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## Panel on Intersections of Gender, Economic, Racial, and Indigenous (In) Justice (Transcript)

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## TRANSCRIPT<sup>°</sup>

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER  
VIOLENCE SYMPOSIUM:

### Panel on Intersections of Gender, Economic, Racial, and Indigenous (In) Justice

UNIVERSITY OF MIAMI SCHOOL OF LAW

*James Ptacek (moderator)<sup>\*†</sup>*

*Margaret Johnson*

*Nicole Matthews*

*Hillary Potter<sup>†</sup>*

**MATTHEWS:** Hello everyone, my name is Nicole Matthews. I am Ojibwe from the White Earth Reservation in Northern Minnesota. I come to this work not as an academic but as an activist, as a woman who has both experienced violence and seen violence in my home, who has many female relatives who have experienced violence. I also come from a grandfather who survived boarding school. I bring all of this to who I am and to why I do this work. I never wanted to do research; I never wanted to do public speaking; and, now I do a lot of talks about the research that

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<sup>°</sup> This transcript has been edited from its original transcription for clarity.

<sup>\*</sup> Margaret E. Johnson is an Associate Professor at the University of Baltimore School of Law. She is the Co-Director of the Center on Applied Feminism and Director of the Bronfein Family Law Clinic. Nicole Matthews works with the Minnesota Indian Women's Sexual Assault Coalition. Hillary Potter is an Associate Professor of Sociology at the University of Colorado, Boulder. Her research focuses on the intersection of race, gender, sexuality, and class as they relate to crime and violence. Jim Ptacek is a Professor of Sociology at Suffolk University and also serves as the Director of the Master's Program in Crime and Justice Studies.

<sup>†</sup> Original remarks from the CONVERGE! conference omitted.

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we did on trafficking. So, you just never know where life is going to bring you.

I am going to talk a little bit about our research<sup>1</sup> and then a little bit about our experience and the status of Native American women today and where all of that has brought us—the impact of colonization for tribal people, and what that means when we are talking about how Native American women have, suffered the highest rates of violent victimization.<sup>2</sup> Just last week, I was at a trafficking conference with a Minneapolis law enforcement officer who does work on trafficking with youth. He told me that, in Minneapolis, where I live, 85% of his victims are Native Americans, yet Native Americans comprise less than 5% of the total population there. So, when you look at the numbers, Native people are disproportionately being used and exploited.

When we did the research it was because we wanted to know how we could help and we wanted to know what was happening to our sisters in the community. We wanted to hear their voices. We wanted them to tell their/our story, what they needed, what kind of *justice* they needed, and what would help them escape prostitution and trafficking. This is why I get excited about sharing this information. For me, it is all about the women's voices informing the work that we do on the ground.

I want to start by talking about the sheer invisibility of Native American women on so many different levels—whether in academia, advocacy, or the criminal justice response. So much of our focus in the last ten years has been on enhancing the criminal justice response to the victimization of Native American women simply because we have none. I struggle with the call to *decrease* this response when there really is not much of one to begin with.

In the reservation that I am from, several years ago, and it has not improved much since the relationships between the County and the State and the Tribe were so strained that women would call 911 and *nobody responded* because everybody would argue over who had jurisdiction. In addition, you add on a layer of colonization that has broken up our families, broken up our communities, and we often just do not have the same level of community support that we once had. Many abused and exploited Native American women are left with no response from their community when they need it most. What do we do to address that?

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<sup>1</sup> Nicole Matthews et al., *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, 2011, [http://www.prostitutionresearch.com/pdfs/Garden\\_of\\_Truth\\_Final\\_Project\\_WEB.pdf](http://www.prostitutionresearch.com/pdfs/Garden_of_Truth_Final_Project_WEB.pdf).

<sup>2</sup> See generally *The Facts on Violence Against American Indian/Alaskan Native Women*, FUTURES WITHOUT VIOLENCE, <https://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf> (last visited May 21, 2015).

I was very happy to go to Val Kalei Kanuha's workshop yesterday<sup>3</sup> and hear about not equality but balance, because I talk so much about balance and restoring balance in our communities. To me, it is not about men and women as equals, but about how we each have our different roles and how we are in balance and in sync with one another. We look at and talk a lot about what that means in tribal communities. What does it mean that for many years we were stripped of our spirituality and were unable to practice fundamental inherent right to practice our own spirituality? For so many years, our practice of our spirituality was kept underground, or simply not practiced at all. Generations of our community, of our relatives, were denied this right—it was beaten out of them. They were taught: you do not get to talk your language; you do not get to practice your culture; you do not get to have your own spirituality. What does that do to a person? What does it do to your life when you do not have a simple belief that you can hold onto that tells you that when you wake up in the morning, things are going to be okay?; that you have that sense of belonging and community?

The experience of boarding schools in our community impacted our parenting, because we learned from our parents what our roles were in our families. We often talk about walking in two worlds—walking with our Native sisters and our Native communities in one world, but also having to walk in a White world that does not always see or value us. When they do see us, there are a lot of stereotypes at play about who we are. We are seen as mascots, drunks. People ask me all the time, “Isn't the violence so high in your community because your alcoholism rate is so high?” “Isn't violence just a part of your culture?” In fact, our cultural beliefs really *upheld* women and children as sacred and many of our tribes were matriarchal. Now, however, due to the impact of colonization, much of our culture is patriarchal.

I want to briefly mention the role of blood quantum and the stripping of our land and our resources. Blood quantum was a federal policy put into place, in essence, to wipe us out and to strip us from our land and our resources.<sup>4</sup> It was a sort of a made up notion, and we have since divided ourselves based on the notion of blood quantum. I am happy to say that there are more and more tribes now getting away from that notion and having enrollment based on descent and not who has

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<sup>3</sup> Sarah Deer et al., *Panel on Colonization, Culture, and Resistance*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 325 (2015).

<sup>4</sup> For more information regarding Blood quantum, see ONEIDA TRUST AND ENROLLMENT COMMITTEE, *What is Blood Quantum?* [https://oneida-nsn.gov/uploaded/Files/wwwroot/Government/Boards\\_Committees\\_Commission/Elected/Trust\\_Enrollment\\_Committee/June.27.BloodQuantum.pdf?AspxAutoDetectCookieSupport=1](https://oneida-nsn.gov/uploaded/Files/wwwroot/Government/Boards_Committees_Commission/Elected/Trust_Enrollment_Committee/June.27.BloodQuantum.pdf?AspxAutoDetectCookieSupport=1) (last visited May 22, 2015).

more blood. If you look at the federal policy, the government wanted our resources and our land so they told us if you are this much percentage of a certain bloodline, then you can have this much land. For African Americans, it was the “one drop” rule because the government wanted to keep people in slavery.<sup>5</sup>

Federal policies have clearly impacted our community in dividing us and keeping us in government-controlled systems. For example, we now have “reservations”—really crappy pieces of land that the government put us on, that are finally now realizing some actual property value, due to their valuable natural resources. The problem is, our resources are now being exploited yet again which has led to an astronomical increase in trafficking, violence against women, exploitation, economic, and environmental violence in our communities. We are working very closely with tribes in North Dakota on how they are addressing trafficking and how we can learn from each other what we have heard from the women in our research.

I want to talk a little bit about what we learned from the women. One of the women told us that some of the things the men said to her and some of her experiences were so difficult that she did not want to say them out loud. One of the women talked about how one “sex buyer” wanted her to play Pocahontas and he wanted to play John Smith. What do we know about Pocahontas? One could argue that she was our first victim of trafficking because she was taken from her land to another foreign land, and she was nothing like what the Disney character looks like in the movie “Pocahontas.” She was actually a very young child, and not at all sexualized and curvy as Disney would have you believe. Another woman talked about a “John” saying to her, “I thought we killed all of you.” There is violence in that statement, in that notion of the invisibility of our culture—Indians are just extinct, we are absent. Even in history books, we are talked about as if we exist only in the past.

I have been struggling with and thinking a lot about tribal strategies and justice—what justice in this context even means. Years ago, some of our tribal strategies were around banishment. In essence, if you banished a person from his or her tribal community, it was almost a death sentence because our communities were so reliant on each other for survival. What does that mean today, however, when someone can go from one tribal community to the next or come down to the “urban area”? Most of us no longer live on tribal lands. So, how can we restore balance to our community in light of this? What are our new cultural strategies? How

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<sup>5</sup> For more information regarding the “one drop rule,” see F. James Davis, *Who is Black? One Nation’s Definition*, PBS FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html>.

do we make old strategies relevant today? We work with youth and talk about coming-of-age ceremonies, but for some of our youth, these ceremonies seem pretty irrelevant today. How do we make them relevant again?

For my tribe, one of the coming-of-age ceremonies for young women when they first go through their cycle is a one-year fasting. There are certain things you cannot eat; you cannot step over babies; you cannot swim. You have a feast, and you have women, your elders, come in to give you teachings about the respect of giving life, the respect that you have of carrying that gift, and being a woman. For many of our girls who do not live in our tribal communities, who could not care less about berries and deer meat and fish, they could not care less if they have to give up that ritual. Maybe they are not near a lake, so not being able to swim does not mean anything to them. So we talk about what is possibly equal to that? What can you give up instead? Some girls said they will give up their iPods for a year, or they will not eat french fries for a year. What are the relevant teachings today to still have these important coming-of-age traditions in place?

For our young boys, it is about their first kill, and how they use that skill to feed their community. Well, all of our boys are not hunters anymore; they are in the city. So, maybe it is buying some groceries and bringing them to an elder in their community that should happen. What should these parallel teachings look like? How do we make our cultural traditions and practices relevant for our communities today, in order to restore the community balance we once had?

I strongly believe that we can come up with community strategies. I know we have had a rich discussion about community and the fact that our communities are not really intact right now, so community strategy is what we do to actually restore balance to our community. But, I strongly believe that, for tribal communities, these strategies need to be rooted in our cultural traditions and our long-standing cultural beliefs. Thank you.

**JOHNSON:** This presentation<sup>6</sup> envisions what a better domestic violence legal system might look like for persons subjected to domestic abuse who have not had their needs met or who have been harmed by the current legal system. The paper reframes the focus of the civil legal system from a paradigm of safety into a paradigm of security, including economic, housing, health, and relationship security. This reframing permits a focus on the domestic violence legal system and its intersecting systems of oppression such as race, gender, class, and ethnicity.

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<sup>6</sup> This presentation is based on the following article: Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145 (2015).

Currently, the domestic violence legal system targets short-term physical safety of the person subjected to abuse. This safety is accomplished through physical separation of the person who was subjected to abuse from the person who committed the abuse. For instance, this targeting exists in the mandatory criminal justice system's response to domestic violence with mandatory arrest and no drop prosecution policies and with the remedies available in the civil protection order, such as the stay away, no contact and ejection from the home provisions. The goals of the domestic violence civil legal and funding policies should be to decrease domestic violence and to help persons subjected to abuse lead satisfied lives. To achieve this shift, we need to reframe the domestic violence policy and legal system from solely safety to security. The safety paradigm replicates the problematic victim/agent paradigm. The construction of safety reinforces our gender and other stereotypes of people and creates a worthy victim/worthy agent paradigm. This construction of safety is problematic because it undermines the agency of the person subjected to abuse; it undermines that person's ability to make her own choices. It constructs the person subjected to abuse as living in a world of dangers and havens. The dangers are identified and removed by persons external to the person experiencing the abuse. Because the danger is constructed by others, it does not address the full experience of the person who is subjected to abuse—how she is viewing her experience of the abuse and her life. For instance, domestic violence is the leading cause of family homelessness. One wonders whether homelessness sometimes results from others forcing the separation of the person being abused from the person who caused the abuse without exploring the existence of housing alternatives. Also, the havens designated by others are not necessarily havens that the person subjected to abuse believes she needs. Even if the person wanted to be safe, the havens are not necessarily based on what she thinks would make her safe and therefore those havens do not necessarily effectuate even the very limited, problematic goal of short-term safety. Ignoring her identification of havens is problematic given the research that women subjected to intimate partner violence are the best predictors of the risk of future assault and separation assault.<sup>7</sup>

Additionally, it is problematic that society does not permit women subjected to abuse to reject safety as a goal when it is in conflict with their other important goals. The paradigm of safety is also problematic because it prioritizes the criminal justice system response to domestic violence. The largest percentage of anti-domestic violence policy public

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<sup>7</sup> Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 558–60 (2010).

funding is funneled to the criminal justice system. For instance, under VAWA, \$189 million were allocated to STOP grants furthering the criminal justice response and only \$25 million were allocated to transitional housing units.<sup>8</sup> Such money could be more effective if shifted to security programs. Another reason the paradigm of safety is problematic is because it requires that the partner of the person who has been subjected to abuse be deemed unsafe. The partner is always the danger, thereby blocking the continuation of a relationship even when the person subjected to abuse wants to continue it.

As an alternative to the safety paradigm, I propose a security paradigm that could more effectively decrease intimate partner violence and increase life satisfaction for persons subjected to abuse. Cybersecurity experts state that our national computer network will never be safe from hackers and instead, we should aim to create a network that is secure, resilient and able to withstand and recover from breaches of security.<sup>9</sup> Similarly, our legal system and funding schemes addressing domestic violence could benefit from focusing on supporting resiliency for those persons subjected to abuse—security—rather than safety.

There are four reasons why security is a more helpful goal than safety. First, security can permit persons subjected to abuse to be an agent—someone who can identify the goals she has regarding the abuse and make informed decisions of how best to achieve the goals rather than having outsiders define the dangers and havens for her. The research shows that when women subjected to abuse are able to be connected to their community, to control their physical environment by leasing or owning their own home, or to build assets, violence can decrease.<sup>10</sup> And when persons subjected to abuse make their own informed decisions around physical separation or what is safe, they are more satisfied with their lives and, therefore, less at risk of physical violence.<sup>11</sup> When we shift the frame to security from safety, we permit the goals of persons subjected to abuse to drive what options exist. And when we see these

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<sup>8</sup> FY 2013 APPROPRIATIONS BRIEFING BOOK (Campaign for Funding to End Domestic Violence and Sexual Assault) at 6, 8, [http://nnev.org/downloads/Policy/FY\\_13\\_Briefing\\_Book.pdf](http://nnev.org/downloads/Policy/FY_13_Briefing_Book.pdf).

<sup>9</sup> P.W. SINGER AND ALLAN FRIEDMAN, CYBER SECURITY AND CYBERWAR: WHAT EVERYONE NEEDS TO KNOW 36 (2014).

<sup>10</sup> Kameri Christy-McMullin, *An Evidenced-Based Approach to a Theoretical Understanding of the Relationship Between Economic Resources, Race/Ethnicity, and Woman Abuse*, 3 J. Evidence-Based Soc. Work 1, 23–25 (2006).

<sup>11</sup> Angela Moe Wan, *Battered Women in the Restraining Order Process: Observations in a Court Advocacy Program*, 6 VIOLENCE AGAINST WOMEN 606, 611 (2000); Sherri Lawson Clark, et al., *Housing Dependence and Intimate Relationships in the Lives of Low-Income Puerto Rican Mothers*, 32 J. FAMILY ISSUES, 369, 385 (2010).



goals come into focus, we are seeing complex and multiple goals driven by a person's whole life experience.

The second reason security is a more helpful frame is because it provides the opportunity to see domestic violence as a systemic operation of power that intersects with other systemic operations of power such as poverty and racial injustice, and we can focus on varied actions taken by the persons subjected to abuse as opposed to those just taken on behalf of them by others. With a safety paradigm, police will make mandatory arrests, prosecutors will prosecute, and there will be criminal justice system interventions even if unwanted by the person subjected to abuse. In a security paradigm, the person subjected to abuse may choose to have the person committing the abuse arrested or not, prosecuted or not. In addition, economic security comes into sharper focus in a security paradigm and we can identify additional areas for legal reform. For example, there is a need to block coerced debt from affecting the credit scores of women who are subjected to abuse.<sup>12</sup> Every jurisdiction should pass unemployment insurance provisions, as we did in Maryland that define domestic violence as good cause for leaving employment, thereby permitting unemployment insurance benefits. Every state and the federal government should pass a living wage bill. Communities should increase micro-lending programs to help build the assets of women subjected to abuse. States and Congress should pass legislation to provide guaranteed leave from work and anti-discrimination housing and employment laws for persons subjected to abuse. In addition, communities should employ empowerment career counseling to help persons subjected to abuse seek good employment.<sup>13</sup> States should amend their civil protection order laws to provide monetary damages if they do not already provide this remedy beyond child or spousal support.

Third, the security paradigm focuses on the need to build strong community networks and support for the dignity of persons subjected to abuse. Dignity is important because it is linked to greater satisfaction and happiness in the lives of persons subjected to abuse.<sup>14</sup> Focusing on strong community networks helps to build social capital, "social relationships

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<sup>12</sup> Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 390–408 (2013).

<sup>13</sup> Krista M. Chronister & Ellen Harley McWhirter, *Applying Social Cognitive Career Theory to the Empowerment of Battered Women*, 81 J. COUNSELING & DEV. 418, 422 (2003).

<sup>14</sup> Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U. L. REV. 1, 16–17 (2014).

based on trust that have value or can be used productively,”<sup>15</sup> which in turn enhances security.

Finally, a security focus permits us to look at the overall well-being of persons subjected to abuse. Such a focus is consistent with Mary Ann Dutton and Lisa Goodman’s coercive control research, which identified nine areas of coercive control—personal activities and appearance, support social life family, household, work economic resources, health, intimate relationship, legal, immigration, and children.<sup>16</sup> A security paradigm, unlike a safety paradigm, is able to address all of these areas and therefore can address the experience of persons who are subjected to abuse.

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<sup>15</sup> JO ANNE SCHNEIDER, *SOCIAL CAPITAL AND WELFARE REFORM: ORGANIZATIONS, CONGREGATIONS, COMMUNITIES* 9 (2006).

<sup>16</sup> Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 *SEX ROLES* 743, 747 (2005).