implied women) must be subjected to the will of other people (implied men)⁶². Sometimes a whole community may be indoctrinated with this belief, and women will come to believe that “God’s will” is her husband’s will⁶³. These women typically respond to the spiritual abuse by allowing the oppressor dictate to her how she should live her life, but not giving their oppressor direction on theirs⁶⁴. Spiritual abuse is used often by abusive Muslim men.⁶⁵ In most abusive homes, the husband socializes his wife and even children to believe that whatever he wants the family to do is what God wants⁶⁶. This type of abuse can take many forms, including but not limited to, extreme religious judgment, out loud ridicule under the guise of wanting the wife to be a better Muslim, or that he is a “a religious Muslim” and has the God-given authority to control his wife⁶⁷. A survivor describes her ordeal:

He started to make comments about my closest friends not being religious enough. He did not want me talking or mixing with any men. In fact he would tell me that a man always had a reason to talk to a woman, but never vice versa. I

⁶¹ EVANS, *supra* note 49, at 207.

⁶² *Id.*

⁶³ *Id.* at 208.

⁶⁴ *Id.*

⁶⁵ MEMON, *supra* note 38.

⁶⁶ *Id.*

⁶⁷ *See generally* ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 171

could not wear certain colors, like red, or anything that he considered showy...If I went against his wishes, he would call me ma'seeya (the one who disobeys God)... His verbal comments hit my most vulnerable feelings inside; because his comments were geared towards how I practiced my faith...If I was religious enough, he could then accept me. Anything less was simply registered as "not a good Muslim" in his eyes, and therefore unacceptable. He did not try to search within himself to question his actions, or believe that he needed to. As far as he was concerned, there was no acceptable reason as to why I could feel pain...⁶⁸

These women typically do not understand their proper religious roles as wives and a lawyer may find his/herself in a situation where an abuser is using religion to justify the abuse to the victim. The victim may in turn use the rationale to justify the abuse to the lawyer. Batterer's commonly justify their abuse with a well known, but highly misunderstood hadith (a hadith is a saying or teaching of the Prophet Mohammed(pbuh), it can hold Islamic precedent if proven authentic) that says, "If I were to ask someone to bow down to another human being, I would order wives to bow down to their husbands.⁶⁹" Several scholars have questioned this hadith's transmission and authenticity⁷⁰. The hadith was reportedly recited after a companion of the Prophet (pbuh) insisted on bowing to the Prophet (pbuh) when he returned from traveling in which he saw others bowing to their priests⁷¹. The Prophet (pbuh) reportedly refused to allow anyone to bow down to him because of the clear teachings that prohibit anyone from bowing down to another, except God⁷². The altered version of the hadith has become common usage among Arabs⁷³, and abusers have used it to perpetuate the idea that women are almost Islamically subservient to their husbands. Thus, it is not unlikely for a lawyer to find an Arab

⁶⁸ Id. at 178.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Author's experiences (having been told altered hadith on several occasions).

woman engaged in a conversation that she is unhappy with her marriage, but that her abuser is a “righteous” man, her compliance with his orders are equal to that of God, and her dilemma is at least partially her own making. When a lawyer comes across such quotes and/or victims using religion as a justification for their abuse, they may call Sheikh Osama Bahloul at Islamic Center of South Texas.

E. Humiliation:

1. Humiliation Perpetrated By Husband:

In Arab culture a husband’s humiliating remarks in front of others is particularly abusive. These can include, but not limited to, cursing them and calling them derogatory remarks, forcing the wife to apologize to her mother-in-law for the sole purpose of appeasing the latter, ridiculing the wife’s family, and joking or talking about the sexual relations with his wife⁷⁴. The abuse stems from the cultural values of women being respected by their children as mothers; the wife’s position to be honored by her husband’s relatives; and that sexual relations in a marriage are highly personal and must remain confidential at all costs⁷⁵.

2. Humiliation Perpetrated by Extended Family:

It is also worth mentioning that Arab women, are frequently abused by extended family members, in particular mothers-in-law⁷⁶. Haj-Yahia reports about 26% of reported abuse was perpetuated by mothers-in-law and in some cases a husband’s siblings⁷⁷. This type of abuse may

⁷⁴ Haj-Yahia, *supra* note 24, at 243-244.

⁷⁵ *Id.* at 244.

⁷⁶ *Id.* at 244-245.

⁷⁷ *Id.*

be physical, emotional, and/or slanderous against the wife⁷⁸. One woman explained her neighbor's abuse by her mother-in-law in this way:

One of my neighbors lives with her husband and his mother. I often hear the mother-in-law shouting, cursing, and humiliating her...When she visited me once, I asked her about those rumors, but she denied them. Afterward, however, she told me terrible things about the way her mother-in-law treats her. She mentioned that almost every day the mother-in-law reports to her son about her behavior, distorts things, and even encourages him to beat her. She mentioned that their marital relationship is largely influenced by what his mother tells him⁷⁹.

When a lawyer discusses the marital problems with his client, s/he should be keen to ask about who is living with her or how often the victim's or abuser's family visits. Attorney's should not hesitate to inquire about the husband's treatment towards his wife in front of his or her family and friends. If the victim complains about incidents of abuse, the lawyer should inquire as to who is around when the husband makes derogatory remarks. However, if the abuse is perpetuated by an extended family member a separate personal injury suit may be in order. One way to recognize the abuse and help the client recognize the abuse is to ask her to make a journal of every time the abuser says something she feels hurt by⁸⁰. When verbal abuse is "going public" it is usually a sign of escalation and/or impending physical abuse⁸¹. However, a lawyer should proceed with caution, as the abuser may find the journal and escalate the abuse. If possible keeping the journal in place other than the home or an MP3 player may work better.

F. Isolation:

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ EVANS, *supra* note 49, at 71.

⁸¹ ID. at 72.

Isolation as a type of abuse is quite harmful to immigrant Arab women. Although isolation is usually part of abuse, its effects on Arab immigrant women may be exacerbated⁸². These women typically do not have family present and isolation from their social network may result in complete isolation⁸³. An abuser may allow only limited or no contact with the outside social network, cut off communication with the victim's family and friends overseas, and/or keep them at home to prevent them from making new friends within their communities⁸⁴. Since it is common for battered Arab women to seek support from their families, at least temporarily⁸⁵ or symbolically, an immigrant is naturally deprived of this support. However, in a study of 22 mosques in New York, 96% of worshippers perceived imams (Islamic scholars at Mosques) as counselors⁸⁶. The researchers found that 49% of those worshippers sought counseling for anxiety, 44% for emotional issues, and 30% for depression problems⁸⁷. Although, most imams lack proper training in domestic violence, many victims identify faith as critical in helping achieve emotional health⁸⁸. This type of healing and emotional support is robbed from victims who are isolated from their Muslim or social networks.

In addition to segregation from social networks, the isolation may take other forms. The abuser may deny the victim a chance to become educated, even at the most basic level, like

⁸² ALKHATEEB & ABUGEDIRI, *supra* note 8, at 83.

⁸³ Personal experience of author, as having grown up in a predominately Arab Immigrant society in South Texas.

⁸⁴ <http://www.aardvarc.org/dv/immigration.shtml>

⁸⁵ HAJ-YAHIA, *supra* note 24, at 240.

⁸⁶ Wahiba Abu-Ras et al., *The Imam's Role in Mental Health Promotion: A Study at 22 Mosques in New York City's Muslim Community* 3 J.OF MUSLIM MENTAL HEALTH 155-176 (2008).

⁸⁷ *Id.*

⁸⁸ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at III.

learning English⁸⁹. This type of isolation would make it easier for the abuser to keep the victim dependent on him and unable to learn about options in seeking help⁹⁰.

There are several ways lawyers may recognize this abuse. There may be overt signs, like prohibiting a woman from driving. A counselor in Austin, Texas explained that an abuser will frequently not allow a wife to get her driver's license and justify it by labeling that as "being American."⁹¹ Effectively resulting in significantly restricting her mobility and raising her dependence on him. Another tactic is to use spiritual abuse as a means of inflicting isolation. One victim describes her husband as telling her that she is not to leave or she would be "disobeying him."⁹² This can be particularly harmful since Arab women are socialized to believe disobeying the husband is sinful or a justification for abuse. Educationally, many Arab women are socialized to believe they are only entitled to an education if their husband approves⁹³. Thus, a lawyer may guide a victim through a host of questions such as; whether or not the victim ever sought an education after getting married or when she came to the United States. If she answers in the negative, simply ask why not. The key is to keep the lines of communication open, clear, and non-judgmental.

III. CULTURAL AND LEGAL RECOMMENDATIONS

A. Background

⁸⁹ TURK, *supra* note 6.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 179.

⁹³ Personal experience based on many conversations with various Arab Immigrant women.

In effectively dealing with emotionally abused Arab Muslim immigrant women a family lawyer must have deference to the client's culture and religion. Certain cultural considerations can help family lawyers build trust and bonding with victims.

In Islamic law, with regards to dividing a marital estate, one will find quite a difference from the normative standards in American law, thus family law attorneys need to understand the difference and effectively utilize both systems to formulate a just division for the parties. Because this section will focus on Texas laws, lawyers in other states should take the variations of their states into consideration. This section also focuses on dissolution of marriage, however, other steps such as counseling and legal separation should be assessed.

B. Cultural Recommendations:

1. Eye Contact & Shaking Hands:

For some conservative Muslims contact between genders is uncomfortable and lack of it should be interpreted by the lawyer as a sign of respect and modesty⁹⁴. It is in this author's experience that male lawyers should refrain from holding prolonged periods of eye contact with women, as a sign of mutual respect and modesty⁹⁵. Lawyers should always ask before shaking hands with Muslim women⁹⁶. Conservative Muslim women may refrain from shaking hands with males out of modesty⁹⁷.

2. Gender Issues:

⁹⁴ Zainab Alwani & Salma Abugideiri, *What Islam Says About Domestic Violence: A Guide for Helping Muslim Families* 50 (2003).

⁹⁵ Personal Experience having grown up in an Arab Immigrant community.

⁹⁶ Alwani & Abugideiri, *supra* note 91, at 50.

⁹⁷ *Id.*

If possible, victims should deal directly with lawyers of the same gender. This is particularly important when asking questions referring to sexuality⁹⁸. Conservative Muslims do not interact as casually with the opposite sex as is common in American society⁹⁹. Thus, the same gender will be more likely to create a kind of relaxing atmosphere needed to facilitate open and candid discussion.

3. Sharing Personal Information:

It is often helpful if the lawyer shares a little personal information with a Muslim victim to reduce suspicion and facilitate a relationship with the victim¹⁰⁰. Basic information, such as, children, religion, and past experiences with other Muslims should be adequate¹⁰¹. Sharing stories of other Arab Muslim women who have overcome domestic violence, successfully coped with social stigma, and facilitated healthier environments for their children can be encouraging and motivational to victims¹⁰².

4. Expect Time to Build Rapport and Trust:

Lawyers should expect that abused Muslim women may need more time than their American counterparts to contemplate and decide what to do¹⁰³. These women are unfamiliar with the role lawyers play, and they may be suspicious and distrustful that the lawyer is biased towards divorce in the beginning¹⁰⁴. Typically these women will also feel guilt and uncertain

⁹⁸ Id. at 51.

⁹⁹ Id.

¹⁰⁰ Id. at 50.

¹⁰¹ Id.

¹⁰² Id. at 49.

¹⁰³ Id. at 48.

¹⁰⁴ Id.

about reaching out to lawyers and deciding on a divorce¹⁰⁵. Also, lawyers should expect that victim nodding and offering verbal agreement is not always a sign of intended compliance with recommendations¹⁰⁶. In many Middle East cultures it is impolite and disrespectful to disagree with an authority figure¹⁰⁷.

5. Explain the Legal System:

Lawyers should take the time to clearly explain, without the use of legal jargon, their roles and how the legal system operates¹⁰⁸. This is particularly important if there is physical as well as emotional abuse. Often, these women know they can call 911 in an emergency situation, but are unaware that the abuser will be arrested or criminal charges may be brought without their consent¹⁰⁹. Also, explaining the various aspects of family law, including the children's issues, can be key to women leaving the relationship. Typically, these women come from countries where child custody will be given to the father, thus forcing women to stay in abusive relationships so as not to part from their children¹¹⁰. Nonetheless, lawyers should also explain that although they may be given physical custody of the children, fathers might still have some aspect of custody management to the children. This type of role splitting in children's lives is not typically found in the Middle East.

6. Explain the Cycle of Violence and Impact on Children:

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id. at 49.

¹⁰⁹ Id.

¹¹⁰ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 60.

It is not uncommon for Muslim women to confuse the Islamic concept of forgiveness with accountability and even tolerance for the abuse¹¹¹. A lawyer should explain the basic dimensions of power and control and emphasize that abuse escalates without proper counseling interventions¹¹². Arab immigrant women typically come from countries where arbitration in marital problems are usually done by family members and elders. Sometimes these women wrongly perceive that reaching out to well-respected members in their communities as mediators will surely succeed. Thus, a lawyer should explain that for domestic violence abuse to stop counseling needs to be facilitated by those properly trained in domestic violence¹¹³. This can be particularly important if there is physical violence as well, since abusers may escalate the violence after the interventions¹¹⁴.

Often these women will wrongly believe that it is more important for children to live with both parents, than a healthy single-parent home¹¹⁵. Thus, explaining the long term psychological effects on children living in emotionally abusive homes can often help women choose to leave the relationship¹¹⁶. Domestic violence counselors have found this to be particularly useful in persuading Arab victims to leave¹¹⁷.

7. Helping Victims Reach Out To Proper Services:

¹¹¹ ALWANI & ABUGIDEIRI, *supra* note 91, at 49.

¹¹² *Id.*

¹¹³ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 81 (citing YVONNE Haddad & Adair Lummis, Islamic Values in the United States 24-30 (1984)).

¹¹⁴ Eve S. Buzawa & Carl G. Buzawa, *Do Arrests and Restraining Orders Work?* 1-2 (1996)

¹¹⁵ ALWANI & ABUGIDEIRI, *supra* note 91, at 49.

¹¹⁶ *Id.*

¹¹⁷ TURK, *supra* note 6.

Since battered Muslim women may be confronted with social stigma, religious confusion, and even pressure to not leave the abusive relationship, it is important for the lawyer to help the victim find proper counseling. It is this author's opinion that lawyers should be responsive, but understand that counseling may be more useful and more easily accepted by the victim if it comes from a third source, such as counselors and therapists. This will also help the victim realize the lawyer's correct observation of abuse and reduce the suspicion of being biased toward divorce. The lawyer should find individuals or counseling centers that focus on faith/spirituality, personal accountability, concept of forgiveness, and protection of the family¹¹⁸. Muslim and/or Arab practitioners are preferable. This author does not recommend sending the victim to Imams or mosques unless the lawyer is certain about their domestic violence training. Unfortunately, even with physical violence, Imams may sincerely, but wrongly advise women to place family privacy above harm or to be patient and pray for the abuse to end¹¹⁹. Additionally, since Imams typically lack training in domestic violence, they may try to speak with the abuser on the abuse, thus jeopardizing the safety of the woman further.

Although the author encourages lawyers to seek out counselors in their community, there are several counseling centers throughout the country:

- ISTABA Family Support and Resource Center
7326 Sligh Avenue
Tampa, Fl 33610
Phone: 813.663.0140
Email: istabafsrc05@verizon.net

¹¹⁸ ALAWANI & ABUGIDEIRI, *supra* note 91, at 50-51.

¹¹⁹ MEMON, *supra* note 38.

Website: www.i-family-resources.net

- Bitul Hemayah

20-24 Branford Place, Suite 702

Newark, New Jersey 07102

Phone: 973.242.1922

Email: info@baitulhemayah.or

Website: www.baitulhemayah.or

- Sista2Sista

Philadelphia, PA

Email: sistas@sista2sista.org

C. Legal Recommendations:

1. Islamic Marital Law Background:

Lawyers may find that many women readily adapt to a pure American marital law system, however, some conservative victims may feel more comfortable adhering to some combination of Islamic and American law. Thus, a brief background in Islamic marital law is important.

Islamic marital rules has been established by Muslim jurists over the 1400 years of Islamic history¹²⁰. These rules are a combination of societal norms, jurists experiences, jurists interpretations of the laws set out in the Quran, and various interpretations of rulings issued by

¹²⁰ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 203.

the jurists predecessors¹²¹. These rules are merely precedent, as very few rules are set out in Quran¹²². Some jurists have created schools of thought, and currently there are five: Hanafi, Hanbali, Shafi', Maliki, and Ja'fari¹²³. Most Muslim countries today use some interpretation of Islamic schools of thought while combining their own law systems, traditions, and customs¹²⁴.

Under Islamic law, the parties maintain their identity as well as some form of independence¹²⁵. For example, the wife retains her name and financial independence¹²⁶. She retains her right to conduct her business transactions and other affairs without the interference of her husband¹²⁷. Husbands and wives are expected to consult with each other regarding the upbringing of their children¹²⁸. Additionally, a wife is under no Islamic obligation to perform housework and is still entitled to full financial support by her husband¹²⁹.

Like marriage, divorce in Islam has many religious aspects to it¹³⁰. First and foremost, it is disliked, but permitted¹³¹. A famous quote of the Prophet states that divorce is "the most disliked permissible act."¹³² Divorce has two dimensions, the right of the spouse and the right of God¹³³. If a spouse decides to divorce, a judge may not force him or her to stay within the

¹²¹ Id.

¹²² Id. at 203-205.

¹²³ Id.

¹²⁴ Id.

¹²⁵ JOHN WITTE, JR. & ELIZA ELLISON, COVENANT MARRIAGE IN COMPARATIVE PERSPECTIVE 199 (2005).

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id. at 201.

¹³¹ Id. at 203

¹³² Id.

¹³³ Id. at 201.

marriage¹³⁴. Thus, even where courts accurately conclude that a unilateral divorce by the husband is arbitrary and oppressive towards the wife, the court can only attempt to provide equity through adjusting the final terms of the divorce settlement but not prohibit the divorce; it is the right of the spouse¹³⁵. However, one of the fundamental concepts of marriage in Islam is based on the divine justice and balance¹³⁶. This is among the reasons why marriage in Islam is based on tranquility and harmony¹³⁷. Discord in a marriage would disturb the balance, and oppressive divorces would only further the violation of divine justice¹³⁸.

Islam is a separate property system without the concept of marital property¹³⁹. Thus, under Islamic law whoever holds the title to an object is the owner of that property and, this concept carries into marriage¹⁴⁰. For example, the conclusion of inheritance or personal income of the wife never carries into the husband's control or expectation as partially his¹⁴¹. However, again, the husband is obligated to fully support his wife, regardless if she works or not¹⁴². Sometimes in a divorce preceding it can become difficult for a couple to determine who owns the title to property, and it becomes a question for a jurist to determine¹⁴³.

For the purpose of this paper, three general methods to obtain a divorce under Islamic law will be discussed. The author encourages lawyers who deal with Arab and/or Muslim clients regularly to study the process further for competent representation.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Id. at 203.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 205-206.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Id.

2. Islamic Divorce Background:

1. *Talaq* (Arabic word for repudiation of marriage)- Under this method, the husband says the word *taliq* to his wife at which starts a three menstrual month waiting period to determine if a wife is pregnant and to allow a reconciliation period¹⁴⁴. If the wife is determined to be pregnant the divorce is not finalized until after the baby's birth¹⁴⁵. If the parties reconcile, this process is allowed only twice with a third finalizing the marriage¹⁴⁶. To remarry would require the wife to enter into a bona fide marriage with another and that marriage somehow ends¹⁴⁷.

2. *Khul'* (Arabic word for divestiture)- Under this method the wife initiates the divorce with her husband¹⁴⁸. Because of the patriarchal system this, like many women's rights, is typically misunderstood. This type of divorce comes from the Hadith, where a woman went to Prophet Mohammed (pbuh) and asked him to divorce her from her husband¹⁴⁹. She informed the Prophet (pbuh) clearly that her husband had no defect, either moral or religious, but she simply could not stand him¹⁵⁰. She stated she feared that staying in the marriage would cause her to violate God's laws¹⁵¹. The Prophet (pbuh) asked her if she would be willing to return the dowry (and only that)¹⁵². She agreed, and the Prophet (pbuh) without the husband's consent, instructed him to divorce her¹⁵³. However, despite the clear chain of events, patriarchal jurists interpreted this form of divorce as requiring the consent of the husband and for centuries women could not

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Witte & Ellision, *supra* note 121, at 201.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ Id. at 202.

divorce at will¹⁵⁴. In addition, many oppressive men require large sums of money in exchange for their consent¹⁵⁵. This is despite the clear meaning of the Quran that marriage should be based on tranquility or peaceful divorce¹⁵⁶. It is also note worthy to mention that this wife forsaked her dowry, but was not in any way abused by her husband. Thus, lawyers should be keen not allow an abused client to understand her request for the divorce requires her to forsake or return her dowry, since it is not consistent with either the hadith or the justice demanded by the Quran. Thus, if a lawyer finds an abuser using this hadith, they should watch for and note spiritual abuse.

3. Judge Determined: This method can be initiated by either party before a Muslim judge¹⁵⁷. The judge listens to both sides, determines the rights and responsibilities of both parties, and then issues a divorce¹⁵⁸. The determination of rights and responsibilities should be based on equity.

Although Islamic law is a strict separate property system with the husband responsible for full support during the marriage, there are three general financial provisions for the wife in the case of divorce¹⁵⁹. First, the dowry must be paid if it was not at the beginning of the marriage, with some jurists increasing the dowry if a long time has passed¹⁶⁰. Secondly, the husband is required to financially support the wife during the 3 menstrual month period or if determined that she is pregnant the entire length of pregnancy, including pregnancy costs¹⁶¹. The support should be

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ Telephone Interview with Shekih Osama Bahouli, Religious Scholar and PhD Candidate in Islamic Studies (Mar. 9th, 2009).

¹⁶⁰ Id.

¹⁶¹ Id.

enough to allow the wife to live the same as to husband's financial level¹⁶². Thirdly, the husband is required to pay the wife a lump sum or payments for a specified period of time¹⁶³. The guiding principle in determining the amount and the length of time gives the wife enough time to steady her financial position¹⁶⁴. This is typically given for one year, but there are not any time limitations¹⁶⁵. Again, the amount of money would depend on the husband's financial position¹⁶⁶. It also noteworthy to reiterate that child support is fully the responsibility of the father of the child, and the wife is entitled to a custodial fee from the husband for taking care of them¹⁶⁷. If a victim decides to forsake her community property estates, she should be fully compensated in every regard that Islam enumerates to her. A lawyer should be vigilant to obtain all of the victim's rights under the Islamic system if she decided to relinquish her American community estate.

Although the dowry and three menstrual month cycle or pregnancy are fixed times and amounts, the attorney should try to reach a substantial settlement through the third provision of payment. Since Arab Muslim immigrants are not in their traditional homeland or may not have proper language or educational skills, a lawyer should try to mediate a payment or length of payments longer than the normative standard of one year. Lastly, because of social stigma, family honor, and the victimization of emotional abuse a lengthy divorce trial is not recommended and mediation should be the target.

2. Legal Separation

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ ALKHATEEB & ABUGIDEIRI, *supra* note 3, at 208.

Although the focus of this paper is Texas Law which does not recognize legal separation, this may be very useful to attorneys in other states to Arab Muslim immigrant women. Legal separation or limited divorce will allow the couple to stay legally married, but live separately, determine child custody, child support, property division, and alimony¹⁶⁸. Currently, every state except, Delaware, Florida, Georgia, Mississippi, Pennsylvania, and Texas adheres to some kind of legal separation¹⁶⁹. This may be particularly helpful to Arab Muslim immigrants, since it will free the victim from emotional abuse, while saving the “family honor” from divorce and may reduce pressure on the victim to stay in the abusive relationship. This may also help the victim to adjust to a new lifestyle which may eventually lead into divorce or with proper counseling for the batter reconciliation between the parties.

3. Intentional Infliction of Emotional Distress:

Remedies under Intentional Infliction of Emotional Distress (IIED) should be sought after in applicable circumstances. To recover under IIED four elements must be present.

1. The defendant acted intentionally or recklessly.
2. The conduct was extreme and outrageous.
3. the actions caused the plaintiff emotional distress.
4. The resulting emotional distress was severe¹⁷⁰.

¹⁶⁸Robert Oliphant & Nancy Ver Steegh, *Examples and Explanations: Family Law 65* (2nd ed. 2007).

¹⁶⁹ Women’s Divorce, Legal Separation, <http://www.womansdivorce.com/separation.html>.

¹⁷⁰ Restatement (Second) of Torts § 46 (1965).

In the Texas Supreme Court case of *Tyman v. Tyman*, the court found that a spouse could recover for IIED in a divorce proceeding provided the emotional distress was not addressed in the distribution of assets and under the principles of *res judicata*¹⁷¹. Additionally, the court pointed out that in Texas recovery for personal injury of a spouse, including pain and suffering, is the separate property of that spouse. This is critical for conservative Muslims who may wrongly believe that they are deriving their justice from community estate.

Applied to Arab Muslim immigrant women, a lawyer would need to assess each case on the particular facts and merits. It is particularly important for a lawyer to stress to a jury the effects that such conduct, such as threatening a fidelity rumor and humiliating her in front of others, has on this particular woman as part of this particular culture. In the everyday American culture, it may not be regarded as “extreme and outrageous”, but in Arab culture where women may be honor killed or feel their respect as a mother has been threatened by a scolding in front of their children, this conduct may more easily rise to that level.

The third element of IIED is whether a causal nexus exists between the defendant’s conduct and the emotional distress¹⁷². In the *Garza* case, the appellate court found that despite *Garza* having been diagnosed with Crohn’s disease and the emotional trauma from being sick, there was a basis in the jury’s finding that a causal nexus existed between the defendant’s actions and the victim’s distress¹⁷³. In particular they point out the testimony of two neighbors and her

¹⁷¹ *Tyman v. Tyman*, 855 S.W. 2d 625 (Tx. 1993).

¹⁷² RESTATEMENT, *supra* note 172.

¹⁷³ *Garza v. Hernandez*, No. 1397853, slip op. at 10 (13th Dist. Ct. App. Apr. 15 1999).

doctor, and that she started to undergo treatment for depression after she was subjected to the defendant's conduct¹⁷⁴.

Since Arab Muslim immigrant women typically do not seek counseling until they are "close to breaking," and have family honor, and social stigma to worry about, it is more likely that the emotional distress is a key contributor to their inquiry into legal options. It would be particularly helpful to give victims psychological tests, and ask if others can verify their testimony of emotional abuse, such as a mental health counselor. Most likely the tests will help establish the victim has been emotionally abused. These can become key elements in establishing a nexus between the batterer's conduct and the emotional distress.

In addition to the above recommendations that victims who complain of physical symptoms, such as stomach and sleeping disorders, should be screened for emotional abuse, a lawyer should screen for post-traumatic stress disorder (PTSD). Given that the Texas Supreme Court affirmed severe emotional distress in a case of PTSD, this can be particularly helpful. Having a traditional sex role orientation, attributions of self-blame for victimization, and experiencing other family stressors and negative life events are factors that increase adverse reactions such as post-traumatic stress disorder in domestic violence cases¹⁷⁵.

4. Continuing Tort

Another viable option for lawyers whose client's cases may not justify IIED is a continuing tort. A continuing tort is injurious conduct that persists over a specific period of time,

¹⁷⁵ Follingstad, D.R.et.al., Factors Moderating Physical and Psychological Symptoms of Battered Women 6 J. OF FAMILY VIOLENCE. 81-95 (1991).

with each day constituting a separate cause of action¹⁷⁶. Continuing tort doctrine prevents the defendant from asserting a statute of limitations defense, and the court bases its remedy on the cumulative effect of all the harmful conduct, not simply a single incident or small cluster of events, like IIED¹⁷⁷. Additionally, unlike a usual personal injury case, the cause of action continues and does not accrue until the tortious conduct stops¹⁷⁸.

If a lawyer determines that an Arab victim may not be able to obtain justice through IIED, showing a chain of emotional abuse accumulated into severe abuse should also be considered. If the lawyer has established PTSD or emotional abuse through psychological testing and/or counseling a showing of a pattern of harmful conduct is easily accomplished. The lawyer may also find it easier to persuade a court how small incidents of abuse, such as threats of infidelity and humiliation in front of others, have established a pattern of harmful conduct targeted toward these women. In turn, this pattern of abuse has caused severe emotional distress.

5. Fault-Divorce

A fault-based divorce alleging cruelty is recommended for some of these victims. Under Texas Family Code section 6.002, a divorce may be granted in favor of one spouse on the fault ground that the other spouse's cruel treatment of the complaining spouse was of such a nature that it rendered further living together insupportable¹⁷⁹. Insupportable means unendurable,

¹⁷⁶ Sarah Buel, Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders, 83 OR.L.REV. 1016 (2004) (explaining *Twyman v. Twyman*, 790 S.W.2d 819 has given this cause of action precedence).

¹⁷⁷ *Id.* at 1017.

¹⁷⁸ *Id.* (citing C.J.S. Limitations of Actions § 177, at 231 (2004)).

¹⁷⁹ TEX. FAM.CODE PLUS §6.002 (O'Connors 2008 & Supp. 2008-2009).

insufferable, intolerable, and incapable of being borne¹⁸⁰. Cruel treatment requires willful and persistent infliction of unnecessary suffering¹⁸¹. Cruel treatment is a relative term, and each case must be determined on its own facts¹⁸². The suffering may be mental or physical and may consist of a single act or many different acts or combinations of misconduct, including acts occurring after separation¹⁸³.

This type of divorce, although not common, maybe particularly useful in some circumstances with emotionally abused Arab Muslim immigrant women. First, an official court ruling that the breakup was the husband's fault may help some victims find support from their communities and family. Second, it will emphasize to the victim that the breakup was not their fault and, this may be very therapeutic for some victims to hear. A lawyer should be careful to only use this type of divorce if she does not believe the wife will be subjected to harassment for openly discussing family affairs or going to legal authority to resolve her problems. However, if after fully discussing the option with the client and the client opts to go forward, the lawyer should adhere to the wishes of the client.

IV. Conclusion:

The purpose of this paper was to introduce family law attorneys to the intersection of culture, faith, and abuse for emotionally abused Arab Muslim women living in the United States. Emotionally abused Arab Muslim immigrant women face a number of obstacles, ranging from family honor to misinterpretations of religious texts, in dealing with their abusers. Because Arab

¹⁸⁰ Henry v. Henry, 48 S.W.3D 468, 473 (App. Ct. 2001).

¹⁸¹ Id. at 474.

¹⁸² Mobley v. Mobley, 263 S.W. 2d 794, 794-795 (App. Ct. 1953).

¹⁸³ Id.

Muslim immigrant emotionally abused victims may not identify their victimization, it is critical for lawyers to understand the client's full cultural context in order to effectively represent them. Although the scope of this paper did not allow for child and immigration issues to be discussed, a lawyer should take the initiative to understand the unique cultural and religious aspects of these issues when dealing with Arab Muslim immigrant women.