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UNIVERSITY OF MIAMI RACE & SOCIAL JUSTICE LAW REVIEW

Volume 5 Issue 2

Summer 2015

2014 – 2015

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Symposium Issue

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**UNIVERSITY OF MIAMI RACE & SOCIAL
JUSTICE
LAW REVIEW**

Volume 5, Issue 2

Summer 2015

2014-2015

**CONVERGE! REIMAGINING THE MOVEMENT TO END
GENDER VIOLENCE**

Symposium Issue

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Introduction: CONVERGE! Reimagining the Movement to End Gender Violence

Donna Coker, Leigh Goodmark, & Marcia Olivo^{*†}

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I. THE VISION OF CONVERGE!

In February 2014, more than 200 academics, activists, survivors, students, and service providers convened in Miami. They came in response to a call to reimagine the work to end gender violence:

We seek to refocus United States priorities in funding, activism, legal responses, and social services in ways that better address the intersecting inequalities that create and maintain gender violence.

^{*} Donna Coker was the initial catalyst for the CONVERGE! conference. Leigh Goodmark and Marcia Olivo soon joined her as co-chairs for the conference. Our efforts were aided by the support and thoughtful analysis of an ad hoc group that evolved into an Advisory Board: Caroline Bettinger-López, Julie Goldscheid, Mimi Kim, Anne Menard, Kelly Miller, Leta Pittman, James Ptacek, Maria Rodriguez, Deborah Weissman. For a complete list of our many supporters, see UNIVERSITY OF MIAMI RACE & SOCIAL JUSTICE LAW REVIEW, *Volume 5: Issue 2*, <http://race-and-social-justice-review.law.miami.edu/> (follow “Acknowledgements” hyperlink).

[†] Donna Coker contributed the following article: Donna Coker & Ahjane D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of The Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585 (2015). Leigh Goodmark contributed the following article: Leigh Goodmark, *CONVERGEing Around the Study of Gender Violence: The Gender Violence Clinic at the University of Maryland Carey School of Law*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 661 (2015). Marcia Olivo participated in the following panel: Marcia Olivo et al., *Panel on New Possibilities for Reframing Work to End Gender Based Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 521 (2015).

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The call was informed by our experiences with gender violence on both the national and local fronts. Women and girls face significant barriers to participating in the democratic process, controlling their lives and bodies, and governing their communities and families. These barriers are created and reinforced by the intersecting factors of race, gender, power, and privilege. Domestic violence, systemic violence, sexual assault, the state's taking custody of low-income (disproportionately African American and Native American) children, attacks on reproductive health and rights, detention and deportation, lack of labor protection for domestic workers, and continued income inequality stand in the way of women, particularly women of color, seeking to determine their futures. CONVERGE! was intended to bring together all of those strands of gender violence work, both in Florida and nationally, to broaden and deepen our understanding of and responses to gender violence.

II. REIMAGINING GENDER VIOLENCE

We wanted to highlight the connections between what is often described as “gender violence” or “violence against women”—interpersonal violence, particularly intimate partner violence and sexual assault—and the structural inequalities of colonization, sexism, heterosexism, racism, anti-immigrant bias, and economic injustice. Building on the groundbreaking work of INCITE!,¹ we wanted to expand the traditional interpersonal violence frame to encompass *state* violence directed at women—violence that is embodied in racist, homophobic, classist, and anti-immigrant policies and practices, whether in prisons, on the streets, at the borders, in the workplace, or in homes.

Highlighting those intersections makes apparent the state policies that foster and maintain interpersonal violence. Highlighting those intersections brings into view women whose “experience[s] of male violence are inconsistent with the oversimplified classifications”² that

¹ See *About INCITE!*, INCITE!, <http://www.incite-national.org/page/about-incite> (last visited Jan. 31, 2015) (“INCITE! Women, Gender Non-Conforming, and Trans people of Color Against Violence is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue and grassroots organizing.”).

² BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 101 (2012). As Richie elaborated in her keynote address, “our movement subscribes to a very narrow understanding of who is entitled to protection, to services, resources, grants, etc. The more you fit in, the more pro-marriage you are, the more heterosexual you are, the more American you are, the more legal you can prove yourself to be, the more *temporarily* poor you can prove yourself to be, the fewer felony convictions you have, the more you are going to be entitled to the attention, resources,

mark the dominant ways of thinking about violence against women. Highlighting those intersections makes visible women who face *both* increased risks of intimate partner violence and control and increased risk of state violence and control.³

We wanted to expand the frame in another direction as well: to reimagine the meaning of *gender* violence to include violence that is a tool to police and define the boundaries of masculinities and enforce gender normativity, bringing into view homophobic and anti-trans violence in prisons, on the streets, and in homes.⁴

We met to share our experiences across boundaries of activism and research: organizing campaigns with domestic workers, sex workers, and farm workers; mobilizing to stop police harassment of LGBT youth; advocating for immigrant rights; calling for prison abolition; establishing international human rights norms in domestic settings; exposing and demanding accountability for campus sexual assault; training and encouraging men to oppose violence against women; and working on behalf of those subjected to domestic violence/intimate partner violence and sexual assault. All of these efforts are central to the work of reimagining the movement to end gender violence; conversely, gender violence should be part of the agenda for every progressive movement.

III. MIGRATION, LANGUAGE JUSTICE AND GENDER VIOLENCE

Creating a space where advocates, activists, academics, service providers and survivors all felt empowered to share their ideas was essential to the success of CONVERGE!. Our commitment to ensuring that such a space existed was informed by the geographic context for our conversations—the multicultural, multilingual city of Miami, which serves as a microcosm for understanding the relationship between migration, language justice, and gender violence.

Migration is largely the result of global neoliberal policies. These policies have resulted in the removal of people from agricultural rural

and support of this movement.” Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015) [hereinafter *Keynote*].

³ See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFFALO CRIM. L. REV. 801 (2001); Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1478 (2012).

⁴ See JOEY L. MOGUL, ANDREA J. RITCHIE, & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2011); Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51 (2013).

land and produced increased poverty in urban areas. Without import protections or social welfare policies, life becomes impossible for those affected. People are then forced to flee to the United States for economic survival.⁵ This dynamic is dramatically changing the racial, cultural, and political makeup of the United States. The 2010 U.S. Census Bureau's American Community Survey (ACS) estimated the number of immigrants in the United States to be close to 40 million, 13% of the total population.⁶ Of those 40 million people, 38.3 million foreign born have limited English proficiency, and 50.2% are female.⁷

This massive influx of people has a tremendous impact on the culture, traditions, history, moral values, and the overall functioning of both the United States and the countries from which people are coming. In the United States context, new immigrants are largely segregated by low wages, poor housing, and the lack of services.⁸ Their immigration status is criminalized. They are denied citizenship and basic democratic rights. Immigrant women suffer significant rates of domestic violence, sexual harassment, and sexual assault at home and in the workplace.

Immigrants, particularly immigrant women, are having a tremendous impact on American politics, policy, democracy and the economy. At the core of this impact is language. In almost every major urban center, there is not only a new multi-cultural reality, but also a new multi-lingual reality. America must learn how to be a multi-lingual society. Embracing a multi-lingual reality makes for more than an expanded skill set; it fundamentally opens the culture to the possibility of true diversity. This is not just a question of inclusion and interpretation. Practices that both elevate the voices of immigrants and also create space for the entire

⁵ See Vincent Q. Pham, *The NAFTA Flu: How Neoliberalism Impacted and Impacts Mexico*, INJECTING RACIST HYSTERIA 6, <http://scalar.usc.edu/works/injecting-racist-hysteria-how-media-coverage-of-the-2009-h1n1-swine-flu-virus-raises-questions-about-border-security-nafta-and-mexican-representation-in-us-culture-/the-nafta-flu-how-neoliberalism-impacted-and-impacts-mexico> (last visited Mar. 15, 2015) ("The increased migration of the Mexican people to the United States is derived from the impact of Mexico's neoliberal reform under President Carlos Salinas de Gortari, who adapted this model of development advocated for by the United States.").

⁶ ELIZABETH M. GRIECO ET AL., AMERICAN COMMUNITY SURVEY REPORTS, THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2010 (2012), <http://www.census.gov/prod/2012pubs/acs-19.pdf>.

⁷ *Id.*

⁸ See Paul A. Jargowsky, *Immigrants and Neighborhoods of Concentrated Poverty: Assimilation or Stagnation?* (Nat'l Poverty Ctr., Working Paper Series #06-44, 2006), available at http://www.npc.umich.edu/publications/u/working_paper06-44.pdf (discussing high concentration of poverty in immigrant communities); Jennifer Y. Seo, *Justice Not For All: Challenges To Obtaining Equal Access To Health Care for Non-Citizen Immigrants in the United States*, 3 GEO. J. L. & MOD. CRITICAL RACE PERSP. 143 (2011) (discussing the difficulties non-citizen immigrants face in receiving healthcare).

nation to learn outside the traditional English language and American cultural paradigm will lead to the cultural and political transformations that we envision.

Language is a symbol of social and cultural identity, a form of representation. Languages have a deep connection to the thoughts, emotions, strengths, weaknesses, dreams, visions, and culture of a people. Like the rest of society, social justice movements must re-evaluate their social, racial, economic, and gender analysis and practice through the lens of migration. Social justice work has to be done in the language and culture of the people being organized. It requires meetings that are simultaneously interpreted. It requires an approach to embracing learning and interaction from a multi-lingual reality. Analysis, conferences, demands, and strategies must be developed incorporating the experiences, values, traditions, and culture of the people directly impacted by oppressive structures, and the most immediate vehicle for achieving this is through the language of those people.

The inclusion and the practice of accessibility through language justice is what made CONVERGE! special. CONVERGE! was truly bilingual, with a strong voice of monolingual Spanish speakers, undocumented women survivors of domestic violence and sexual assault, and domestic workers. The playing field was leveled: monolingual Spanish speakers used translation equipment when English was spoken; monolingual English speakers, in turn, put their headphones on as panelists discussed their ideas and experiences in their own language. CONVERGE! helped to raise the visibility of the new demographic reality of the United States and highlighted the need to incorporate language access in all the work we do for social justice, as a way of respecting people's identity, humanity, integrity, and elevating language access as a form of gender justice.

IV. CHALLENGES TO THE CRIME-CENTERED MODEL

Beth Richie's keynote, *Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*,⁹ was the catalyst, the instigator, for many discussions that followed. Calling for a politics of prison abolition, Richie argued that "prison abolition represents a chance to think about [reframing] the work to end gender violence . . . as work against the patriarchal carceral state, and the architecture of racism and related forms of oppression upon which that patriarchal carceral state is built."¹⁰

⁹ Keynote, *supra* note 2.

¹⁰ *Id.* at 262.

Many of the conference speakers agreed with Richie's challenge to the crime-centered approach to domestic violence that characterizes the United States' response. Most of the federal dollars allocated to intimate partner violence are used for criminal intervention—to train and assist police, prosecutors, and courts.¹¹ An alternative vision would focus funding on long term affordable housing, job creation, childcare, and education; enacting and enforcing meaningful anti-racial discrimination measures in housing, education, and employment; disinvesting in the instruments of mass incarceration; and providing justice in ways that build and strengthen communities, rather than contributing to their decline.

In addition, the last several years have seen a renewed desire among anti-violence advocates to test innovative strategies and community capacity building that are *not* focused on criminal intervention or are focused on a *reimagined* criminal justice response. These alternatives include transformative justice initiatives, restorative justice programs, community organizing strategies, and human rights initiatives. Practitioners and theoreticians of these alternatives shared their ideas and experiences at CONVERGE!.

We envisioned CONVERGE! as not only an opportunity to share criticisms and develop coalitions across social justice claims, but fundamentally as a way to strengthen a broader-based “reimagined” movement to end gender violence. In the aftermath of the conference, we hoped to strengthen and broaden the difficult work of re-focusing our energy and resources to change the structural inequalities and the state policies that create and strengthen gender violence. Fundamental to that change is to replace the criminal justice system as the default response to gender violence. What we did not anticipate was how far ahead of us the participants at CONVERGE! would be. Many of those in attendance had already come to the conclusion that the criminal justice response to domestic violence is not only failing to provide satisfying solutions for many people subjected to abuse, but that it is affirmatively harming those it is meant to protect. Several representatives of community based organizations explained that they no longer used the standard, “If you are in immediate danger, call 911” on their answering machines, knowing that interactions between their clients and law enforcement could be more dangerous than the immediate threat posed by an abusive partner. In Beth Richie's indictment of the criminal justice response to gender violence, participants heard their own frustrations with the results of

¹¹ Caroline Bettinger-López et al., *VAWA Is Not Enough: Academics Speak Out About VAWA*, POVERTY LAW BLOG (Feb. 29, 2012), <https://maximinlaw.wordpress.com/2012/02/29/of-note-vawa-is-not-enough-academics-speak-out-about-vawa/>.

forty years of failed policy on criminal justice and gender violence and their own concerns about the dangers that the criminal justice system posed for both men and women of color, for low income men and women, for immigrant men and women, for LGBT men and women.

V. GOING FORWARD

The unique balance of participants and presenters at CONVERGE! contributed to the willingness to have difficult conversations about the future of gender violence work. We sought diversity in every possible way: race, gender, sexual orientation and gender identity, immigration status, professional role, socioeconomic status, and experiences with intimate partner and other forms of gendered abuse. Local Miami-Dade activists were involved in the planning and execution of the conference and saw the conference as an opportunity to re-energize and cement their base, while connecting more strongly with national work. Members of Miami Workers Center Sisterhood of Survivors, directed by conference co-chair Marcia Olivo, played a central role. CONVERGE! connected with the national FREE MARISSA NOW! campaign, which originated in Florida,¹² and with other local activists and funders.

That diversity in perspectives gave our conversations a richness, depth, and honesty that few of us had ever experienced at a conference on these issues. Over the course of the two days of the conference, the participants at CONVERGE! pushed to consider the really difficult questions: If we believe that immigration policies and policies that create mass incarceration and police violence should be understood as “gender violence,” how do we answer Richie’s call to make those central to the work of organizations focused on stopping gender violence? If we believe that the criminal justice response is flawed, then how can we create and implement different ways of handling gender violence cases when the criminal justice system is so firmly entrenched? What are the practical obstacles and possibilities for transformative justice, restorative justice? If we believe that federal funding sources are too focused on crime-centered responses, how do we move the federal agenda? And how do we address the fears that many have that changing focus will mean losing ground?

This desire to move to the difficult questions left us both elated and frustrated. We wished that there had been more space and time to have

¹² See FREE MARISSA NOW, <http://www.freemariissanow.org/> (last visited Jan. 31, 2015) (providing more information regarding activism around Marissa Alexander’s case); see also *Keynote*, *supra* note 2, at n.13 (discussing the Alexander case and providing an update).

the hard conversations that will be necessary to shift law and policy in the United States. But we have been excited by the efforts and collaborations and conversations that have sprung up in the aftermath to CONVERGE!. During CONVERGE!, a group of activists and academics interested in persuading local governments to pass resolutions declaring freedom from domestic violence a fundamental human right met to share ideas and strategies. Since the conference, two such resolutions have been passed in Boston and Jacksonville, bringing the number of communities that have enacted such resolutions to twelve.¹³ Attorneys in New York, energized by what they learned at the conference, have continued to talk about how to change City law and policy. After years of grassroots advocacy, leadership development and lifting the voices of women impacted by state violence, Sisterhood of Survivors and the Free Marissa Now! Campaign celebrated the release of Marissa Alexander from prison on January 27, 2015.¹⁴ A new non-profit, Media for Change,¹⁵ is creating a multi-media project on reimagining the movement to end gender violence, featuring the voices of activists, practitioners, and academics engaged in gender violence reform work. In Baltimore, community advocates and academics have partnered to pilot an intimate partner violence restorative justice program serving couples who plan to continue their relationships, who are co-parenting, or who are living in the same small communities.¹⁶ On every front, activists, survivors, and academics are bringing the ideas that so energized us at CONVERGE! into their communities.

CONVERGE! might be described as a once in a lifetime experience, a providential gathering of people and ideas and energy in the right place at the right time. But we hope this is not true. Instead, we hope that we continue to converge around innovative ideas, sharing what we have learned, celebrating our victories, learning from our failures, and continuing to work to end gender-based violence. CONVERGE! was a beginning, not an ending. We look forward to continuing this work with all of you.

¹³ See COLUMBIA LAW SCHOOL HUMAN RIGHTS INST. & MIAMI LAW HUMAN RIGHTS CLINIC, *RECOGNIZING FREEDOM FROM DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN AS A FUNDAMENTAL HUMAN RIGHT* (2015), <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf>.

¹⁴ Alexander was granted a plea deal for time served (three years), but which included probation requiring her to wear an ankle bracelet for two years. She was released on January 27, 2014. See *FREE MARISSA NOW*, <http://www.freemariissanow.org/> (last visited Jan. 31, 2015) (follow “Read More” hyperlink).

¹⁵ See *About Us*, MEDIA FOR CHANGE, <http://mediaforchange.org/about> (last visited Jan. 31, 2015).

¹⁶ See *COMMUNITY CONFERENCING CENTER*, <http://www.communityconferencing.org/> (last visited Jan. 31, 2015).

TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice

UNIVERSITY OF MIAMI SCHOOL OF LAW

Beth E. Richie^{*}

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I. INTRODUCTION

Good Morning. Let me briefly thank the conference planners; a long list of people has been involved in this both from the University of Miami Law School, but also from the community—especially Donna Coker, Sabrina Segura, Marcia Olivo, and Leigh Goodmark—who seem

^o This transcript has been edited from its original transcription for clarity.

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to have pulled together an amazing group of people, conspiring with each other to imagine “reimagining.” Thank you for inviting us here. Thank you for the logistics. Thank you to the interpreters. Thank you to the students. It is amazing what you have been able to do. Second, thank you to the co-sponsors. Conferences are always better when lots of people put their energy into it and lend their credibility. Thank you for making this opportunity for all of us.

Thank you to the members of the Plenary who will follow my talk. They are an amazing group of people who are going to offer some reactions to some of the things that I say, as well as talk about their own incredibly valuable experiences. They will challenge us to reimagine. Thank you to all of you for coming, for answering this call to reimagine the movement to end gender violence. I recognize that you left your work, maybe you left your families or other people important to you; you could be other places instead of being here. One of the other places we could be is in New York at the Black Women’s Blueprint¹ event which is a really exciting event honoring Barbara Smith and her activism. I am glad you chose this place to be—to share your ideas, to participate in panels, in workshops, and in hallway corner conversations about what we need to do better. Because we really are here, I think, to talk about doing our work better.

Since you decided to come here, I made some assumptions about you as I was preparing my talk. I assume that you came because you read the call and identified with some of the themes: the themes of structural inequality and gender violence and the need to mobilize GLBTQ communities to respond to gender violence. I assume you came because you care about alternatives to the criminal legal system, or thinking about gender violence as a human rights violation, and other kinds of radical propositions that the call announced. And to me, that says a lot about who you are because you are interested in those themes. But, I also assume that you came because you are interested in the process of reimagining. You came because you are willing to be challenged and to challenge back. I assume that you are committed to looking honestly, more honestly than is often the case, at this so-called “anti-violence movement.” I assume that you are disappointed in yourselves and your organizations. I assume some of you feel alienated from that work. You think about the work, talk about the work, but when you actually *do* the work, there is a sense of disconnect. I assume you are frustrated by the

¹ See *TFW at Black Women’s Blueprint’s Fourth Annual Mother Tongue Monologues*, THE FEMINIST WIRE (Feb. 10, 2014), <http://thefeministwire.com/2014/02/tfw-at-black-womens-blueprints-fourth-annual-mother-tongue-monologues/>.

seemingly endless stories of degradation and abuse and our seemingly endless failure to respond to them. I know that some of you are annoyed by the rhetoric and that you are tired of the lack of action. Because I made those assumptions about who you are and why you came, and because you could be other places, I feel particularly honored to be given this opportunity. I feel humbled and I feel an unusual responsibility to speak some truths. I think you are just the people to help “course correct” as we rebuild our reimagined justice movement. Indeed, much of what I know I learned from the people in this audience. Much of what I hope to be as a social justice activist is inspired by the things we will talk about in the next few days. So my goal this morning is to dignify you and your commitment as well as to frame some of the issues that I bring to thinking about radical justice work.²

Many of those issues actually came from you, from being among you for so long in this struggle. I refer specifically to my sisters from INCITE!,³ my brothers and sisters from IDVAAC,⁴ A CALL TO MEN,⁵ Praxis,⁶ NCADV,⁷ YWEP,⁸ CARA,⁹ and from many other groups. More

² I consider myself an “insider-outsider” in the anti-violence movements that I am describing in this talk. Therefore, through the talk I use the term “we” to signal my involvement while at the same time my critique of the work. In other places, I use “we” to indicate the women of color who I work with and feel ultimately accountable to politically and personally as an activist in this work.

³ See *About INCITE!*, INCITE!, <http://www.incite-national.org/page/about-incite> (last visited Jan. 31, 2015) (“INCITE! Women, Gender Non-Conforming, and Trans people of Color Against Violence is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue and grassroots organizing.”); *Dangerous Intersections*, INCITE!, <http://www.incite-national.org/page/dangerous-intersections> (last visited Jan. 31, 2015).

⁴ See INSTITUTE ON DOMESTIC VIOLENCE IN THE AFRICAN AMERICAN COMMUNITY (IDVAAC), <http://www.idvaac.org/> (last visited Jan. 31, 2015) (“[A]n organization focused on the unique circumstances of African Americans as they face issues related to domestic violence, including intimate partner violence, child abuse, elder maltreatment, and community violence.”).

⁵ See A CALL TO MEN, <http://www.acalltomen.org/> (last visited Jan. 31, 2015) (“A CALL TO MEN is a leading national violence prevention organization providing training and education for men, boys and communities.”).

⁶ See THE PRAXIS PROJECT, <http://www.thepraxisproject.org/about> (last visited Jan. 31, 2015) (“The Praxis Project is a nonprofit movement support intermediary and an institution of color that supports organizing and change work at local, regional and national levels.”).

⁷ See THE NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/> (last visited Jan. 31, 2015) (“The National Coalition Against Domestic Violence (NCADV), has worked since 1978 to make every home a safe home.”).

⁸ See YOUNG WOMEN’S EMPOWERMENT PROJECT, <https://ywepchicago.wordpress.com/> (last visited Jan. 31, 2015) (“The Young Women’s Empowerment Project (YWEP) is a

generally, I drew ideas from thirty or more years working in state coalitions against domestic violence and sexual assault and from work with national organizations, some of which no longer exist. I worked in local programs in Chicago and before that in New York, and with women in prisons. Some of the ideas I learned from those places give me a long list of things that we have done well in our movement to end gender violence. We have a number of long standing intervention programs where people who are hurt can turn to for help. We have broadened those programs in an impressive way to respond not only to women, but to all people who are harmed by gender violence, including trans people, queer people, gender non-conforming people, and sometimes men. I think we can feel good about the exciting national conferences that have occurred. We can feel good about the adoption of some public policies that have changed in favor of gender equity. We can feel good about the increase in public awareness about the rates of gender violence and its causes and consequences. We can feel good about a kind of academic legitimacy, which means that books are published; journals, feature articles, and documentaries are made; Ph.D. dissertations are written. These are products that we can feel good about that have an audience in the mainstream world of teaching. We can feel good, in some ways, about that work that is supported by resources from individuals, from corporations, from foundations, and from the state.

I also have some ideas about what we have done wrong and paradoxically they are some of those same things that I listed as things we can feel good about. Our alliance with some funding sources has simply backfired because they have required us to limit who we serve and what issues we take on, creating a kind of dependency on the funding sources that we think of as the "Not for Profit Industrial Complex."¹⁰ We should not feel good about that. We have been preoccupied with a kind of national legitimacy that has distracted our movement at times, focusing attention more on celebrations and celebrities than on the pernicious crisis of everyday routine violence and the abuse that characterizes the lives of hundreds of thousands of people

member based social justice organizing project that is led by and for young people of color who have current or former experience in the sex trade and street economies.").

⁹ See COMMUNITIES AGAINST RAPE AND ABUSE (CARA), <http://cara-seattle.blogspot.com/> (last visited Jan. 31, 2015) ("CARA is a Seattle-based 501(c)(3) grassroots organization that promotes a broad agenda for liberation and social justice while prioritizing anti-rape work as the center of our organizing.").

¹⁰ See INCITE!, *Beyond the Non Profit Industrial Complex*, <http://www.incite-national.org/page/beyond-non-profit-industrial-complex> (last visited Jan. 31, 2015) (discussing the "not for profit industrial complex").

around the world. We should not feel good about that. We should not feel good about public policy and academic work that is the result of compromised relationships with people in power. We quite literally purchased our way into legitimacy by selling ourselves; we purchased our way into a set of neoliberal assumptions. The neoliberal assumptions are that on the one hand, the state should not be obligated to take care of people, while on the other hand, the state should be obligated to control, correct, and punish people. So the neoliberal project is to pull back from state obligations for care and replace it with a state obligation or an imperative to control.¹¹ We should not feel good about that. We have been part of that.

We have been co-opted and as a result, delegitimized and isolated from people who would be allies, who could help us in reimagining our work. We have been alienated from them because of positions that we have taken or not taken including positions on poverty and welfare reform, on the rights of domestic workers, on the removal of Native children from their families, on the economic crisis, and on war. Now, these failures surely have hurt our work. They have made us feel frustrated, alienated, mad at each other at some point, but more importantly these failures have made violence worse for some women.

What distinguishes what we did right from what we did wrong are three simple things: power, privilege, perspective. For many people the work has saved lives. Hundreds of thousands of women surely will credit, rightly or wrongly, this movement for their freedom. But others will describe the way that our work, yes, *our work*, has created danger and a whole new set of harms that they are now vulnerable to. It is this insidious way that power and privilege, whether you have it or not, and your perspective based on the power and privilege that you have, work together in our movement in ways that we thought might end violence for some, but has actually created harm for others. I think we came to course correct on that point. That is the reimagining that we need to do. That is why I called my talk *Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*. You see I think we need to not just reimagine our work for some kind of esoteric reason that has to do with us feeling good about ourselves. I think we need to do it because people's lives depend on it.

First, I am going to talk about the need for a more robust, honest analysis of racism in our movement. Second, I am going to talk about

¹¹ See generally BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012).

what a women of color feminist analysis or perspective or set of principles can offer that is a more promising, more radical approach to reimagining our work. Third, I am going to talk about prison abolition as the most direct path toward justice, one that offers us the best possibility of redemption of our radical roots. To me, the prison abolition frame provides a chance to talk about how to reframe the work to end gender violence as work against the patriarchal carceral state, and in particular the architecture of racism and related forms of oppression upon which the carceral state is built. I am going to say that again. To me, prison abolition represents a chance to think about the work to end gender violence and how it needs to be reframed as work against the patriarchal carceral state, and the architecture of racism and related forms of oppression upon which that patriarchal carceral state is built. That is the reimagining that will be truly radical and transformative.

II. AN HONEST ANALYSIS OF RACISM IN THE MOVEMENT

So my journey towards becoming a prison abolitionist as an antiviolenence activist began many years ago, more than thirty years ago. A group of women of color and I, who were living in New York City, started to engage with a predominantly African-American and Latino organization to try to advance an analysis of gender violence under the rubric of racial justice work. We were naïve in thinking that because people talked about justice and framed their work as being about liberation that issues of gender and sexuality would be included in that work. We were surprised to find ourselves constantly struggling with men and male identified community leaders, all of whom were people of color, who resisted our attempts to intervene in what we considered to be problematic politics around issues of gender and sexuality within the context of racial justice work. It was that same year that I went to my first conference sponsored by the National Coalition Against Domestic Violence in Milwaukee, Wisconsin. There I met for the first time the dynamic, radical, feminist activists who were building a grass roots movement to respond to violence against women. Their analysis of gender and inequality was powerful and it resonated deeply with those of us who were there. It resonated deeply with the political work that we were trying to do in Harlem, except that the emerging feminist analysis did not incorporate an understanding of race, class and equality. We were reassured at the Women of Color Institute that there were people like us who had a more intersectional analysis of the problem—an analysis that was more consistent with our own experiences. We did not read about an intersectional analysis, we *lived* an intersectional life. I was immediately

drawn to the national efforts of women of color to both challenge the white dominated feminist anti-domestic violence group to relinquish some of the hold that they had on the growing resources for anti-violence work and to challenge patriarchal assumptions in the communities of color that we lived in. It was an exciting time for me to be growing up as a black, feminist, anti-violence community activist. The anti-violence movement felt to me at the time like a stimulating environment—the place to work out this anti-violence, racially informed, class conscious praxis.

We had very high expectations of both our communities and the white feminist anti-violence movement. Our work was deeply informed by the real life stories from the streets, our homes, and our community-based organizations. These were stories of women who were racial justice activists who had been raped, beaten, stalked, and kidnapped while engaged in that work. Our work was also deeply informed by the sisters of color who were working in white dominated feminist organizations who felt like power was constantly taken from them, and that they were disrespected and disregarded. We were running from place to place trying to make sure that people were doing right by us and our experiences. We believed—now remember this was thirty years ago—that it was possible for a women of color feminism—the experiences of women of color and the leadership of women of color—to merge the struggle for racial justice and the struggle to end gender violence.

Here's the point of me telling you that story. Women of color came to this work because the movement's "justice" rhetoric promised us that our leadership would be recognized and supported. We believed that promise. We really did believe it, and we dug in because we thought that the work would embrace our lives and our contributions. What we found then is what we still find now: a pernicious form of racism in the movement to end gender violence. This reality does not make sense because it is inconsistent with what the movement says we believe in. That is, in practice, the movement to end gender violence does not see the links between gender oppression, white supremacy, hetero-patriarchy, colonialism, capitalism, able bodied-ism, and any of the other forms of oppression that women of color experience, not uniquely, but in very particular ways.

It was quite frankly at this point when I was preparing my remarks that I started to have a hard time because I realized that nothing is really very new about this omission. I do not have much more to say. I have

been saying this; it is on the INCITE! website;¹² many of you have written books about this for years. So in some ways, I wanted to say I cannot come to this conference because I do not have anything new to say. What we got right was a profoundly important universal essentialized analysis of gender and how it causes violence and degradation. We got that right. What we got wrong was we did not even think much about how gender is nuanced, complicated, contextualized and challenged by other identities. We did not think about this in a serious way. So we cannot respond to the violence because we did not think about the violence of poverty or homophobia or cultural genocide.

Now some of you are thinking, "But we did do some that." We *did* do some of that. We have some tokenized color in the gender analysis, but what we did not do is to include it in the real work. We did not do the real work of challenging and changing structural oppression that inflicts so much violence on so many people. As a result, white women still have the power to define which problems are real—very particular forms of violence caused by individuals in certain contexts. Because of those definitions, our movement subscribes to a very narrow understanding of who is entitled to protection, to services, to resources, and to grants. The more you fit in, the more married you are—and I am talking about queer marriage, too—the more heterosexual you are, the more American you are, the more legal you can prove yourself to be, the more *temporarily* poor you can prove yourself to be, the fewer felony convictions you have, the more you are going to be entitled to the attention, resources, and support of this movement.

So the work that emerges from that narrowed definition of what counts as gender violence is still very closely aligned with narrow state practices and policies such as mandatory arrest. Human trafficking, defined in a certain way, may be resolved if you believe that it is only certain people who are impacted by that problem. Young trans kids for example, queer women, disabled people, people that are not of legal status, and others who do not fit in that definition are not only left vulnerable, but are now targeted by the widening net of what we call the prison industrial complex. That explains to me why as a movement we have not joined the FREE MARISSA NOW¹³ mobilizing campaign to rally

¹² INCITE!, *supra* note 3.

¹³ See FREE MARISSA NOW, <http://www.freemariissanow.org/> (last visited Jan. 31, 2015) (providing more information regarding activism around Marissa Alexander's case). Several of the conference attendees were active on Marissa's behalf including CONVERGE! co-chair, Marcia Olivo; Alisa Bierria; Aleta Alston-Touré; and Carrie Bettinger-Lopez. At the time of the conference, Alexander had won her appeal and was facing a new trial. She was subsequently granted a plea deal for time served (three years),

behind Marissa Alexander's case. She was denied immunity under Florida's "stand your ground" law.¹⁴ She attempted to defend herself and was sentenced to twenty years in prison for firing a warning shot at the ceiling while she was being assaulted. This narrow definition of gender violence explains to me why we are not vocal opponents of the massive deportation policies that this current administration is so deeply invested in. It explains why we have made no moves to think about solidarity with the people of Palestine who are living as virtual prisoners in an apartheid state—a whole nation in an abusive relationship. It explains why white women still are credited with discovering notions that women of color have been strategizing around for years, as is the case of ONE BILLION RISING¹⁵ and *Orange is the New Black*.¹⁶ It is why we buy into a particular analysis of human trafficking, as I said before, that results in the arrests of trans and queer young people who are involved in the sex industry.

None of this happened by accident. We made strategic decisions nearly thirty years ago not to include race, class, ethnicity, age, and other variables in our analysis of gender violence. We adopted the *everywoman* analysis.¹⁷ The *everywoman* analysis was the one we used when we stood in front of groups and said, "Any woman can be a battered woman"; "Rape can happen to any woman." We said it over and over again in part because we wanted to make sure that violence against women was not heard as a stigmatized set of experiences of communities of color. The good news is that they believed us that it could happen to any woman or every woman. When they believed us they said, "You mean it can happen to *our* people? *Our* girls? *Our* wives? *Our* daughters? We better do something about that." We gave the power to them to protect their girls. When we did that, we said, "Those women are the only ones who need resources and supports; they are the only ones who should be researched and written about." We did that. We never course corrected that. We thought that we could work within mainstream anti-violence movements to reform them. We thought that we could keep our

which included probation requiring her to wear an ankle bracelet for two years. She was released on January 27, 2014. See FREE MARISSA NOW, <http://www.freemarissanow.org/>.

¹⁴ See FLA. STAT. § 776.013 (colloquially known as "stand your ground" law).

¹⁵ See ONE BILLION RISING, <http://www.onebillionrising.org/> (last visited Jan. 31, 2015) ("One Billion Rising is the biggest mass action to end violence against women in human history.").

¹⁶ See *Orange is the New Black*, Creator Jenji Kohan (Netflix television series 2013–2014), <http://www.netflix.com/WiMovie/70242311?locale=en-US> (describing the Netflix series, *Orange is the New Black*, regarding the prison experiences of an upperclass, white female inmate).

¹⁷ RICHIE, *supra* note 11, at 90 (describing the "everywoman" analysis).

strength and keep our righteousness; we could keep our energy clear; we could change broad systems. We did not say that we need an alternative—at least we did not say that until we founded INCITE! We thought that we could work *within* the system to make it better. As we evolved from a grass-roots activist based movement, we credited ourselves because we won the mainstream, but guess what? *We lost the movement.*

There is still something very important to be learned from THIS BRIDGE CALLED MY BACK: RADICAL WRITINGS BY WOMEN OF COLOR.¹⁸ It is worth re-reading because there is still this bridge called our backs in this work. We need to step back or step over to a different kind of place. We need to think about women of color as the *center* of this work, not add-ons, or special projects, or unique issues, or communities to be outreached to, or voiceless women that somehow the white savior complex needs to rescue. Women of color feminisms give us an opportunity to say that the subordinated bodies, the lives that are the most disaffected and the most harmed, the places where violence is most severe, need to be positioned as the original site of the struggle, the place from which the broadest liberation can come.

III. PRINCIPLES OF WOMEN OF COLOR FEMINISMS

So that is my second major point: our movement would be stronger, it would be more effective, it would be more accountable, if we reimagined it based on a set of principles related to women of color feminisms. Let me say what some of those principles are. First, oppression is interlocked. You can only account for the experiences of violence if you understand all of the ways that different kinds of violence reinforce each other. That is the analysis of intersectionality. Second, we need to embrace a sense that everyday knowledge and authority matters. We have to listen to survivors, survivors of *all* forms of violence, and believe that their truth matters. We need to not fit these truths into pre-existing paradigms, but instead believe the truth that is being shared with us. Third, we have to not just listen, hear, study, and write differently; we have to *do* things differently. So these are not rhetorical questions when I say, “Where are we on questions of trafficking, or Palestine, or immigration?” We have to do something about these issues. We have to engage with a different set of issues. That is praxis. We have to engage because we understand that these are examples of violence. We have to

¹⁸ See THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherrie Moraga and Gloria Anzaldua eds., 1981).

do it because if we are committed to ending violence we have to see violence that is intersecting along all of the spheres of people's identities. Fourth, we have to really believe in strength, not weakness or vulnerability or "gaps." We have to really believe that we are strong, that we are ready, that we are able, and that we have the capacity to make change.

Feminisms of color posit that there are a series of dangerous intersections. The INCITE! webpage discusses these dangerous intersections.¹⁹ INCITE! recognizes that larger structures leave us vulnerable and that those larger structures *are* violence. Individual harm is furthered, allowed, enabled, and facilitated by those larger structures. The only way to challenge those larger structures is to take on the question of state power. Now I am going to borrow a little from a group called the Crunk Feminist Collective in Atlanta: "As a part of a larger women-of-color feminist politic, crunkness, in its insistence on the primacy of the beat, contains a notion of movement, timing, and of meaning making through sound . . ."²⁰ That is especially productive for our work together. They continue:

Our relationship to feminism and our world is bound up in the proclivity for the percussive, as we divorce ourselves from 'correct' or hegemonic ways of being in favor of following the rhythm of our heartbeats. In other words, what others may call audacious and crazy, we call CRUNK because we are drunk off the heady theory of women of color feminism that proclaims that another world is possible. We resist others' attempts to stifle our voices, acting belligerent when necessary . . . Crunk feminists don't take no mess from nobody.²¹

That is a wonderful way of being.

So that is what this movement is missing: Crunk! We are missing crunk and those of us who might bring some crunk to this work. You hear in that definition of crunk a transparency, accountability, a sense of power and not powerlessness, and the sense of power to do something. You hear fearlessness and audacity. You hear a willingness to take risks

¹⁹ See INCITE!, *supra* note 3.

²⁰ See *Mission Statement*, CRUNK FEMINIST COLLECTIVE (CFC), <http://www.crunkfeministcollective.com/about/> (last visited Jan. 31, 2015) (CFC is a "community of scholars-activists" whose work is informed by "Crunk Feminism"; Crunk is a term initially referring to music that blends Hip-Hop and Southern Black music and culture.).

²¹ *Id.*

and to make mistakes and a sense of rhythm, of soulfulness that is active and engaged and disruptive. Surely it will bring a response. For me, Crunk is a way of suggesting that being an activist has to do with doing things with some rhythm. Here's what INCITE! taught me: we have to resist the pull towards legitimacy and we have to resist racist assumptions about women of color needing voice. We do not need voice, we need people to listen to our voices. We are deliberately silenced, but we *can* speak, we *do* speak, we *will* speak.

We have to do the hardest work first, not when we are done with the rest of the work. We have to do the hardest work first. To me it is a chance to take leadership from edginess, from energetic people who live in ways that are generative of enthusiasm for struggle. It would position different people in leadership at all levels, and different forms and kinds of leadership, as we reimagine not only our movement, but our movement's relationship to the world. We need to get crunky. I think a place to start that is with prison abolition.

IV. PRISON ABOLITION

As we evolved from grass-roots activism to more institutionally-based movement work within the mainstream, one of the most profound realignments of our social order occurred: the buildup of a prison nation. Right alongside of our evolution as an anti-violence movement came the conservative apparatus that was deeply committed to building a prison nation. That buildup fell right into the open arms, as if we were waiting for it, of the anti-violence movement that had aligned itself with the criminal legal system. There was a moment, I do not know if it was like fifteen minutes or maybe it was fifteen years, where our rhetoric, our resources, our approaches, our relationships with the criminal legal system meant that we were ripe for being taken advantage of by the forces that were building up a prison nation. In other words, they used us. They took our words, they took our work, they took our people, they took our money and said, "You girls doing your anti-violence work are right, it is a crime, and we have got something for that." There was really a moment where we said "cool, take it." Some of us said, "don't go there," but the train had already left the station. That is because there was not a Crunk women of color feminism. We would have done it differently.

Let me tell you what that buildup of a prison nation looks like. A prison nation, as I use it in my work, is a set of ideologies and public policy changes that led to a divestment from communities of much needed health and human services. This occurred because of the

neoliberal understanding that I talked about before: “People don’t need care, they need control.” A prison nation is when we start to blame people for their suffering. Whatever is wrong with them it is their fault. We even name policies “individual responsibility.”²² Prison Nation involves criminalizing people who cannot take care of themselves. We criminalize them by expanding criminal laws and by using harsher more aggressive law enforcement strategies for anything that violates social norms and threatens people in power. We invest hugely in programs such as special units of police departments to deal with gangs, to deal with guns, and to deal with domestic violence and sexual assault. We set up special courts to deal with addiction, truancy, and domestic violence and sexual assault. Now, I think as we reframe our work, we need to think about the buildup of a prison nation and how we were part of it, both in terms of actual prisons, but also in the growth of mechanisms of surveillance and control. Prison nation is connected with ideology and language about things like “safety” and “justice” and it means that people who are threats, or people who are causing harm, should not only be captured in prison, they should also be stigmatized, devalued, and dehumanized. So poor people become “undeserving,” and then we set up laws that make welfare fraud a major crime problem, and then we put police officers or security guards in welfare offices to look for people who are cheating welfare. So we turn people into criminals. I mean that in quite the literal sense; there are seven million people who are under the control of the criminal legal system in this country today.²³ As you know, this country houses twenty-five percent of the world’s prisoners.²⁴ That is the largest incarceration rate in the world.²⁵ But we not only have the largest incarceration rate in the world, people in United States’ prisons are incarcerated in harsher conditions for longer periods of time,

²² See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996) (establishing “welfare reform” legislation that had the effect of dramatically reducing benefits justified as necessary to make recipients take “personal responsibility” for their well-being).

²³ LAUREN E. GLAZE AND DANIELLE KAEBLE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 (2014), available at <http://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

²⁴ The World Prisoner Population List: ROY WALMSLEY, INTERNATIONAL CENTRE FOR PRISON STUDIES, WORLD PRISON POPULATION LIST (10th ed. 2013), available at http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf.

²⁵ ROY WALMSLEY, INT’L CTR. FOR PRISON STUDIES, *World Prison Population List* (9th ed. 2011), available at <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf> (The U.S. prison population rate of 743 per 100,000 is highest among the 218 independent countries and dependent territories included in the study, followed by Rwanda (595), Russia (568), Georgia (547), U.S. Virgin Islands (539), and Seychelles (507)).

farther and farther away from their communities, for less serious offenses than almost any country in the world.²⁶ And guess what? Those places are increasingly incarcerating women, most of whom should have been able to turn to our services and support, but instead they were defined out of who is a legitimate victim.

There is important new evidence of a decrease in incarceration rates in this country, particularly, decreasing incarceration rates of black people, and particularly black women.²⁷ I initially thought that this is some good news. But you do not need a prison to build up a prison nation. You do not have to keep people in institutions. In fact, what you really want to do is send them out of the institutions but still control them by not providing them with any care; or by monitoring them with the use of ankle bracelets or parole or probation officer oversight; or cutting them off of welfare; or watching for the opportunity to take their kids from them. You do not need a building for that. So the state can release people from prison, without adequate resources for their care, while continuing to keep them under state control, and then fill the now available prison space with another group of vulnerable people: immigrants.²⁸ This is why we have to shift our analysis to prison abolition.

There are some people who would argue that the work to end gender violence has benefited from both the ideological and policy shifts associated with the buildup of the prison nation. Some people may have benefited from harsher punishments against violence perpetrators. There are some people who might have benefited because of new technology that the prison nation has developed. Maybe some of the new laws have protected some people. And maybe the fundamentally conservative “law and order” agenda has made some people safe for a short time. I think for us, the challenge is to say that this is insufficient. These policies may have benefitted a few people, but they did not fundamentally change anything. These policies may have removed an abusive person from access to someone they were harming, but that did not do anything to make the fundamental changes necessary to end gender violence. What

²⁶ See, e.g., AMNESTY INT’L, USA: THE EDGE OF ENDURANCE (2012), available at <http://www.amnestyusa.org/sites/default/files/edgeofendurancecaliforniareport.pdf> (specifically discussing prison conditions in California’s security housing units).

²⁷ MARC MAURER, THE SENTENCING PROJECT, THE CHANGING RACIAL DYNAMICS OF WOMEN’S INCARCERATION (2013), available at http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.

²⁸ See Maria Rodriguez et al., *Panel on Immigrant Rights, Women and Gender Violence: Structural Violence and Organizing Strategies*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 335 (2015).

we need to do is think about how to replace that very small, temporary, ineffective feeling of safety with something better, something that is sustained, and something that is connected to a broader vision of what our work needs to be. That is why I think our work as prison abolitionists becomes so important.

Now there are a number of people who remind me about the dangerousness of anti-violence work that does not confront a prison nation. These women are some of the women I talk about in my book, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION*.²⁹ One is Tiawanda Moore in Chicago.³⁰ Let me tell you a little about her. I will give you a short version of a very long story, a very rich life, a very complicated life—some of it complicated in a good way, some of it complicated in not such a good way. Tiawanda was assaulted by her boyfriend and called the police. The police came; we might feel good about that. When the police got there they separated her from the person that was harming her. During the separation, the police officer who was talking with her asked her for her phone number. He was propositioning her. She took offense to that. She had a little crunk feminism in her. She took offense and filed a complaint. She filed a complaint, which of course they took offense to. She took offense to them taking offense. She decided that she was going to take offense and document what they were doing by recording the conversation with her cell phone, which of course they *really* took offense to. You know what? Recording a phone call without the other party's knowledge is against the law. So now she has gone from being a relatively empowered survivor, to being a criminal. In some ways, we created the opportunity for that to happen. Tiawanda's story is one of hundreds of thousands of examples of what is happening, probably right now, with the ways that our engagement with the criminal legal system is affecting women. All of our resources meant that she ends up trapped by that same system. If I were her, I would turn around and look at us and say,

What were you thinking? You do not know anything about what happens in black communities in Chicago on the south side when you call the police. What were you thinking? You told me to do all of these things as if I had power over this huge prison nation that you participated in building up. Why would you expect that I could have gotten anything from this?

²⁹ See RICHIE, *supra* note 11.

³⁰ *Id.* at 99–100.

There are other stories like that. You only need to look at who is in jails, who is in prisons, who is under the surveillance of the state. What did we do to contribute to their being in harm's way? These stories, hundreds of thousands like them, are happening while we are here reimagining. They remind us of what Audre Lord told us, "The master's tools will never dismantle the master's house."³¹ It never, never will and we have to remember that. We cannot reform the tools; they will never dismantle the master's house.

Prison abolition represents a chance to think critically and rationally about the work to end gender violence. Our work needs to be reframed as a movement against the patriarchal carceral state that is so dangerous to so many people. It needs to include tearing down the architecture of racism and the related forms of oppression upon which that carceral state is built. That is the way that we will have a truly radical justice oriented movement. That will protect survivors and that will make us strong, whole, and ready. Prison abolition is an aspiration, it is a dimension of our work that means that we have to be more than rhetorically committed to de-carceration, but actively engaged in divesting ourselves from the racist state that is keeping people in cages. It means that we have to rebuild communities based on a notion of women of color feminist principles. It means that we have to open up our arms, and open up our organizations, open up our analysis to the strength that can come from that. We will be more relevant that way. Communities will be stronger and that will save lives.

Bernice Johnson Reagan of Sweet Honey in the Rock told us in the first line of *Ella's Song*, "We who believe in freedom cannot rest."³² I remember hearing Sweet Honey in the Rock sing that song at the first NCADV (National Coalition Against Domestic Violence) conference that I went to in Milwaukee. Never did I imagine at that moment that I would work for thirty years in a movement and see so much change and yet so little change. I never imagined that we would have lost so many people. I think about Susan Schechter, Radhia Jabber, Sandra Camacho, and Ellen Pence. We have lost so many people. But there were so many people who we would be able to call our allies if we took a different direction in what we define as our work. I never imagined that I would learn so much from working with women caught in the legal system. Some of the best lessons of what's right and what's wrong, I learned

³¹ Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LORDE* 110, 110–114 (1984).

³² See Bernice Johnson Reagan, *Ella's Song*, available at <http://www.bernicejohnsonreagon.com/ella.shtml>.

from women in jail and in prison. I did not imagine that they, as my allies in this work, would teach me to be a prison abolitionist. But that is what happened.

V. CONCLUSION

So we are here now to reimagine, to remember that we are burdened with a very particular responsibility that comes from our success and from the ways that we have screwed up. It is time now, I think, to become anti-racist, women of color feminisms-inspired, prison abolitionists. I think that is demanded of us because of the mistakes we have made. Indeed, we who believe freedom can no longer wait. Thank you.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Plenary 1—Reflections and Analysis

UNIVERSITY OF MIAMI SCHOOL OF LAW

Eesha Pandit^{*}

Rosana Araujo

Reina Fernández[†]

Reyna Gómez

Lavon Morris-Grant

PANDIT: My name is Eesha Pandit and I am going to moderate this discussion. I am going to frame what we are doing in this session and why this session is following Dr. Richie's keynote.¹ This is a response to,

[°] This transcript has been edited from its original transcription for clarity.

^{*} Eesha Pandit is a writer and activist who believes in social justice movements, the power of intersectionality, feminism, sisterhood, and the power of art. Pandit contributed the following essay: Eesha Pandit, *On the Same Bodies: Exploring the Shared Historical Legacy of Violence Against Women and Reproductive Injustice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 549 (2015). Reina Fernández is a survivor of Domestic Violence and a founding member of Sisterhood of Survivors. Reyna Gómez is a member of the Sisterhood of Survivors. She migrated to the United States in 2004 from Honduras, where she faced fierce persecution and repression for being a union organizer. Lavon Morris-Grant is a social and political activist for women and children's safety against violence. She dedicates much of her time and efforts to statewide domestic violence and faith-based organizations. Rosana Araujo was born and raised in Montevideo, Uruguay and moved to the United States in 2003 with her husband and son. Rosana joined Sisterhood of Survivors out of an honest desire to empower other women and encourage them to speak about the physical, psychological, sexual and economic gender based abuse endured by women, particularly undocumented women, whose lack of immigration status prevents them from accessing treatment and educational opportunities.

[†] Original remarks from the CONVERGE! conference omitted.

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¹ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

and in alliance with what Donna Coker said at the beginning: it is not only that our work to end gender based violence is incomplete without the voices of survivors, but it is actually deeply insufficient without them. Our speakers will tell their stories and describe their work and then we will have a few questions, which I will moderate.

We will start with Reyna Gomez who is a member of the Sisterhood of Survivors. She immigrated to the United States in 2004 from Honduras, where she faced fierce persecution and repression for being a union organizer. In spite of having to flee her country for political reasons and being a survivor of both cancer and domestic violence, Reyna was not able to obtain legal immigration status in the United States. Still as an undocumented domestic worker, survivor of cancer, domestic violence survivor, and persecuted syndicalist, Reyna has managed to remain in the front lines of the movement to end gender-based violence and to participate in other struggles. She was one of the fasters during the University of Miami janitor strike in 2006,² which led to a 33% increase in janitor's wages and the ability to form a union.

Then we will hear from Lavon Morris-Grant who is a social and political activist for women and children's safety against violence. She dedicates much of her time and efforts to statewide domestic violence and faith-based organizations. She is a mentor for the Women of Color Network and was a board member for the New York State Coalition Against Domestic Violence for eight years. She is also an entrepreneur and an internationally recognized speaker on topics related to violence against women. Her book called *WHOM SHALL I FEAR: A SPIRITUAL JOURNEY OF A BATTERED WOMEN*,³ tells her story and her process.

Then we will close with Rosana Araujo, who was born and raised in Montevideo, Uruguay. She moved to the United States in 2003 with her husband and son. Rosana joined Sisterhood of Survivors out of a desire to empower other women and encourage them to speak about the physical, psychological, sexual, and economic gender-based abuse endured by women. She is particularly concerned with undocumented women, whose lack of immigration status prevents them from accessing treatment and educational opportunities. Rosana's passion is not merely to empower other women to speak out, but to create a woman-led movement to change legislation and to help create laws and protections and development opportunities for women and children who are survivors of gender-based violence.

² See generally *THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA'S LABOR MARKET* 243 (Annette Bernhardt et al. eds., 2008).

³ See also LAVON MORRIS-GRANT, *WHOM SHALL I FEAR: A SPIRITUAL JOURNEY OF A BATTERED WOMEN* (2001) (a memoir of Lavon's life relating to domestic violence after being shot four times by her husband who later committed suicide).

GÓMEZ: (*ORIGINAL SPANISH*) Mi nombre es Reyna Gómez y mi historia es complicada debido a mi situación. Padezco de cáncer y soy inmigrante indocumentada. Por lo tanto, he tenido que navegar el sistema desde que descubrí que tenía la enfermedad.

No califico para ningún seguro médico porque no cubren este tipo de enfermedad. Fui a buscar ayuda a La Liga Contra el Cáncer pero lo primero que me preguntaron fue, “¿Cuál es tu estatus en este país?” Por ser indocumentada no me pueden ayudar.

No ha sido fácil para mí, pero el sistema no ha podido doblegar mis ganas de vivir o mi fe. He luchado contra todo. Se me han cerrado puertas pero sigo tocándolas, he seguido adelante. Llevo once años en este país. Tengo once años aquí trabajando. Duele cuando te dicen que no te pueden ayudar porque no tienes un estatus legal. Tengo once años sin ver a mi familia. No tengo familia en este país, pero tengo mis amigos y ellos han tenido que ayudarme aportando dinero.

He tenido que trabajar en esta condición para poder tener el dinero necesario para comprar mis medicamentos. He estado en la situación de tener que tomar la decisión entre comer o comprar mis medicamentos. Esto también me ha afectado en mi trabajo porque una vez que le dices al empleador que estas enferma ya no te quieren en el trabajo.

En Junio, descubrieron que tenía un tumor y el tumor estaba afectando tres órganos. Mi médico me dijo que había que operarme inmediatamente, pero tuve que esperar seis meses, bregando en el sistema, seis meses pidiendo ayuda. Mis amigos tuvieron que hacer de todo para poder conseguir dinero, para yo poder ser operada.

Hace tres meses tuve la cirugía, y tuve que trabajar con dolor, tuve que trabajar buscando ayuda. Es una situación muy difícil para cada uno de nosotros y no tenemos la estructura ni nada que nos ayude. Mi hija o mi madre me preguntan, “¿Quién te cuida en el hospital?” “¿Quién está contigo?” “¿Quién te da un abrazo?” Yo le digo que mis amigos están conmigo. Pero hay veces que no están mis amigos, y no pueden estar porque están trabajando, y entonces estoy sola. Pero no le puedo decir eso a mi madre, o mi hermana, o a mi hija, por que sufren. Tengo que callar y quedarme callada para no hacerlos sufrir. Ya yo estoy sufriendo. Me preguntan cómo estoy haciendo y no les digo la verdad, ellos no saben cómo estoy sobreviviendo.

A pesar de todo, sigo en la lucha, sigo tocando puertas, y sigo estudiando. Les llevo el mensaje a mis compañeras porque hay muchas mujeres trabajadoras del hogar que limpian casas y cuidan niños pero no tienen ningún derecho. No tenemos nada que nos proteja. No podemos ni enfermarnos. Esa es mi historia y he tenido que decirle a cada uno de ustedes.

GÓMEZ: (*ENGLISH TRANSLATION*) My name is Reyna Gómez and my story is complicated due to my situation. I have cancer and I am an undocumented immigrant. As a result, I have had to navigate the system ever since I discovered that I had the disease.

I do not qualify for any health insurance because they do not cover this type of disease. I sought help at La Liga Contra el Cáncer⁴ but the first thing they ask you is, “what is your status in this country?” I am undocumented and therefore they cannot help me. It has not been easy for me, but the system has not been able to bend my will to live or my faith. I have fought against everything. I have knocked on doors, doors have been shut, but I have continued on. I have been in this country for eleven years. I have eleven years working here. It hurts when you are told you cannot be helped because you do not have legal status. It has been eleven years that I have not seen my family. I do not have family in this country, but I have my friends and they have had to help me raise money. I have had to work in my condition in order to have money to buy my medications. I have been in the situation where I have had to make the decision between eating and buying my medicines. It has also affected my job, because once you tell your employer that you are sick they no longer want you working for them.

In June they discovered that I had a tumor and the tumor was affecting three organs. My doctor told me that I needed surgery immediately, but I had to wait six months, struggling in the system, six months asking for help. My friends had to do all sorts of things to be able to get the money in order for me to be operated on.

Three months ago I had the surgery and I had to work with the pain, had to work looking for help. So, it is a very difficult situation for each and every one of us and we do not have the structure, to help us. My daughter or my mother asks me, “Who takes care of you in the hospital?” “Who is with you?” “Who gives you hugs?” I tell them that my friends are with me. But there are times that my friends are not there, they cannot be because they are working, so then I am alone. But I cannot tell that to my mother, or my sister, or my daughter, because then they will suffer. I have to be quiet and remain silent to not make them suffer. I am already suffering. They ask me how I am doing and I do not tell them the truth, they do not know how I am surviving.

Despite everything, I keep fighting, I keep knocking on doors and I keep studying. I carry the message to my colleagues, because there are many domestic working women that work inside cleaning houses, taking care of children, that do not have any rights. We do not have anything

⁴ For more information, please visit LA LIGA CONTRA EL CÁNCER, <http://ligacontraelcancer.org/> (last visited May 12, 2015).

that protects us. We do not even have the right to get sick. That is my story and I have had to tell it to each one of you.

MORRIS-GRANT: Good morning, as a speaker for so many years I have never been so emotional before my speech. Beth messed me up this morning because she told my whole story. Beth has been my “shero” since I first came into the movement.

I went to my first national conference in 1998, as a survivor coming from the New York State Coalition Against Domestic Violence. I bought into the belief that my voice was relevant, that I was necessary at the table, and that I was welcomed. And boy oh boy was that such a huge illusion for an African-American woman survivor or just an African-American woman period. I did not know there was a language out there that you all called “domestic violence,” because in my community we do not call that domestic violence, we call that survival—“You hit me, I’m going to hit you back. You cuss me, I’m going to cuss you out.” I did not know there was a whole movement of people with a language, but I was living a language you all had defined for my life. Because I did not define the language you had already defined for me, for my life to fit into, I became the problem at the table.

It has been a hard fight to stay in the work. I am so passionate about this work because so many women are dying and being abused. But it is so hard to stay connected to the people at the table because they are not connected to you, and you know they do not want you there, but they cannot say, “you can’t come,” because you are a survivor. I am a political activist. I know your analysis; I have studied you very well and you have taught me a lot. New York State is a heavy hitting state, very progressive, and those women at the table taught me a lot.

I had heard so much about this Beth Richie and I did not know who she was; all I knew was that she was a Black woman and I had never really seen any Black women at the table—I thought I was the only one. I was in the bathroom with this Beth Richie, but I did not know she was Beth Richie. We were washing our hands and I am talking my truth. When I get back to the Women of Color Institute room, they called this Beth Richie up because she was on the program to speak. She walks up and I was like “oh my god, I told her my real thoughts.” At the end of the Women of Color Institute she said to me, “Lavon, my sister, don’t ever let them take your voice.” I did not fully know what she meant by “my voice” because I did not fully know that I was going to be in the midst of the enemy camp at in some point in my journey, but her words have rung true.

I began to raise questions and challenges within the very system that told me I was welcomed. I began to ask questions of the framework that you all had already designed. I asked “where was my community?,” and

“where were women of color in this framework?” We do not want police in our community; the police in our community are not our friends. You decided to bring in the prison industry people. I knew my reality, and the white women told me, “Well Lavon, we never thought about it that way, but you know we are going to move forward anyway.” I said, “Then you all are going to find out that it is not going to work.” Little old me who did not know anything; but they had all the answers.

I am a woman who was never hit by her husband. I was married to him for ten years. Ten months after I left him, one day when I went home to get my children, my husband attempted to kill me. He put a 22-caliber gun to my head and pulled the trigger. That bullet is lodged in my head to this day. As this was happening, my children were downstairs in the house. They were fourteen, seven, and four years old. Marquis, Cory and Sharia, are the true heroes. After shooting me in the head, he then shoots me in my thigh. I get out of the bedroom and he then shoots me in my butt. I dove down the stairs. I knew I was going to die, but I had to get those children out of the house. As I am diving down the stairs, he shoots me again in my foot. That bullet is still lodged in my foot today. I got down the stairs and I grabbed my children and we ran. I did not lose consciousness. I just knew I was going to die because I had a bullet in my head. I get us to a neighbor’s house and I asked my neighbor to put my children in the basement because I did not want them to see me die. That was my only concern—I did not want my children to see the last of their mother dead.

As you can see I did not die. But unfortunately, and it *is* unfortunate for us, my husband then shot and killed himself. His death did not make us whole or make our healing any easier. My children were left without a father and I was a widow at the age of thirty-four.

My son Marquis is thirty-two years old. He graduated from Morehouse College and went on to get his Master’s degree. Cory is twenty-four; he is in the Navy, married with two kids, and doing very well. Sharia is the baby and she went through a horrible prison nation. She went to jail, but she is now a senior at Savannah State University and is going to start a Master’s program. So there is hope and there is healing. You have to keep working at it regardless of what systems come at you and regardless of how people try to tell you that you are not relevant.

ARAUJO: (*ORIGINAL SPANISH*) Mi nombre es Rosana Araujo, soy Uruguaya y vengo de una familia con muchos problemas de violencia domestica. Yo creo que desde mi procreación he sido expuesta a la violencia. En el año 2002, a causa de la crisis económica que aun persiste pero que hubo mas en el sur en Uruguay y en Argentina, tuvimos que emigrar. Ahora soy una inmigrante indocumentada.

Nunca en mi vida imagine emigrar. Por cosas de la vida y el destino llegué a Miami. Cuando llegué estaba súper emocionada porque estaba en la ciudad de visión, Miami. Pero al mes me enfrente con mi primer reto. Mi primer obstáculo fue el no poder estudiar. Yo soy una egresada de la universidad pero por no tener documentos no podía estudiar. Entonces tuve que trabajar porque hay que vivir.

Tuve que anotarme en las agencias de trabajo que toman personas como temporario. Por primera vez tuve que trabajar en una factoría. Quizás suene un poco arrogante, pero nunca había trabajado en una fabrica, no conocía lo que era una fabrica. Empecé a trabajar en un almacén de flores. Ahí tuve que trabajar en condiciones con temperatura bajo hielo, con ropa que no eran adecuadas. En ese trabajo, sufrí muchos abusos y tuve muchos problemas. Los problemas ocurrieron porque me quejaba mucho. Todo el tiempo daba quejas de que nos maltrataban. Nos encerraban en el almacén, que era como un congelador, y nos hacían trabajar horas y horas. Nos robaban el dinero, no nos dejaban ir al baño y muchos abusos mas.

Después de ahí me llevaron a una empaquetadora de juguetes. Por suerte mi amiga y yo pudimos ir—porque gracias a ella es que estoy acá hoy. Mi amiga era lesbiana y el manager pensaba que éramos pareja y que teníamos una relación. Por esto, el manager nos maltrataba muchísimo todo el tiempo y decía cosas que afectaban mi integridad. Un día me enoje muchísimo con el y lo afrenté, pero desafortunadamente empeoraron los abusos. Trabajar ahí fue terrible para mi porque nos amenazaba que si lo reportábamos iba llamar a inmigración. No pude llamar a la policía porque si la policía me pide los documentos, al no tenerlos puede perjudicar a mi esposo y a mi hijo. Después de ese trabajo, con todo lo que me pasó, me costó muchísimo superar el daño y aun me cuesta superarlo. Me cuesta en lo que es sicológicamente, físicamente y en todo.

De ahí nos llevaron a otro lugar a trabajar. Yo tuve la triste desgracia de tener un accidente en el lugar nuevo. Se me vino una pared de madera que había con cajas, encima. Me lesione las vertebrae. En vez de preocuparse si yo estaba grave, lo primero que los dueños me dijeron fue, “No tenemos seguro; nos vas a denunciar? Que horrible si tu haces eso sabes que podríamos llamar a inmigración, la policía te llevaría, te separarían de tu hijo.” Cuando me llevaron al hospital Palmetto tuve que mentir, decir que el accidente ocurrió mientras tomando un curso en ese lugar. No estaba involucrada todavía en lo que es Sisterhood of Survivors y Miami Workers Center.

Ese accidente me costó mucho porque me lesione la cabeza, las vertebrae, y perdí bastante el conocimiento. Tardé mas o menos como seis meses en recuperarme. Al no tener documentos, no tenía acceso a ir a

terapia física. Gracias que uno siempre tiene a esos amigos que son enviados por dios y que los ayuda. Gracias a ellos conseguí unas sesiones pero aun con eso no quedé bien. No puedo trabajar, no puedo estar horas parada ni horas sentadas, pero eso no me ha impedido involucrarme. No quería estar mas callada, no quería estar llorando en una cama con intentos de suicidios. Mi hijo en ese momento estaba mas pequeño y tuvo el desatino de contar en la escuela que su mama se quería ir al cielo; me acuerdo que me llamó la consejera y me enoje mucho con ella porque para ella era mas importante que tuviera un numero social de lo que me pasaba a mi.

Pero, un día llegué al Florida Immigrant Coalition (FLIC) y de ahí fui al Miami Workers Center y Sisterhood of Survivors. Encontré a estas mujeres que tenían historias muy similar a la mía. Ellas me inspiran todos los días para no quedar mas callada, para revelar la falacia en pensar que el sistema nos va ayudar y que todos vamos a estar mejor. Por eso estoy involucrada en la lucha. A veces me desamino, me siento enferma, me deaigo pero me inspiro en escuchar a mis amigos hablar sobre lo que hago. Por ejemplo, un día fui a un casamiento de mis amigos y cuando iba caminando decían, “Mira, mira! Esta es la que va a las protestas, la que esta gritando, la que esta en las calles,” y pensé, “Vale la pena estar horas en las marchas y venir con dolores de cabeza y pasar tres días en la cama.” Juntos, espero que podremos cambiar el sistema para mejorar las vidas de mujeres.

ARAUJO: (*ENGLISH TRANSLATION*) My name is Rosana Araujo, I am Uruguayan and I come from a family with many problems of domestic violence. I think I have been exposed to violence since procreation. In 2002 due to the economic crisis that still lingers, but that was more prevalent in the south, in Uruguay and Argentina, we had to emigrate. Now I am an undocumented immigrant.

Never in my life did I imagine I would ever emigrate. By happenstance and destiny, I arrived in Miami. When I arrived I was super excited because I was in the city of vision, Miami. But within a month I faced my first challenge. My first hurdle was not being able to study. I am a college graduate, but because I did not have documents I was unable to go back to school. As a result, I had to work because we had to survive.

I had to sign up with work agencies that hired people on a temporary basis. For the first time in my life I had to work in a factory and this might sound a bit arrogant, but I had never worked in a factory; I did not know what a factory was. I started working in a flower warehouse. There I had to work in conditions with temperature below zero, with inadequate clothing. In that job, I suffered many abuses and had many problems. The problems occurred because I complained too much. I was always

complaining about how they mistreated us. They would lock us up in the warehouse, which was like a freezer, and they would make us work for hours and hours. They would withhold our wages, would not let us go to the bathroom, and many other abuses.

After that job they took me to a toy-packing factory. Fortunately, my friend and I were allowed to go—thanks to her I am here today. My friend was a lesbian and the manager thought that we were a couple and had a relationship. Due to this, the manager would mistreat us all the time and would say things that would affect my integrity. One day I got really angry with him and confronted him, but unfortunately the abuses worsened. Working there was terrible for me because they would threaten that if we reported them they would call immigration. I could not call the police because if the police asked for my documents, me not having them could have hurt my husband and my son. After that job, with everything that happened, it took a lot for me to overcome the damage and it still takes a lot to overcome it. It takes a lot in a psychological, physical and every kind of sense.

From there they took us to another place to work. I had the misfortune of having an accident in the new place. A wooden wall that had boxes came down on me. I injured my vertebrae. Instead of worrying if I was seriously hurt, the first thing the owners told me was, “We don’t have insurance; are you going to report us? It would be horrible if you did because you know we could call immigration and the police would take you and separate you from your son.” When I was taken to Palmetto Hospital I had to lie, I had to say the injury occurred while I was taking a course at that place. I was not yet involved in what is Sisterhood of Survivors and Miami Workers Center.

The accident cost me a lot because I injured my head, my vertebrae, and I lost consciousness. It took me more or less six months to recover. Having no documents, I did not have access to physical therapy. Luckily one always has those friends that are sent from God to help us. Thanks to them, I got a few sessions, but even with that I did not fully recover. I cannot work, I cannot stand or sit for too many hours, but that has not prevented me from getting involved. I did not want to keep quiet any longer; I did not want to be crying on a bed with intentions of suicide. My son at that time was smaller and foolishly commented in school that his mom wanted to go to heaven; I remember getting a call from the counselor and being very mad at her, because for her it was more important I had a social security number than what was happening with me.

But one day I went to the Florida Immigrant Coalition and from there I went to the Miami Workers Center and Sisterhood of Survivors. I found women who had stories very similar to mine. They inspire me

every day to not keep quiet, to reveal the fallacy in thinking that the system will help us and we will all be better. That is why I am involved in this fight. Sometimes I get discouraged, I feel sick, I get depressed, but I get inspired hearing my friends talk about what I do. For example, one day I was at my friends' wedding and as I was walking they said, "Look, look! She is the one that goes to the protests, the one that yells, the one that is in the streets," and I thought, "It is worth spending hours in marches and coming home with headaches and having to spend the next three days in bed." Together, I hope that we can change the system to improve the lives of women.

PANDIT: We heard some of the systemic issues come up in the stories we heard about the institutions that folks turned to that [did not support them, I want to hear about the challenges that each of you faced within these systems that you thought were there to protect you or you thought *should* be there to protect you. I also want to ask each of you [to tell us what are some solutions and strategies that you think would work, what should the systems have looked like, what could they have looked like to help you in the ways that you needed and to better respond to your experiences.

MORRIS-GRANT: When I went into the state New York shelter, I just saw a whole different environment from New Jersey, where I grew up. I was the only Black woman and it was very different from where I came from. The police used to follow me everywhere I went. When I left home I took my fur coats, I took my car, I took some material things with me, so I had some privilege—yet still they would stop me randomly. They knew I lived in the shelter because they know everybody coming in and out of that shelter. They arrested me and held me in the jail because they said I was speeding. I promise you, I had just gotten on the road and there was no way I was speeding. Then when they arrested me they said that my license was suspended because my license is from New Jersey and I had not renewed my license in New York. I was just so shocked that the advocates could not get me out.

You know who got me out? My husband. He was coming up to visit with my son, because we were still in contact. The advocates could not get me out of prison and the cops would not stop stopping me. I had to move from that area to a community of crime and drugs because I was more comfortable there. The racism was going to kill me before the crime and drug addicts and all the other people would.

GÓMEZ: (*ORIGINAL SPANISH*) Para mí la reto es cambiar el sistema, que La Liga Contra el Cáncer pueda ayudar a la gente que no tenga un estatus, eso es una meta. Otro de las metas es educar a la gente. Entonces eso es una meta para todo nosotros, los indocumentados, que

nos entiendan el porque nosotros venimos acá y porque nosotros nos enfermamos como cualquier personas, entonces es seguir educando.

Otra de las cosas es el miedo, el miedo de ir a pedir ayuda, mucho de nosotros tenemos mucho miedo. Mucha de mis amigas han perdido la vida porque han tenido miedo, entonces es un reto decir no tengo miedo. Pero llegan y dicen, “no me pueden ayudar” y cuando se les encierran la puertas no vuelven a tocar otra puerta, entonces es una [meta] seguir educando continuamente a la gente indocumentada que si se te cierra una puerta va haber otra puerta que tu puedes abrir. A mi me ha tocado y estoy aquí porque no he dejado de tocar puertas, no he dejado de educarme, no he dejado de llevar el mensaje. Entonces ese es el reto para cada uno de nosotros.

GÓMEZ: (*ENGLISH TRANSLATION*) For me the challenge is changing the system so that the League Against Cancer is able to help people who do not have status, that is my goal. Another goal is to educate people. That is a goal for all of us who are undocumented – to be understood as to why we come here, how we get sick, and the fear we experience—the fear of going to ask for help. Many of us have a lot of fear. A lot of my friends have lost their lives because they have been scared, so then it is a goal to be able to say I am not afraid. They come and they say, “no one can help me,” and when the door closes they do not come back and continue knocking on other doors. It is also a goal to continue educating undocumented people to know that if one door closes there will be another one for you to open. I am here because I have not stopped knocking on doors, I have not stopped educating myself, and I have not stopped carrying the message.

Part I: Reimagining Gender Violence

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TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Plenary 2—Redefining Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

Leigh Goodmark (moderator)^{*†}

Juanita Flores

Julie Goldscheid[†]

Andrea Ritchie

SpearIt

FLORES: (ORIGINAL SPANISH) Voy hablar un poco de la historia de la mujer inmigrante. Cuando emigramos a este país, llegamos con nuestras preocupaciones y nuestras tristezas. Pensamos en aquellos que

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted. Julie Goldscheid's remarks were redacted as she contributed the essay Julie Goldscheid, *Gender Neutrality and the "Violence Against Women" Frame*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 307 (2015). Leigh Goodmark contributed to the following introduction and article: Donna Coker, Leigh Goodmark & Marcia Olivo, *Introduction: CONVERGE! Reimagining the Movement to End Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 249 (2015); Leigh Goodmark, *CONVERGEing Around the Study of Gender Violence: The Gender Violence Clinic at the University of Maryland Carey School of Law*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 661 (2015).

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se quedaron en nuestro país, en ese desenlace tan fuerte de familia, tierra y cultura. También llegamos con muchos traumas, traumas que tenemos desde nacimiento porque muchas no fuimos apreciadas, ni si quiera cuando nacimos. Algunas veces nuestra propia familia, específicamente nuestros padres, no nos apreciaban simplemente por haber nacido mujer.

En Mujeres Activas y Unidas (“MUA”),¹ hemos realizado encuestas a muchas mujeres en San Francisco, específicamente en el área de la bahía, y resulta que, por haber sido mujer no tuvieron el derecho a muchas cosas en sus países de origen, especialmente el derecho a estudiar. Los resultados mostraron que más de un 80% de las mujeres solamente llegaron al sexto año de primaria, y muchas ni siquiera fueron a la primaria. Esto ocurre porque el pensamiento en nuestros países es que las mujeres no tienen necesidad de estudiar.

Cuando llegamos a este país, nos damos cuenta que hay derechos que existen y que ofrecen protecciones para mujeres. Pero, ¿Qué sucede? Estos derechos no se cumplen y en el peor de los casos, muchas mujeres ni siquiera saben que existen. Y si saben de estos derechos, muchas traen el autoestima tan bajo que no le ponen la fuerza necesaria para reclamarlos. Esto quiere decir, que mucha de nosotras, mujeres inmigrantes, ya venimos predestinadas a pensar que no valemos nada, porque no tenemos una educación y ni siquiera podemos desarrollar un trabajo. De esto deviene el abuso más grande que sufrimos—muchas veces de proveniente de nuestra sociedad, la iglesia, nuestra familia—y es la idea de que no valemos nada.

Económicamente, como mujeres, estamos en situaciones mucho más terribles y vulnerables. Para empezar, muchas veces no podemos trabajar. Y si logramos salir a trabajar hay abusos en el trabajo también, comenzando con el acoso verbal. Algunas veces también somos víctimas de violación e intimidación; aquí le agregamos el problema de no tener documentos. Entonces, ya se nos va empeorando todos los problemas que estamos pasando.

Le estoy contando esta historia, porque ha sido la historia de muchas mujeres, incluyendo mi historia personal. Lo importante de todo esto, es que cuando aprendemos o cuando reconocemos quienes somos y donde estamos, es cuando comenzamos a hacer cambios. Es muy importante que como individuos, como seres humanos, como personas de la comunidad, tomemos en cuenta que las mujeres tenemos un fuerte valor. Que somos muy fuertes, que somos muy valientes, y que lo único que necesitamos es primero reconocernos a nosotras mismas quienes somos y hasta donde podemos llegar.

¹ WOMEN TOGETHER, <http://www.mujeresunidas.org/> (last visited May 12, 2015).

En MUA, trabajamos mucho con la reparación de la autoestima. La autoestima no se repara diciéndoles a las mujeres, “Mira, lee estas palabras” o “este libro de superación personal” o “ve a estas reuniones donde te vamos a enseñar . . .” No. Nosotros reparamos la autoestima con unas reuniones donde estamos todas juntas y aprendemos unas de otras, porque la historia de una mujer le da el valor y la fuerza a la otra. Lo que una persona tiene como fortaleza, a otra tal vez le está fallando, y así nos complementamos. “¿Cómo lo hiciste? Enséñame que quiero ir contigo a la mano.” Y eso es lo importante que vamos haciendo.

¿Por qué estoy hablando de esto? Porque, es muy importante que a nosotras las mujeres de base inmigrantes no se nos diga qué tenemos que hacer o qué queremos hacer. Los abogados y otros profesionales que creen que saben más que nosotros, no pueden decirnos que podemos hacer. Nosotras queremos estar en la mesa tomando decisiones y diciendo, “Éstas son nuestras necesidades y queremos tomar estos pasos.” Sí, necesitamos mucho de la ayuda y el apoyo de los abogados y otros profesionales, claro que sí, pero queremos que nuestra voz sea escuchada y que seamos nosotras las que tomemos nuestras decisiones— a dónde queremos ir y que cambios son los necesarios para nosotras. Ahí es donde está la fuerza.

Cuando una mujer ya empieza a reconocer qué es lo que puede lograr y qué cambios puede lograr a nivel personal, a nivel familiar y a nivel comunitario, es cuando ya quiere estar también allí, en la mesa tomando las decisiones. Nosotros vemos que esto es muy importante. Yo me siento debilitada cuando nos llaman “víctimas,” cuando nos refieren como simple “clientas,” cuando dicen, “Esta mujer fue víctima de asalto sexual, la violaron, es mi clienta, pero ahora es sobreviviente.” Siempre me siento mal cuando eso se menciona.

Nosotras no somos víctimas. Pasamos unos retos muy grandes, es cierto. Sufrimos cosas que nos hicieron caer y nos hicieron sentir nada, pero ahora somos capaces de seguir adelante y hacer el cambio, y estamos al mismo nivel que todo el mundo. Cuando nos ponen como víctimas o sobrevivientes, todavía se siente que somos inferiores. Y no, ya tenemos la capacidad y tenemos la fuerza. Tenemos que tener en mente que alguien que ha pasado violación, alguien que ha pasado violencia doméstica, que ha pasado muchos abusos, puede lidiar con casi cualquier cosa. Siempre tomando en cuenta que mientras que se puede lidiar con esto, el dolor nunca se va a curar. Nunca.

Muchas veces decimos que ya el dolor se está curando, pero no. Sí estamos sobreviviendo; sí, el dolor está saliendo; pero es con mucha fuerza de voluntad. El dolor que nos hizo sentir como la nada en un momento, ahora lo estamos transformando en fuerza. Si no hacemos los cambios por nosotras mismas, entonces hay que hacerlo por la

comunidad, Pero más que nada, por cada mujer que va llegando y que vea, "Tu dolor fue mi dolor y va ser nuestro dolor, porque si tú sufres, yo sufro. Si tú eres feliz, yo soy feliz. Entonces, ahora vamos a ir a la par."

Ahora, quiero explicar un poco como lo hacemos en la organización de MUA. Tenemos entrenamientos certificados por el estado de California. ¿Quiénes toman estos entrenamientos? Las mismas mujeres que han tenido estas experiencias y ya han tenido la oportunidad de hablar sobre ello. Muchas veces, lo primero que hay que hacer es hablarlo. Yo veo a las señoras cuando llegan, a veces llorando, muy enojadas, y queriendo hacer mil cosas. Pero cuando empiezan a hablar, aunque no empiecen a actuar, solo con el simple hecho de hablarlo, ya van calmándose y van sintiendo con claridad qué es exactamente lo que quieren hacer. De esta manera, cuando deciden lo que van a hacer, no es algo que luego les va traer más problemas. Cuando ya estén más claras, pueden ir punto a punto y paso a paso como quieran llevar su camino.

Eso es lo que hacemos con las compañeras: llegan, se toman su tiempo, se les escucha, se les apoya, y de ahí ellas mismas, cuando ya se sienten que tienen control de sus propias vidas, empiezan a tomar los entrenamientos. Por esto es que les damos el entrenamiento de liderazgo, para que ellas sepan que tienen voz y que ellas sepan que lo que están pensando y como lo están decidiendo es lo que en verdad quieren.

Hemos visto como las mismas señoras han hecho sus propias campañas y como han contribuido a ser cambios en las leyes. Hemos trabajado mucho por lo que ha sido VAWA y por lo de VISA U. Estamos trabajando ahora con mujeres que han sido trata de personas, que las han vendido en el mismo trabajo, y estas mujeres no quieren estar en esas condiciones, entonces las estamos apoyando. También estamos trabajando, por los derechos de las trabajadoras del hogar, porque muchas veces les dan más trabajo de lo que pueden hacer, a veces no les pagan y también hay mucho abuso emocional, físico, sexual y sino mucho acoso.

En MUA, estamos trabajando con estas campañas a niveles estatales y a niveles nacionales, para que cambien las leyes y reflejen que el poder está en nosotras. Hay que reconocer que en la política son muy pocos los que tienen el poder y que nosotras los superamos en números. Entonces, la organización está trabajando en encontrar la respuesta de la pregunta ¿Cómo vamos a ir cambiando esa mente política para reconocer que nosotros tenemos la fuerza?

FLORES: (*ENGLISH TRANSLATION*) I am going to talk a little about the immigrant woman. When we migrate to this country, we arrive with our worries and with our sadness. We think about those who stayed in our country, of that strong break from family, land, and culture. We also arrive with many traumas, traumas that we have from birth because

many of us were not appreciated, not even at birth. Sometimes our own families, specifically our fathers, did not appreciate us simply for having been born a woman.

At MUA,² we have surveyed many women in San Francisco, specifically in the Bay Area, and it turns out that because they were women they did not have a right to many things in their countries, especially the right to an education. The results showed that more than 80% of women only got to their sixth year in elementary school, and many did not even go to elementary school. This happens because the thinking in our countries is that women have no need to study.

When we arrive to this country, we realize that rights do exist and that they offer protection for women. But, what happens? These rights are not enforced and in the worst of cases, many women do not even know that they exist. If they do know about these rights, many come with such low self-esteem that they do not even try to claim them. This means that many of us immigrant women already come predestined to believe that we are worthless, because we do not have an education and because we cannot even get a job. From this, comes the greatest abuse that we suffer—many times from our own society, the church, our family—and that is the idea that we are worthless.

Economically, as women, we are in much worse and more vulnerable situations. To begin with, oftentimes we cannot work. If we are able to get out and work, there are abuses in the workplace as well, beginning with verbal harassment. Sometimes we are also victims of rape and intimidation; to this we add the problem of being undocumented. So then, all of the problems we are dealing with begin to get worse.

I am telling you this story because it has been the story of many women, including myself. The important part in all of this is when we begin learning and realizing who we are and where we are, that is when we start making changes. It is very important that as individuals, as human beings, as people from the community, we take into account that women are of great value. That we are very strong, that we are very brave, and that the only thing that we need is to first recognize ourselves who we are and where we are able to go.

At MUA, we work a lot with repairing the self-esteem. We do not repair a woman's self-esteem by telling her, "Look, read these words" or "this book about self-improvement" or "go to these meetings where we will teach you" No. We repair the self-esteem with reunions where we all get together and learn from one another, because one woman's story provides courage and strength to another. One person's strength

² WOMEN TOGETHER, *supra* note 1.

could be another's weakness, and in that way we complement each other. "How did you do it? Show me, I want to go with you hand in hand." That is the important thing that we are doing.

Why am I talking about this? Because it is very important that we, immigrant women, are not told what we have to do or what we want to do. The lawyers and other professionals that think they know more than us cannot tell us what to do. We want to be at the table making decisions and saying, "These are our needs and we want to take the steps." Yes, we very much need the help and support of the lawyers and other professionals, of course, but we want our voice to be heard and for us to be the ones making the decisions—where we want to go and what changes are necessary for us. That is where our strength lies.

When a woman begins to recognize what she can accomplish and what changes she can achieve on a personal level, a family level, a community level, is when she wants to also be at the table making decisions. We recognize that this is very important. I feel weak when they call us "victims," when they refer to us simply as "clients," when they say, "This woman was a victim of sexual assault, they raped her, she is my client, but now she is a survivor." I always feel bad when that is said.

We are not victims. It is true we have overcome big challenges. We have suffered from things that brought us down and made us feel like we were nothing, but now we are capable of moving forward and making a change, and we are at the same level as everyone else. When we are pinned as victims or survivors, it still feels like we are inferior. And no, we are now capable and strong enough. We have to keep in mind that someone who has been raped, who has dealt with domestic violence, who has suffered many abuses, can deal with almost anything. Always keeping in mind that while we are capable of dealing with things, the wounds will never heal. Never.

Many times we say that the pain is healing, but no. Yes, we are surviving; yes, the pain is leaving; but it requires a lot of willpower. The pain that made us feel like we were nothing at one point, we are now transforming it into strength. If we do not make the change for us, then we do it for our community, but more than anything, for every woman that arrives so that she can see, "Your pain was my pain and will be our pain, because if you suffer, I suffer. If you are happy, I am happy. So let's get through it together."

Now, I want to explain how we do it in the organization of Women Together. We have trainings certified by the State of California. Who takes these trainings? The same women that have had these experiences and have already had the opportunity to talk about it. Many times the first thing that needs to happen is to talk about it. I see women when they

arrive, sometimes crying, very angry, and wanting to do a thousand things. But when they start to talk, even if they do not begin to act, just merely talking about it, they start calming down and start feeling clearly about exactly it is that they want to do. This way, when they decide what they are going to do it is not something that later on will bring them problems. When they think clearly, they can go point-by-point and step-by-step as to how they want to lead their path.

That is what we do with the ladies: they arrive, take their time, we listen to them, we offer them support, and from there, once they feel that they have control over their lives, they start taking the trainings. This is why we give them leadership training, so that they know that they have a voice and so that they know that what they are thinking and how they are deciding is in fact what they want.

We have seen how the women have made their own campaigns and have contributed to changes in the laws. We have worked a lot for what have become VAWA and the U visa. We are currently working with women who have been victims of human trafficking, who have even been sold in the workplace, and these women no longer want to live in these conditions, so we are offering them support. We are also working for the rights of domestic workers because many times they are overworked, or are sometimes not paid. There is also a lot of emotional, physical, and sexual abuse, and if not, then a lot of harassment.

At MUA, we are working with these campaigns at state and national levels so that the laws can be changed to reflect that we hold the power. It has to be recognized that in politics there are very few people with power and we can surpass them in number. Therefore, the organization is working to find the answer to the question “How do we change the political mindset to recognize that we are the ones with the power?”

RITCHIE: One of the first instances of gender-based violence that I heard of after I moved to United States to attend law school involved a twenty-six year-old Black Miami nursing student whose name is Sandra Antor. Sandra was driving along Interstate 95 when a man in an unmarked car signaled her to pull over. Seeing that she was traveling on an isolated stretch of highway and she had heard about these “blue light bandits,” people who pretend to be police and pull you over and then rob you, she waited until she got to a more well-travelled area of the highway and then stopped.³ A white man charged out of the car, gun drawn, pointed at her head and proceeded to violently yank her out of her car as

³ See INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *Law Enforcement Violence Against Women of Color & Trans People of Color: A Critical Intersection of Gender Violence & State Violence* 30, http://www.incite-national.org/sites/default/files/incite_files/resource_docs/3696_toolkit-final.pdf (last visited May 19, 2015).

she was just trying to unbuckle her seat belt, shoved her face-down on the highway with cars speeding by, rammed his knee in her back, sat on her and all the while hurled abuse and threats at her. What set this incident apart from other instances of gender-based violence that we have been talking about was that the person responsible was a State Trooper and the entire incident was caught on his dashboard camera. The incident received some publicity, but I noticed that it didn't garner the same national attention and outrage that was generated by other incidences of "driving while black" that have been caught on video. The experiences of women of color like Sandra Antor really weren't informing the conversation nationally around policing, profiling and police violence in the national discourse. I also noticed at the time that women's anti-violence organizations were not mobilizing around Sandra Antor's experience as a case of gender-based violence, which really kind of struck me given that I had just come from Toronto where as an anti-violence activist on the board of Women's Shelter, I had been organizing around police shootings of women of color, police sexual assault of women of color, of the kinds of violent and abusive strip searches that women of color were experiencing in Toronto. This was not unlike one of the stories that is a cornerstone of Beth Richie's book, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION*—the story of Ms. B⁴—in which a middle-aged black women who was living a public housing complex that was scheduled for demolition in Chicago was terrorized by a group of officers who, among many other things, subjected her to really highly racialized and violent strip searches in her own home. I have been organizing around those issues as gender-based violence and was struck by the fact that they were not being perceived by the mainstream or in most of the national discourse around violence against women as part of that spectrum. It is interesting to me that those kinds of experiences are not generally seen as gender-based violence when they happen in the United States but state violence against women of color is definitely seen as gender-based violence when it happens anywhere else in the world. It seems to me that the almost exclusive reliance on law enforcement and criminal legal responses to violence, that Beth described so powerfully and so eloquently this morning,⁵ has produced some really uncomfortable silences around the experiences of racialized gender and sexuality based profiling and violence at the hands of the very police who we are asked

⁴ See BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 8–11 (2012).

⁵ See Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015) [hereinafter *Keynote*].

to entrust with our protection. But these kinds of experiences of gender-based violence at the hands of law enforcement—whether it is in the context of routine policing; the war on drugs; immigration enforcement; responses to domestic violence, sexual assault and hate violence; in the context of anti-prostitution and anti-trafficking initiatives—are pervasive in the United States. The experiences of one queer young woman of color who I worked with at Streetwise and Safe⁶ are unfortunately typical of stories I hear every day. She recently testified at a hearing in New York City on the issue of “stop and frisk,” which I am sure you all have heard has been a big issue in New York. She was recently speaking at a hearing and talked about it and said:

My first police encounter was when me and my sisters and cousins were stopped on the stairs of our public housing unit in Brooklyn. We were told to take off our shoes and socks and hoodies and top shirt, leaving us standing there in our under shirts. They told us to unbutton our pants and roll the waistband down. Three of us were in pajamas. Then the officer turned us around by the neck and frisked us. They were looking for weed, they did not find any. We were eight, nine, thirteen, and sixteen. But they took us to the precinct anyway, where our mother had to come get us. I have been told that if I just give a cop my number they will make a summons go away. I have asked an officer for directions only to be asked if I am going to the “stroll.” I have been told to take my newborn baby out of her stroller and put her on the filthy sidewalk while they search my stroller. I have been sexually harassed by police officers as I walk my kids to school and groped during stops and frisks. Recently an officer grabbed my phone during the stop, got the number and has been sending me increasingly sexually explicit text messages and threatening text messages. The police in my neighborhood make me feel less safe not more safe. Who is going to protect ME from the police?⁷

These kinds of experiences, these kinds of voices are largely invisible and largely unheard. These stories are often absent from the

⁶ STREETWISE & SAFE, <http://www.streetwiseandsafe.org/> (last visited May 19, 2015).

⁷ CTR. FOR CONSTITUTIONAL RIGHTS, STOP AND FRISK: THE HUMAN IMPACT—THE STORIES BEHIND THE NUMBERS: THE EFFECTS ON OUR COMMUNITIES 13 (July 2012), <http://stopandfrisk.org/the-human-impact-report.pdf>.

social, political and legal discourse around both policing and gender-based violence. I really want to thank the organizers of this conference for creating this space in which to expand the frame of gender-based violence and also for inviting me to join the conversation today.

There is much that we do not know about what gender-based violence by law enforcement looks like. There are a few things we do know. We do know that women of color and young women are racially profiled and abused by police in many of the same ways as men of color. But they are also specifically profiled as drug couriers, as being engaged in prostitution, as bad mothers, at the border, at the airport, on the corner, and in their homes. We know that young women of color experience the same kinds of daily harassment and excessive force as young men of color but also gender-specific forms of violence such as sexual harassment and assault by police. We know that controlling narratives of women and girls of color as inherently aggressive and dangerous inform systemic police brutality. No matter whether we are as young as Jae'eisha Scott, a five-year old girl arrested in St. Petersburg, Florida for essentially throwing a temper tantrum in her kindergarten class⁸—as five year olds are wont to do—or as old as seventy-nine year old Cora Jones who was shot point blank in the chest as she sat in her wheel chair while Detroit police raided her home.⁹ Whether eight months pregnant like Malaika Brooks who was tased three times by Seattle police during a traffic stop because she refused to sign a ticket for stopping in front of her son's school to drop him off. Whether they weigh 100 pounds like my Latina lesbian client who was thrown to the ground by police in New York City and beaten as she left a club by officers who called her a "dyke ass bitch." Bringing the experiences of women who experience violence at the hands of law enforcement to the center of conversations about gender-based violence reveals that gender and sexuality are central axes around which policing takes place, in conjunction with but also in service of race and poverty-based policing. In other words, gender-based violence by law enforcement officers is not an isolated aberration but is fundamental to the institution of policing itself. Particularly, sexual and reproductive violence is a tool of domination and control, which has been used by law enforcement agents throughout this nation's history, from

⁸ DIGNITY IN SCHOOLS, *Still Haven't Shut Off the School-to-Prison Pipeline: Evaluating the Impact of Florida's New Zero-Tolerance Law*, <http://www.dignityin schools.org/content/still-haven%E2%80%99t-shut-school-prison-pipeline-evaluating-impact-florida%E2%80%99s-new-zero-tolerance-law> (last visited May 19, 2015).

⁹ David Ashenfelter & Joe Swickard, *Detroit Cops Are Deadliest in U.S.: Shooting Figures Need Context, Officials Say*, THE POLICE POLICY STUDIES COUNCIL (May 15, 2000), http://www.theppsc.org/Archives/DF_Articles/Files/Michigan/Detroit/FreePress052000.htm.

colonial armies to “plantation justice” to the present. It is not the product of a few bad apples. The conversation around profiling and policing of women and LGBT people of color and gender-based impacts of current policing practices is not distinct from the conversation around racial profiling and mass incarceration of people of color in the United States. It is central to it. The mechanics of how racialized policing of gender and sexuality take place are complex and often invisible. They happen through these day-to-day, minute-by-minute decisions that police officers make about who is safe and who is suspicious, who to surveil and who to ignore, what constitutes reasonable suspicion, what is probable cause, whose conduct to punish, whose conduct to permit, who has the right to defend themselves, and who is inviolable. Through these kinds of daily acts law enforcement draws and enforces the lines of the gender binary; they police the presence of racially gendered bodies in the public sphere; they ensure compliance with racialized and heteronormative notions of gendered behavior and enforce dominant sexualities. Sometimes that happens explicitly when, for instance, police decide who can be in a certain bathroom and what physical characteristics they should have. Or, when they punch butch lesbians in the chest yelling “if you want to act like a man I will treat you like a man.” But other times, policing departures from racialized norms of appropriate gender expression is more subtle and it is more about reading gender nonconformity as grounds for suspicion and presumption that a person is “disorderly,” and as a basis for securing submission to gender roles. As we expand the lens of gender-based violence to include experiences of violence at the hands of police, it becomes clearer that the role that law enforcement agents play in enforcing racialized gender norms and power relations really does not change when their role shifts from enforcer to protector. In fact, shockingly, all too many instances of profiling and police brutality and sexual abuse of women and LGBT people of color take place in the context of responses to calls for help. Whether it is to Tiawanda’s experience,¹⁰ whether it is a Chicago police officer who would make survivors of domestic violence strip naked for him, or the New York City police officers who beat a domestic violence survivor so bad that they broke her nose and her jaw and her spleen—injuries caused by the police, not the boyfriend who was beating her when she called them for help. Her name was Cherae Williams.¹¹ She later testified “[the officers] beat me until I was bloody . . . They left me there dazed and with a

¹⁰ See Keynote, *supra* note 5, at 271.

¹¹ Juan Forero, *2 Officers Are Accused of Beating Woman Who Asked for Their Names and Badge Numbers*, N.Y. TIMES, Mar. 2, 2000, <http://www.nytimes.com/2000/03/02/nyregion/2-officers-are-accused-beating-woman-who-asked-for-their-names-badge-numbers.html>.

warning. They told me that if they saw me on the street, they would kill me . . . I called the police to prevent a serious incident, and they brutalized me.”¹² Women of color and LGBT people of color are often perceived by police as violent and inviolable and therefore deserving of punishment and not protection. Those same stereotypes play out in daily law enforcement interactions with women and LGBT people of color informing who is worthy to be given police protection and who is deemed on the other hand to be subject to arrest, or abuse or denial of protection. The lines around who is a legitimate victim of violence are highly racialized, highly sexualized, highly classed, and those lines are not only lines of exclusion, they are lines along which law enforcement officers are enabled to enact violence against women and LGBT people of color in the name of fighting violence. The more we abhor the violence we seek to address—whether it is sexual offenses or trafficking in persons—the more we are willing to turn away from and ignore the casualties of the reliance of our law enforcement to solve it. Often, all too often, those casualties include among them the very people we claim to protect. Finally, an understanding of gender-based violence at the hands of law enforcement also requires an awareness of the more subtle forms of policing within criminal and immigration systems, but also public housing, foster care, social services and the welfare system. Policing includes not only the presence of actual law enforcement officers in welfare offices, or hospitals, schools and public housing, but also includes less formal policing of sex and gender in the operation of helping institutions extending policing the web of policing to every aspect of society.

The way that policing operates in housing institutions extends the web of policing into every aspect of society: While some of us continue to promote law enforcement-based responses to gender-based violence, others of us envision responses to violence that might not involve the criminal legal system, but might involve alternatively mandating engagement with other systems and institutions, as drug courts have been doing for a long time, and as people are starting to do with “prostitution courts.” In all too many cases, these systems (i.e., drug courts and prostitution court) have already repeatedly failed the people we are shoving them back into. They have been sites of gender-based violence for people who have already fled them, and they do not meet the basic needs that people identify for themselves every day without needing to be arrested to seek the services. As Mitchyll Mora, a staff person at

¹² INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *Police Brutality Against Women of Color & Trans People of Color* 2, http://www.incite-national.org/sites/default/files/incite_files/resource_docs/5341_pv-brochure-download.pdf (last visited May 19, 2015).

Streetwise and Safe recently said something to the effect of “We don’t need to be saved, we are saving ourselves every single day. You need to listen to what we say we need.” Expanding the frame of gender-based violence to include those kinds of experiences really challenges us to truly envision what will actually produce safety, what will actually promote sexual and gender autonomy, and will actually produce ultimately liberation for all of us. Thank you.

SPEARIT: I have been researching prison culture for about the last decade, looking through ethnographic studies, and looking at other people’s work for many years. What I want to do is talk about how imprisonment—how prisons—disadvantage already disadvantaged communities. That is a very simple story to tell. Looking at the prisons and the hood essentially, and what is the relationship. You can look from a political point of view and start to talk about felony disenfranchisement. Millions of Americans cannot vote, and this is concentrated among certain specific ethnic minority communities. So, there is a political dimension; there is a whole financial dimension to how imprisonment disadvantages these communities. Loved ones of an incarcerated person have to send money to commissary accounts, have to go traveling, put wear and tear on vehicles, lose money because of time spent, and pay for babysitters and collect calls from the prison. Every call from a prison is a collect call, right? There is a whole financial dimension to it.

What I want to talk about are some of the cultural ramifications. What are the cultural impacts of imprisonment? So I am looking at the structural costs from a cultural point of view. I want to talk today about prison families—prison families as a means of looking at some of the gender violence problems in prison and how they relate to violence outside of prison.¹³ I am talking about what I call the “destructive cycle of masculinity” or “cycles of destructive masculinity.” The general proposition is that we have gender norms outside of prison, pretty much patriarchal, pretty much heteronormative, sort of a kind of a warped sense of masculinity that is the norm outside. In some of my work I look at pornography. I look at prostitution, prostitution laws and language, how we talk about things. We have this set of norms and so my argument is that we bring some of these norms into prison and they get further warped, and reproduced in very unfortunate ways and then these norms get exported back out to the select communities. That is the cycle of destructive masculinity that I am talking about. The gender norms get

¹³ See generally SpearIt, *Gender Violence in Prison & Hyper-masculinities in the Hood: Cycles of Destructive Masculinity*, 37 WASH. U. J.L. & POL’Y 89 (2011).

imported to prison, get reproduced, and then get exported back out to the hood.

What is a prison family? Now, Let us first of all distinguish a prison family from the family of prisoners. They are two different things. I am talking about what type of family bonding takes place behind bars. Non-biological members create a family where there is none. I guess right away when we start talking about forced families, we can address the distinction that Leigh Goodmark brought up earlier, “What’s the difference between sexual violence and gender violence?”¹⁴ I think you see that gender violence tends to be about making political statements. It is about power. It is about dominance. You might put that on one end of the spectrum and on the other end of the spectrum, this is more complicated, but on the other end of the spectrum you might talk about sexual violence. By sex, I mean how a person relieves himself of that urge and how to satisfy sexual desire. They are on different ends of the spectrum. As one researcher said, there is really nothing sexy about gender violence.¹⁵ It is about power, it is about making a statement, and it is about sending a message to your enemy. Whereas sexual violence encompasses the relief of the sexual urge. There is a lot of gray stuff that goes on in-between. Those are the polar opposites that I would put up as that distinction, at least in the prison context.

I will give a little bit of background to help you understand why prison families form behind bars. For one, we are in a place in time where we have more people locked up than any other time in human history outside the context of war. Right now in the United States we have an enormous prison population and these people are serving some of the longest sentences in the western hemisphere. Twenty-five to life is a pretty normal proposition in our country. We have a lot of people serving lots of time behind bars and the application of the criminal justice system from law enforcement to the courts to corrections is pretty much focused on ethnic minorities. The rest of the country does not feel the problem that I am talking about. It does not feel these problems because criminalization is concentrated in specific ethnic communities. There are several feeder counties that feed the majority of prisons in this country—the majority in terms of population. These are isolated places. We know that when people exit prison they almost invariably go back to their home community or one very similar.

So it is a cycle. That is the backdrop we have in African-American communities and Latino communities that populate prisons. So what is a

¹⁴ Leigh Goodmark asked this question during her opening remarks in this panel, which have been redacted.

¹⁵ ANTHONY M. SCACCO, *RAPE IN PRISON* 67 (1975).

prison family? There are two types. One is a forced family and one is the volunteer family. I will talk about the forced family first. This is where an individual creates his own family. Remember I mentioned that norms are being imported? Just like on the outside one of the ways for a male to exhibit masculinity is to have a family. It is not very different inside of prison. A man can create a family. You can have your wife, you can have kids, you can have boys, you can have sisters of the boy—"sissies." You do this by force. You turn out individuals. You break someone—mentally, physically—you break that person. These are ways that the family gets created and it is very similar in structure to what happens on the outside, but it is a very warped permutation on the inside. I will quote one prisoner who talks about it like this: going to work and drinking coffee are the normal thing on the street; having boys and prison wives is a normal thing in here. The same things go on in here as go on out there. When they go to work and make their money we do our hustling and make our money. So from this point of view, the larger family you have means the more power you have. That is your display of power in prison is how many kids you have, how many boys you have.¹⁶ Another prisoner says:

The more boys that I have picked up, the more I wanted. It became a challenge to see a pretty little, young boy come in, everybody shooting at him, everybody trying to get at him, everyone trying to pull him in. It became a challenge. It made me hard, excited to chase him to see if I could get him before anyone else.¹⁷

So how does this happen? How do the forced families come about? Well there is turnout, breaking someone, turning someone into a punk, so forcefully doing it. You can do it by seduction. You can seduce someone into these awkward positions through coercion. Debt relief is how many of these individuals turn into boys or sissies or wives. Borrowing coffee, sugar, cookies can get you into all sorts of trouble behind bars until you have paid back the debt.

How does this finish? How does the family dissolve? How does that happen behind bars? When it is the forced kind of families, usually the daddy is going to turn out the wife or the sissy or the boy and prostitute them or make them sex slaves. The distinction between slavery and prostitution is that the prostitute stands to make something. A sex slave does not make anything and gets lent out and friends borrow the slave. The ultimate sort of dialectical experience is when the daddy himself

¹⁶ TURNED OUT: SEXUAL ASSAULT BEHIND BARS (Interlock Media, Inc. 2004).

¹⁷ *Id.*

gets turned out. He falls in love with one of the boys, with his wife—and once there is penetration of that male or that male engages in some sort of oral sex act, it is over—he loses his status as a man behind bars.

I could talk more about the families by choice, but I am going to get straight to what are the ways to look forward in resolving some of these issues and really changing the dynamics inside and outside of prison. The first thing I would mention is that there has to be a two-pronged approach to deal with this problem I am talking about. Obviously, the first would be to talk about prison culture. How can we change prison culture so that it is not so rapacious and it is not so easy to be sexually assaulted and battered behind bars? I have argued that prison is a heteronormative institution. It is. No sex between men. The only sex that is allowed is for men that have wives and they may be able to come in as conjugal visitors. There are no condoms allowed behind bars because that is contraband. You will get written up and go to solitary. It is designed for male/female sexual relationships. That is the only sexual relationship that is recognized behind bars.

What happens when you report sexual assault or some sort of gender violence episode? Well, you are going to go to solitary confinement. Why? That is the worse punishment for anybody behind bars, but they do it for the individual's protection. So for trying to enforce the rules, an inmate gets put in the most severe administrative segregation. That has to change. The snitching culture has to be changed. Behind bars they say "punks get fucked, snitches get killed." That is the rule. Telling someone about your assault can get you killed. That is all a part of prison culture as well.

What is the standard to make a successful rape claim behind bars? Forget it. It is almost impossible. There is the standard called deliberate indifference and it a very high bar for any prisoner to make a successful claim.

How can we deal with the prison culture? One way is through the inmates themselves, taking matters into their own hands. In South Africa, they have a system of prisoners who are facing the same kind of issues and they did what they call "taking turns":¹⁸ Playing the man one time, playing the woman another time, and flipping back and forth so that there is no permanent category of the man behind bars. That is one way.

It is not just inside, but how do we change the importation of all those gender norms to the outside? How do we deal with society to make it a less patriarchal, less male-dominated society? I suggest that we need

¹⁸ Sasha Gear, *Rules of Engagement: Structuring Sex and Damage in Men's Prisons and Beyond*, 7 CULTURE HEALTH & SEXUALITY 195, 204 (2005).

to excavate the ways that oppression of women is at the foundation of all sorts of degradation. For example, if you are a seven-year old boy, it is very common to be called a “pussy” out in the yard. That is not a very flattering thing to call someone. If you tell someone, “Wow man, you got balls,” well that is a different scenario. It has a great connotation . . . right?

The last thing I would suggest is that we in society need to really turn an eye to this and make this use of language a source of embarrassment. We need to follow the lead of what happened when crack cocaine was dominating the landscape on the streets. Sociologists have documented that some of the reason crack fell out of favor is because people started making fun of other people, calling them crack heads, base heads, and these sorts of things. I would argue that we have to do the same thing when it comes to gender violence—it has to be made the subject of stigma.

Gender Neutrality and the “Violence Against Women” Frame

Julie Goldscheid*

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The CONVERGE! conference took place at a moment of opportunity and challenge for advocacy to end gender violence.¹ At the same time that law, policies, and programs to address gender violence globally have expanded, the critiques that many at this conference have raised surface the limitations of generations of reform. Intimate partner and sexual

* Professor of Law, CUNY School of Law. This essay has been adapted from an article titled, Julie Goldscheid, *Gender Neutrality, the ‘Violence against Women’ Frame, and Transformative Reform*, originally published at 82 UMKC L. REV. 623 (2014) [hereinafter Goldscheid, *Gender Neutrality*]. Published with permission from UMKC L. REV. Professor Goldscheid participated on the following panel, however, her remarks have been redacted: Andrea Ritchie et al., *Plenary 2—Redefining Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 289 (2015).

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¹ This essay uses the terms gender violence, intimate partner violence, domestic violence, and sexual violence to refer generally to the range of violent acts that are committed primarily by men against women, including physical and coercive violence between intimate partners, sexual assault, and stalking.

violence continue to be committed at alarming rates,² and gender-based stereotypes still infuse legal doctrine, system responses, and public discourse.³ Historically, the movement to end intimate partner and sexual violence's transformative power lay, in large part, in its roots in political anti-oppression organizing.⁴ Nevertheless, today's service delivery networks suffer critiques as mainstreamed, bureaucratized arms of the state.⁵ The dominant policy emphasis on criminal justice interventions has alienated communities, particularly along lines of race, immigration

² For example, a recent survey found that on average, twenty-four people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States. *Violence Prevention*, CENTERS FOR DISEASE CONTROL AND PREVENTION, available at www.cdc.gov/violenceprevention/nisvs/ (last visited Jan. 20, 2014). See also, e.g., Michele C. Black et al., *Nat'l Ctr. for Disease Control, Intimate Partner and Sexual Violence Survey* (2011), available at <http://www.cdc.gov/violenceprevention/nisvs/> (finding, *inter alia*, that nearly one in four women and one in seven men have experienced severe physical violence by a current or former partner and that one in five women and one in seventy-one men have been raped at some point in their lives). These statistics are likely to undercount the prevalence of both intimate partner and sexual violence as these crimes are often the most underreported. See CALLIE M. RENNISON, U.S. DEP'T JUSTICE, RAPE AND SEXUAL ASSAULT: REPORTING TO POLICE AND MEDICAL ATTENTION, 1992-2000 2 (2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsarp00.pdf>.

³ See, e.g., MARTIN D. SCHWARTZ, POLICE INVESTIGATION OF RAPE—ROADBLOCKS AND SOLUTIONS 53-54 (2010) (finding, *inter alia*, that despite many years of training, many police officers maintain stereotypic attitudes towards complainants in rape cases); U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 46-48 (Mar. 16, 2011), available at www.justice.gov/crt/about/spl/nopd.php (detailing stereotyped responses to intimate partner and sexual violence complainants); Lynn H. Schafran, *Barriers to Credibility: Understanding and Countering Rape Myths*, available at: http://www.nationalguard.mil/Portals/31/Documents/J1/SAPR/SARCVATraining/Barriers_to_Credibility.pdf; Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003 (1995); Naomi Cahn & Joan Meier, *Domestic Violence and Feminist Jurisprudence: Towards a New Agenda*, 4 B.U. PUB. INT. L.J. 339, 353-55 (1995); see also, e.g., BLACK WOMEN'S BLUEPRINT, available at <http://www.blackwomensblueprint.org/sexual-violence/> (last visited Oct. 14, 2013) (describing mass education campaign to eradicate stereotypes regarding black women's sexuality and other cultural norms that perpetuate sexual violence).

⁴ See, e.g., BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 68-69 (2012); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* 29-52 (1982); ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 11-23 (2000).

⁵ See, e.g., LISA A. GOODMAN & DEBORAH EPSTEIN, *LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE* (2008); LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* (2011); RICHIE, *supra* note 4, at 66-98; G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237, 276-77 (2005).

status, gender expression and other marginalized identities.⁶ As Beth Richie persuasively argues, feminists “won the mainstream but lost the movement.”⁷

This essay considers how we might draw from those critiques to best advance a movement that supports comprehensive and empowering services, and that aims to transform the cultural norms that continue to sanction gender violence.⁸ It revisits the now-common gender-specific frame “violence against women.” That frame was developed in service of feminist goals such as foregrounding and challenging gender bias and fostering more inclusive delivery of social and other services.⁹ It is by no means the only term used in connection with gender violence reforms, but it has become a standard description globally for laws, programs, and services addressing intimate partner and sexual violence, as well as for the violence itself.¹⁰ Although this terminology question is familiar, it

⁶ See, e.g., KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 1–15 (2008); GOODMARK, *supra* note 5; RICHIE, *supra* note 4, at 82–84, 97–124; Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801 (2001); Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J. L. & POL’Y 13, 35–36 (2011); Andrea Smith et al., *The Color of Violence: Introduction*, in COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY (2006); see generally, e.g., NATALIE J. SOKOLOFF WITH CHRISTINA PRATT, DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER, AND CULTURE (Natalie J. Sokoloff ed., 2005).

⁷ RICHIE, *supra* note 4, at 97.

⁸ For further discussion, see Goldscheid, *Gender Neutrality*, *supra* note *.

⁹ See, e.g., RICHIE, *supra* note 4, at 89–90 (explaining that the original construction of what she terms the “every-woman” analysis was an intentional and strategic move to avoid stereotyping those who use violence and the women who experience it, and to ensure that members of elite groups took the problem seriously).

¹⁰ In the United States, the federal Violence Against Women Act is perhaps the most prominent example. See, e.g., Violence Against Women Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006) (codified in scattered sections of the U.S. Code, including §§ 8, 16, 18, 28, and 42); Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994). For examples from global initiatives, see, e.g., Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Preamble, May 11, 2011, C.E.T.S. No. 210; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belem do Para,” Jun. 9, 1994, O.A.S.T.S. No. A61, available at <http://www.oas.org/juridico/english/treaties/a-61.html>; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) available at <http://treaties.un.org/doc/publication/UNTS/Volume%201249/v1249.pdf> (defining “gender-based violence” as a form of discrimination against women).

warrants revisiting as global initiatives gain prominence and the gender-specific language continues to be inscribed and codified.

This essay argues that on the whole, the gender-specific “violence against women” term no longer does the work feminists hoped it would do, and that its associated limitations outweigh its utility. I group those limitations into four categories and argue that the gender-specific “violence against women” frame is problematic empirically, theoretically, politically and legally, and practically. This essay will briefly elaborate those problems, and will draw on frame theory, a tool that has been used in analyzing social movements, to support the conclusion that we should shift from using the gender-specific “violence against women” frame as a default. Instead, we should default to gender-neutral terminology such as “gender violence” or descriptive terms such as “intimate partner violence,” or “sexual assault.” Terminology should be intentionally selected to advance the goals of the particular context in which the language is invoked, whether that is legislative, policy, or program-based. In consciously selecting terminology, we should recognize that gender-neutral terminology need not be politically neutral. Instead, our rhetoric and discourse should advance new and creative strategies to challenge the structural inequalities that continue to inform the experience and ramifications of gender violence and that advance the fundamental goal of ending gender violence in all its forms.

I. LIMITS TO THE FRAME

Advocates have lauded the gender-specific “violence against women” frame for its explicit focus on the disproportionate ways acts of violence, such as intimate partner violence and sexual assault, impact women.¹¹ The hope was that this express link would support advocacy, organizing, and reform that would frame the problem as a social and political concern, and as explicitly tied to historic and ongoing gender-based biases and discrimination.¹² By focusing directly on the impact on

¹¹ See, e.g., SCHECHTER, *supra* note 4, at 216–218; SCHNEIDER, *supra* note 4, at 11–28; Natalie J. Sokoloff & Ida Dupont, *Domestic Violence: Examining the Intersections of Race, Class, and Gender*, DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER, AND CULTURE 1, 2 (Natalie J. Sokoloff ed., 2005); see also, e.g., MOLLY DRAGIEWICZ, EQUALITY WITH A VENGEANCE: MEN’S RIGHTS GROUPS, BATTERED WOMEN, AND ANTIFEMINIST BACKLASH 8–10 (2011) (describing definitional debates); ALICE EDWARDS, VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW 21 (2010) (also describing definitional debates).

¹² For discussion of the link between abuse and gender bias, see, e.g., DRAGIEWICZ, *supra* note 11, at 10–12; SCHECHTER, *supra* note 4, at 29–34, 217–218, 228–234; SCHNEIDER, *supra* note 4, at 12–13; Reva Siegel, “The Rule of Love:” *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996).

women, the frame would challenge those deep and discriminatory gendered social norms and would help ensure that gender was not erased from popular and policy understandings of and responses to the problem.¹³ Nevertheless, empirical, theoretical, political, legal, and practical challenges limit its power to advance those transformative goals.

A. *Empirical*

The question whether intimate partner and sexual violence is committed primarily by men against women is both well-settled and hotly contested; it is squarely posed by use of the gender-specific "violence against women" frame. At its core, the premise of the gender-specific lens rests on this empirical question about prevalence. Surveys consistently find intimate partner and sexual violence is committed overwhelmingly by men against women, both in the United States and internationally.¹⁴ Structural and cultural forces, such as patriarchy and the historic ordering of the institutions of marriage and the family, result in the phenomenon in which women are overwhelmingly the victims and men the perpetrators of abuse, and in which the abuse reflects and

¹³ See, e.g., Dianne Otto, *International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry*, in THE ASHGATE RESEARCH COMPANION TO FEMINIST LEGAL THEORY 197, 204 (Margaret Davies & Vanessa E. Munro eds., 2013), available at <http://ssrn.com/abstract=2178769>; Margaret (Peggy) Maisel, *Have Truth and Reconciliation Commissions Helped Remediate Human Rights Violations Against Women?: A Feminist Analysis of the Past and Formula for the Future*, 20 CARDOZO J. INT'L & COMP. L. 143 (2011).

¹⁴ See, e.g., Black, *supra* note 2, at 2 (finding that one in five women and one in seventy-one men have been raped or sexually assaulted and that three in ten women and one in ten men have experienced rape, physical violence, and/or stalking by an intimate partner); CALLIE M. RENNISON, BUREAU OF JUSTICE STATISTICS INTIMATE PARTNER VIOLENCE, 1993–2001, (NCJ-197838 Feb. 2003), available at <http://www.bjs.gov/content/pub/pdf/ipv01.pdf> (showing approximately 85% of victimizations by intimate partners in 2001 were against women); PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE IV 17–24 (NCJ-181867 July 2000), available at <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (nearly 25% of women and 7.6% of men surveyed said they had been raped and/or physically assaulted by a current or former spouse at some point in their lifetime; women experience more intimate partner violence than do men); see also, e.g., Walter S. DeKeseredy, *Feminist Contributions to Understanding Woman Abuse: Myths, Controversies, and Realities*, 16 AGGRESSION & VIOLENT BEHAV. 297, 297–98 (2011). For international statistics, see, e.g., World Health Organization, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (2013), available at <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

reinforces traditional gender roles.¹⁵ This imbalance underscores the longstanding feminist insight that much intimate partner and sexual violence is a function of historic and enduring gender-based roles and stereotypes.¹⁶

Nevertheless, a vigorous debate dominates the empirical literature, in which some critique the data concluding that intimate partner violence is committed primarily by men against women¹⁷ and others forcefully refute those critiques.¹⁸ At least some of the differences between survey results reflect definitional issues; in other words, surveys produce different results because they measure different behaviors using different designs and methodologies.¹⁹ Beyond survey design itself, experts distinguish what has been termed “intimate terrorism,” or “battering” from what some term “situational violence,” or “resistive violence.”²⁰ Surveys that focus on the coercive and controlling behavior that may be termed “battering” or “intimate terrorism” may more accurately capture the gendered nature of the problem than do tallies that simply count instances of violent conduct.²¹

¹⁵ See, e.g., DeKeseredy, *supra* note 14, at 298; DRAGIEWICZ, *supra* note 11, at 81–102.

¹⁶ See *supra* note 12.

¹⁷ See, e.g., Donald G. Dutton et al., *The Gender Paradigm in Domestic Violence Research and Theory: Part 1—The Conflict of Theory and Data*, 10 AGGRESSION & VIOLENT BEH. 680 (2005) (citing studies and refuting “feminist” arguments about gender impact); Sherry Hamby, *The Gender Debate on Intimate Partner Violence: Solutions and Dead Ends*, 1 PSYCH. TRAUMA 24 (2009) (finding “moderate gender asymmetry” in intimate partner violence); Murray A. Straus, *Gender Symmetry and Mutuality in Perpetration of Clinical-Level Partner Violence: Empirical Evidence and Implications for Prevention and Treatment*, 16 AGGRESSION & VIOLENT BEHAV. 279 (2011) (reviewing studies and urging recognition of gender symmetry in intimate partner violence).

¹⁸ See, e.g., DRAGIEWICZ, *supra* note 11, at 81–101; Michael P. Johnson, *Gender and Types of Intimate Partner Violence: A Response to an Anti-feminist Literature Review*, 16 AGGRESSION & VIOLENT BEH. 289 (2011).

¹⁹ See Hamby, *supra* note 17, at 32–33 (discussing definitional issues and suggesting approaches to synthesize data).

²⁰ See, e.g., Ellen Pence & Shamita Das Dasgupta, Praxis Int’l., Inc., *Re-Examining ‘Battering’: Are All Act of Violence Against Intimate Partners the Same?* (June 20, 2006), available at <http://www.praxisinternational.org/files/praxis/files/ReexaminingBattering.pdf>; MICHAEL P. JOHNSON, *A TYPOLOGY OF DOMESTIC VIOLENCE* (2008); see also, e.g., Joan B. Kellyn & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476 (2008) (recommending differentiation between different types of intimate partner violence in range of family court contexts).

²¹ See, e.g., Jennifer Nixon & Cathy Humphreys, *Marshalling the Evidence: Using Intersectionality in the Domestic Violence Frame*, 17 SOC. POL.: INT’L STUD. IN GENDER, ST. & SOC’Y 137, 144 (2010); see also, e.g., Pence & Dasgupta, *supra* note 20; Kellyn & Johnson, *supra* note 20.

In addition to statistical problems, the gender-specific frame is empirically problematic in that it inaccurately suggests that men are never subjected to intimate partner abuse and sexual violence. To the contrary, studies consistently confirm the unremarkable fact that men are subject to intimate partner violence, although at far lower rates than women.²²

The erasure of violence against men poses a particular problem for gay and trans-identified men who are subjected to abuse. Studies indicate that gay men experience high rates of intimate partner violence, particularly when compared with men living with female partners.²³ Transgender people, including those who identify as male, also experience high rates of intimate partner violence, though data is sparse.²⁴ Heterosexual, gay, trans men and trans women are subjected to sexual assault as well as intimate partner violence at rates that are

²² See *supra* note 14. Of course, reported rates of abuse of men may be particularly under-inclusive since men may be reluctant to report abuse given dominant social roles deeming men to be the aggressor, not the victim. See, e.g., Bennett Capers, *Real Rape Too*, 99 CAL. L. REV. 1259, 1266, 1274–76 (2011); see also, e.g., RENNISON, *supra* note 2 (discussing under-reporting).

²³ Mikel L. Walters et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation* 1, (Jan. 2013) available at http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf (reporting, *inter alia*, that lesbian woman and gay men reported levels of intimate partner violence and sexual violence equal to or higher than those of heterosexuals). Reports of rates of violence in LGBT relationships generally vary, though studies consistently show that LGBT individuals experience intimate partner violence at least at the same rates as heterosexual individuals. See, e.g., Adam J. Heintz & Rita M. Helendez, *Intimate Partner Violence and HIV/STD Risk Among Lesbian, Gay, Bisexual and Transgender Individuals*, 21 J. INTERPERSONAL VIOLENCE 193, 193 (2006) (LGBTQ people experience domestic violence at the same rate as the general population); Elaine Zahnd et al., *Nearly Four Million California Adults are Victims of Intimate Partner Violence*, in UCLA HEALTH POLICY RESEARCH BRIEF 5 (April 2010), available at http://www.healthpolicy.ucla.edu/pubs/files/IPV_PB_031810.pdf (bisexual, gay, lesbian or homosexual adults are almost twice as likely to experience intimate partner violence as heterosexual adults); see also Mitru Ciarlante & Kim Fountain, National Center for Victims of Crime & National Coalition of Anti-Violence Programs, *Why it Matters: Rethinking Victim Assistance for Lesbian, Gay, Bisexual, Transgender, and Queer Victims of Hate Violence & Intimate Partner Violence* 4-7 (2010) available at http://www.ncdsv.org/images/NCVC_WhyItMatters_LGBTQreport_3-2010.pdf (summarizing research) [hereinafter *Why it Matters*].

²⁴ See, e.g., National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual Transgender, Queer and HIV-Affected Intimate Partner Violence*, (2010), available at http://www.ncdsv.org/images/AVP_VoicesOfSurvivorsIPVNarratives_2010.pdf, (summarizing research) [hereinafter *NCAVP 2010 Report*]; Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51, 54-55 & nn.22-24, (2013) (tracking studies); see also, e.g., National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual Transgender, Queer and HIV-Affected Intimate Partner Violence in 2012*, (2013), available at http://www.avp.org/storage/documents/ncavp_2012_ipv_report.final.pdf [hereinafter *NCAVP 2012 Report*].

difficult to quantify, though no doubt are higher than commonly recognized.²⁵ The woman-specific frame erases the experiences of these survivors and excludes them from services as well as from legal and other forms of redress.²⁶

B. Theoretical

The gender-specific frame has been a foundational component of feminist theory and advocacy seeking to challenge intimate partner and sexual violence as a manifestation of patriarchy.²⁷ But, it increasingly conflicts with theoretical perspectives with which many anti-violence advocates otherwise would agree. This section summarizes those tensions.²⁸

1. Queer and Gender Theory

Queer and gender theorists resist the gender-specific frame for a number of reasons. It inscribes an inaccurate and misleading binary view of gender.²⁹ The frame is inconsistent with many people's lived experiences as well as with contemporary medical technology and expertise, which confirm that "sex" is lived on a continuum, rather than through the limited categories of male and female.³⁰ It normalizes sex/gender hierarchies and stereotypes and prevents broader

²⁵ See Capers, *supra* note 22, at 1266-77 (detailing studies of male rape both inside and outside of prison); see also *NCAVP 2012 Report*, *supra* note 24, at 8 (reporting that gay men, LGBTQ communities of color, LGBTQ youth and young adults, and transgender communities experienced the most severe forms of intimate partner violence).

²⁶ See *infra* Part I.D.

²⁷ See, e.g., SCHNEIDER, *supra* note 4, at 22; Goodmark, *supra* note 24, at 90-92; Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. CAL. REV. L. & WOMEN'S STUD. 81, 89 (2003); Emily J. Sack, *Battered Women and the State: the Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1666 (2004).

²⁸ For further elaboration, see generally Goldscheid, *Gender Neutrality*, *supra* note *, at 635-41.

²⁹ See also, e.g., Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325, 350 (1999) (urging distinction between gender difference and other forms of privilege and power); Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U. L. REV. 567 (1990) (urging recognition of lesbian domestic violence); see generally, e.g., Capers, *supra* note 22; Otto, *supra* note 13; Morrison, *supra* note 27; Darren Rosenblum, *Unsex CEDAW, or What's Wrong with Women's Rights*, 20 COLUM. J. GENDER & L. 98 (2011); JUDITH BUTLER, *BODIES THAT MATTER* (1993).

³⁰ Rosenblum, *supra* note 29, at 134-36.

understandings of the manifold ways that sex and gender operate as technologies of power and oppression.³¹

Framing intimate partner and sexual violence as violence committed by men against women hides the reality of abuse in lesbian and gay relationships.³² It excludes the complexities of the experiences of lesbian, gay, and trans survivors, which may involve different dynamics of coercion and control,³³ and which may challenge dominant Western gender-role stereotypes, compounding barriers to obtaining services.³⁴

2. Anti-essentialism and Intersectionality

Critical race, intersectionality, and anti-essentialism theorists contribute to a critique of the gender-specific frame through scholarship surfacing the ways single-identity politics conflate or ignore multiple dimensions of identity.³⁵ Critics have challenged frames for intimate partner and sexual violence that use a single axis of identity, charging that the unitary focus on "women" amounts to a reference to white women.³⁶ This single axis of focus obscures the complexities of survivors' experiences and fails to take into account the variability in survivors' experiences of abuse based on structural factors other than gender, such as race, immigration status, class, and gender identity.³⁷ As

³¹ Otto, *supra* note 13, at 200.

³² See *supra* notes 23-24 and accompanying text.

³³ See, e.g., NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE IN 2012 (2013), available at http://www.avp.org/storage/documents/ncavp_2012_ipvreport_final.pdf; see also, e.g., Goodmark, *supra* note 24 (detailing the experiences of trans victims of abuse).

³⁴ See Dena Hassounch & Nancy Glass, *The Influence of Gender Role Stereotyping on Women's Experiences of Female Same-Sex Intimate Partner Violence*, 14 VIOLENCE AGAINST WOMEN 310 (2008).

³⁵ See, e.g., Patricia H. Collins, *The Tie That Binds: Race, Gender and US Violence*, 21 ETHNIC & RACIAL STUD. 917 (1998); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988).

³⁶ See, e.g., RICHIE, *supra* note 4, at 91-92; Crenshaw, *supra* note 35; Morrison, *supra* note 27, at 88; Rosenblum, *supra* note 29, at 102.

³⁷ See, e.g., Collins, *supra* note 35, at 918-19, 930-36 (focusing on the experiences of African-American women and other marginalized groups); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 779-80 (2000) (arguing that feminists' traditional focus on violence against women obscures the ways race and gender shape both violence and the criminal justice system's response). For example, survivors in communities of color and in immigrant communities may prefer community-based, rather than criminal justice, interventions, due to the ways those communities have been adversely impacted by criminal justice responses. See, e.g., Nixon & Humphreys,

Beth Richie argues, the gender-specific rhetoric affirming that “every woman can be a victim” is “almost dangerous” in that it detracts from the possibility of developing a broader social justice analysis.³⁸ At a minimum, a continued adherence to the “violence against women” frame de-emphasizes the insights drawn from intersectionality theory and can be a barrier to cross-gender, race, and class alliances.³⁹

3. Anti-stereotyping

Notwithstanding the fact that the gender-specific lens grew out of feminist theory and advocacy, it nevertheless poses a tension with foundational feminist tenets. The woman-specific paradigm is difficult to reconcile with traditional feminist critiques of gender stereotypes. Theory and advocacy challenging traditional gender roles and stereotypes lie at the heart of legal and other feminist initiatives.⁴⁰ Accordingly, we would expect feminists to acknowledge that women have the capacity to be violent, instead of casting women reflexively in the role of (presumably non-violent) victim. It perpetuates a gender stereotype of its own to assume that women always are the targets rather than the perpetrators of violent aggression. Woman-specific framings reinforce gendered stereotypes by enshrining images of the weak female victim who cannot resist male aggression and who requires protections.⁴¹ As Dianne Otto argues, the focus on women as the victims of violence has led to protective representations of women that inscribe women’s vulnerability and deny women’s agency and autonomy.⁴² To the extent

supra note 21, at 150; *see also, e.g.*, Michele Bograd, *Strengthening Domestic Violence Theories: Intersections of Race, Class, Sexual Orientation, and Gender*, 25 J. MARITAL AND FAMILY THERAPY 275 (1999); SOKOLOFF, *supra* note 6, at 25 (discussing, *inter alia*, differences in the meaning of domestic violence across racial or ethnic lines, the impact of class differences, and the ways traditional depictions of domestic violence render gay and lesbian battering invisible); Crenshaw, *supra* note 35.

³⁸ RICHIE, *supra* note 4, at 91.

³⁹ *See, e.g.*, Michele Bograd, *supra* note 37; Beth E. Richie, *A Black Feminist Reflection on the Anti-Violence Movement*, 25 SIGNS 1133, 1135 (2000); Sokoloff & Dupont, *supra* note 11, at 2.

⁴⁰ *See, e.g.*, REBECCA J. COOK & SIMONE CUSACK, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES (2010) (arguing that wrongful gender stereotypes must be eliminated to eliminate all forms of gender discrimination); *see also, e.g.*, Price Waterhouse v. Hopkins, 490 U.S. 228 (1988) (finding that gender stereotypes constituted impermissible sex discrimination).

⁴¹ Capers, *supra* note 22, at 1306-07; *see also, e.g.*, Laurie Kellman, *Democrats Raise Violence Against Women Act*, ASSOCIATED PRESS ONLINE, Mar. 15, 2012, available at <http://news.yahoo.com/democrats-raise-violence-against-women-act-195155112.html> (quoting Senator Patty Murray as arguing that “[p]rotecting women against violence should not be a partisan issue”) (emphasis added).

⁴² Otto, *supra* note 13, at 200.

that the woman-specific frame feeds images of women as victims, it runs counter to feminist theory and advocacy endorsing women's autonomy as paramount.⁴³

C. "Backlash" Politics and Legal Challenges

The gender-specific lens also has provided fodder for challenges by so-called "fathers' rights" groups and conservative feminists.⁴⁴ Fathers' rights groups often argue that feminists exaggerate the extent of violence perpetrated by men against women; they argue that feminists have succeeded in changing the justice system to focus solely on victimization of women with the result that the system instead victimizes men.⁴⁵

Both "fathers' rights" groups and conservative feminists critique the premise that intimate partner and sexual violence reflect male subordination of women and gender discrimination.⁴⁶ They argue that anti-domestic violence programs, particularly those that employ gender-specific terminology, constitute reverse discrimination and violate equal protection. Some critique batterers' intervention programs as discriminatory because the programs explicitly recognize that acts of intimate partner and sexual violence are deeply rooted in historic attitudes towards women.⁴⁷ They have brought legal challenges to legislation and regulations that codify the woman-specific lens.⁴⁸ Although those legal challenges generally have not and likely would not succeed substantively,⁴⁹ they divert scarce resources from advocacy and service organizations and skew the terms of debate.

The net effect of these challenges has not disturbed the nature or delivery of domestic violence services since there was no dispute that

⁴³ See, e.g., GOODMARK, *supra* note 5; see also, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 27–35 (1991).

⁴⁴ These conservative feminists also are referred to as "pseudofeminists." See, e.g., Sack, *supra* note 27, at 1699 n.197.

⁴⁵ For a fuller discussion of the role of the "men's rights" and "pseudofeminists" in anti-domestic violence law reform, see, e.g., DRAGIEWICZ, *supra* note 11; Sack, *supra* note 27, at 1699–1702.

⁴⁶ See, e.g., DRAGIEWICZ, *supra* note 22, at 13–18, 51–60 (detailing arguments).

⁴⁷ For descriptions of those programs, see, e.g., Kerry Healey et al., Nat'l Inst. of Justice, *Batterer Intervention: Program Approaches and Criminal Justice Strategies* 17–18 (1998), available at <http://www.ncjrs.gov/pdffiles/168638.pdf>.

⁴⁸ See, e.g., *Men & Women Against Discrimination v. Family Protection Servs. Bd.*, 725 S.E.2d 756, 758 (W. Va. 2011); *Woods v. Horton*, 84 Cal. Rptr. 3d 332, 339 (Cal. Ct. App. 2008) (emphasis added), *petition for review denied*, 2008 Cal. LEXIS 15055; *Blumhorst v. Jewish Family Servs. of Los Angeles, Fam. Servs.*, 24 Cal. Rptr. 3d 474, 477–78 (Cal. Ct. App. 2005); *Booth v. Hvass*, 302 F.3d 849, 854 (8th Cir. 2002), *cert. denied*, 537 U.S. 1108 (2003).

⁴⁹ See, e.g., Goldscheid, *Gender Neutrality*, *supra* note *, at nn.111–130.

bona fide male survivors could seek services regardless of programmatic titles. No doubt, a gender-neutral frame may not have prevented these or other cases since the groups that brought these cases likely would challenge any reference to historic gender discrimination even if the program was framed and delivered in a gender-neutral manner. Nevertheless, gender-specific provisions provide fuel for efforts to discredit needed services and open the door to challenges that might otherwise be avoided. Absent those provisions, the debate might instead focus on substantive differences in opinion concerning, for example, whether intimate partner violence is fueled by gender discrimination or how to shift cultural norms to reduce and ultimately eliminate intimate partner and sexual violence.

D. Practical

The “violence against women” frame creates practical issues for lesbian, gay, bisexual, and transgender (“LGBT”) survivors of intimate partner and sexual violence and those who advocate on their behalf. The traditional gender frame identifying men as aggressors and women as survivors excludes male victims and female perpetrators of abuse in gay relationships from services and legal redress.⁵⁰ Gay and trans men may see themselves as ineligible for and may in fact be unable to access services; trans women may wonder whether they are “woman enough” to be considered a victim.⁵¹ The woman-specific focus may expose survivors to additional danger and may jeopardize the viability of needed programs and services for men and gender-non-conforming survivors.⁵² The frame is particularly problematic for transgender people who are subjected to suspicious and often hostile pre-screenings before they are assessed with respect to whether they are eligible for services.⁵³

From a service delivery perspective, the gender-specific lens uses the identity of “woman,” or a survivor’s presentation as a cis-female,⁵⁴ as a

⁵⁰ A recent case illustrates the perils of gender-specific definitions. A Swedish man was cleared of attempted rape after it turned out that the victim was a transsexual man, not a woman; the court concluded that the accused could not have committed rape because “he was attempting to rape a woman.” Sara Malm, *Man Cleared of Attempting Rape of Woman – After Female ‘Victim’ Turned Out to be Male*, MAIL ONLINE (July 4, 2012), available at <http://www.dailymail.co.uk/news/article-2168577/Man-cleared-attempting-rape-woman--female-victim-turned-male.html>.

⁵¹ Goodmark, *supra* note 24, at 69.

⁵² See *infra* note 56 and accompanying text.

⁵³ See, e.g., Goodmark, *supra* note 24, at 67–71 (describing shelter practices for admitting trans women).

⁵⁴ The term “cis-gender” refers to people whose gender identity is consistent with the sex to which they were assigned at birth. *Cisgender Definition*, OXFORDDICTIONARIES.

singular proxy for distinguishing victims from survivors. Shelters generally adopt the philosophy of “believing the woman” who is seeking services. That practice does not help discern which partner is the aggressor in lesbian, gay and trans domestic violence cases.⁵⁵ It may exacerbate danger if shelters allow a female abusive partner unquestioned access to her partner.

The gender-specific lens exacerbates the risk that lesbian, gay and trans survivors may be denied services and that needed programs may be denied funding. A growing body of data documents the challenges LGBT survivors face in obtaining services.⁵⁶ Problems include a lack of LGBT-specific services, a lack of culturally-specific outreach, untrained victim assistance providers, non-inclusive reporting forms, an absence of LGBT-specific policies and practices, a lack of collaboration between LGBT and “mainstream” victim service providers, and a lack of funding for LGBT-specific services. Abused gay men may not be able to access shelter, since most intimate partner violence shelters do not house men and few jurisdictions have LGBT-specific shelter beds available. At the same time, when LGBT programs and services are recognized, they may be cabined under the gender-specific frame, leading to the awkward result of programs providing services addressing violence against women, while reassuring that those programs are open to men.⁵⁷

II. PARSING THE FRAME

A. *Frame Theory*

The terms “violence against women,” “gender-based violence,” and the concepts of gender-specificity versus gender-neutrality can be thought of as alternate but related “frames” for the social movement to

COM, available at http://www.oxforddictionaries.com/us/definition/american_english/cis-gender (last visited Oct. 6, 2014).

⁵⁵ See, e.g., Mary Eaton, *Abuse by Any Other Name: Feminism, Difference, and Intralesbian Violence*, in MARTHA A. FINEMAN & ROXANNE MYKITIUK, *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 195, 198 (1994).

⁵⁶ See, e.g., *NCAVP 2010 Report*, *supra* note 24; *Why it Matters*, *supra* note 23 (reporting results of community-based organizations and victim assistance providers). For additional examples, see JANICE L. RISTOCK, *INTIMATE PARTNER VIOLENCE IN LGBTQ LIVES* (2011), and CHING-IN-CHEN ET AL., *THE REVOLUTION STARTS AT HOME: CONFRONTING INTIMATE VIOLENCE WITHIN ACTIVIST COMMUNITIES* (Ching-In Chen et al. eds., 2011) (edited volume including accounts of violence within LGBT relationships).

⁵⁷ See, e.g., Jane Doe, Inc., *Violence Against Women*, available at http://www.janedoe.org/learn_more/what_is_vaw (describing programs addressing “violence against women” and explaining that people who are lesbian, gay, bisexual and transgender, including men, may also be subjected to gender-based violence).

end intimate partner and sexual violence. The concept of “framing” developed from Erving Goffman’s identification of the phrase⁵⁸ to denote “schemata of interpretation” that enable individuals “to locate, perceive, identify, and label” occurrences in daily life and in society.⁵⁹ The concept has been useful in social movement theory, which recognizes “framing” as a key aspect of political success.⁶⁰

Successful frames eventually become markers of the discourse and set the parameters and terms of the movement’s central issues or concerns. When effective, collective action frames mobilize potential movement participants and inspire and legitimate social movement campaigns.⁶¹ Sociologists have identified key concepts that inform a frame’s resonance, including empirical credibility, theoretical consistency, centrality and salience.⁶² In addition, the concept of realignment processes recognizes the ways social movements change in reaction to political and cultural shifts in order to remain useful.⁶³

A brief analysis of a few of these concepts as they apply to the gender-specific frame confirms the frame’s limitations.⁶⁴ For example, frame theory looks at whether the frame is consistent with corresponding empirical data. As the preceding discussion demonstrates, empirical data confirms the gender-specific frame’s limits in describing the gendered parameters of intimate partner and sexual violence. Consistency between the frame and a movement’s articulated beliefs, claims and actions is another measure of a frame’s strength. As detailed in previous sections of this essay, the gender-specific frame creates tensions with theoretical approaches, including gender and queer, intersectionality, and feminist theories. Centrality and salience are other measures of a frame’s power that consider how essential are beliefs, values, and ideas associated with

⁵⁸ ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* (1974).

⁵⁹ David A. Snow et al., *Frame Alignment Processes, Micromobilization, and Movement Participation*, 51 AM. SOC. REV. 464 (1986).

⁶⁰ See, e.g., Charlotte Ryan & William A. Gamson, *Are Frames Enough?*, in JEFF GOODWIN & JAMES M. JASPER, *THE SOCIAL MOVEMENTS READER: CASES AND CONCEPTS* 167 (2d ed. 2009); David A. Snow & Robert D. Benford, *Master Frames and Cycles of Protest*, in ALDON D. MORRIS & CAROL MCCLURG MUELLER, *FRONTIERS IN SOCIAL MOVEMENT THEORY* 133, 136 (1992).

⁶¹ Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 614 (2000).

⁶² See generally, e.g., Snow et al., *supra* note 59; Snow & Benford, *supra* note 60; Benford & Snow, *supra* note 61. For further discussion, see Goldscheid, *Gender Neutrality*, *supra* note *, at Part III.A.

⁶³ See, e.g., Snow et al, *supra* note 59, at 464–76.

⁶⁴ See Nixon & Humphreys, *supra* note 21, at 139 (critiquing the gender-specific frame and arguing that a more nuanced frame is now needed to reflect empirical evidence and survivors’ experiences).

movement frames to the lives of movement participants. In this regard, the gender-specific frame may be less central to movement participants' identity than it had been at earlier stages of the movement to end gender violence. Today, the frame, on its own, fails to encompass survivors' full experiences, which show that men as well as women may be survivors and that other forms of subordination also inform the experience of intimate partner and sexual violence. And the gender-specific frame may be less resonant with cultural narrations as popular identification with a "feminist" movement shifts form.⁶⁵

Frame theory's notion of "realignment processes" is particularly useful in that it recognizes framing as an ongoing, dynamic process. Shifts in the political and cultural context render the gender-specific frame less resonant now than it had been in the past. A number of factors, including the empirical issues discussed above, the increased recognition of the role of multiple identities in framing the experience of abuse, increased awareness of abuse in LGBT relationships, and the rise of the so-called "fathers' rights" movement, render the gender-specific frame less consistent with how survivors and allies see the issues. The frame grew out of a political movement borne of a particular moment in time. As the movement succeeded in raising awareness, reducing formal inequalities and supporting legal, policy, and programmatic change, it left in its wake an ongoing need for political discourse. A revised frame should both give voice to survivors from all social locations and cultural backgrounds and should emphasize a structural approach that recognizes the role of multiple sources of oppression and interlocking systems of power and dominance.⁶⁶ A shift to a broader frame holds potential to support coalition work and broader campaigns for reform.

III. CONTEXTUALIZED GENDER-NEUTRALITY

Notions of realignment processes teach that political and cultural changes can spur accompanying shifts in frames in order for them to remain useful. Gender-specific terminology initially represented a political frame for the anti-violence movement, focusing attention on the ways intimate partner violence reflected historic gender biases and disproportionately impacted women. In the United States, with several decades of advocacy behind us and with a changing landscape ahead, a

⁶⁵ See generally, e.g., JENNIFER BAUMGARDNER & AMY RICHARDS, *MANIFESTA: YOUNG WOMEN, FEMINISM AND THE FUTURE* (2000) (tracing changes in the meaning of feminism and the shape of feminist movements); Bridget J. Crawford, *Toward A Third-Wave Feminist legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99 (2007) (describing "third-wave feminism").

⁶⁶ Accord Nixon & Humphreys, *supra* note 21, at 150–51.

new approach would better capture the potential for progressive reform.

In 1982, scholar and activist Susan Schechter emphasized the importance of advocacy that focused on both services and politics.⁶⁷ Although those two directions are inextricably intertwined, they represent distinct perspectives. The anti-domestic violence movement has been marked by tensions between the two; for example, between those who focus on improving the availability and quality of services and those who believe in the primacy of building a liberation movement.⁶⁸ Re-framed terminology should advance these two distinct, but linked, trajectories.

I suggest a modest shift that meets both descriptive and transformative goals and that is sensitive to differences in context and usage. The default term “violence against women” would be replaced by a default to the term “gender-based violence” or “gender violence.” That switch produces a focus on the gendered impact of abuse without inscribing the problem as tied to women alone.⁶⁹ Those gendered, though neutral, terms are most useful when broadly describing a category of conduct, rather than a way to describe a particular act. For example, the term “gender violence” may be used broadly to reference a range of conduct, for example, intimate partner and sexual violence, in service of political advocacy, public discourse, and movement building.⁷⁰ Particularized and descriptive terms such as “intimate partner violence” or “sexual assault,” may be suited to legislation or descriptions of programs or services, given the need to distinguish between and among different types of gender violence.⁷¹ Even with “neutral” language, transformative goals can be advanced by modifying that language with phrases recognizing the underlying conduct’s social location. For example, terms such as “intimate partner violence” can be followed by a

⁶⁷ SCHECHTER, *supra* note 4, at 242.

⁶⁸ *Id.*

⁶⁹ Here I agree with Darren Rosenblum that categorical but neutral terms, such as “sex” or “gender,” which alternately are used in the context of general anti-discrimination initiatives, avoid the problems associated with using the identity-based term “woman.” See Rosenblum, *supra* note 29, at 150–58.

⁷⁰ See, e.g., EDWARDS, *supra* note 11, at 20–25 (discussing definitions). For examples of this approach, see, e.g., Dean Peacock & Andrew Levack, *The Men as Partners Program in South Africa: Reaching Men to End Gender-Based Violence and Promote Sexual and Reproductive Health*, 3 INT’L J. OF MEN’S HEALTH 173 (2004); World Health Organization, *Gender Based Violence*, <http://www.who.int/gender/violence/gbv/en/>; USAID, *Gender-based Violence*, <http://www.usaid.gov/gbv/>.

⁷¹ See, e.g., Safe Horizon, <http://www.safehorizon.org> (victim services organization listing programs for survivors of, *inter alia*, domestic violence, rape and sexual assault, child abuse and incest, stalking, and trafficking).

phrase stating that it is "committed primarily by men against women," to retain a focus on social context.

This proposal to default to the gender-neutral "gender violence" frame is not absolute; the ideal frame will depend on context. Gender-specific frames may be valuable in challenging legal frameworks that sanction gender violence through formal legal inequalities.⁷² They may be strategically useful in particular organizing campaigns.⁷³ What is key is that the frame is intentionally selected to ensure that, in context, it best advances the twin goals of supporting comprehensive services and challenging ongoing biases without unnecessarily reinscribing essentialist notions of gender and excluding gender-nonconforming survivors.

Regardless, the gender-neutral shift alone is not enough. To sustain and advance the political and transformative goals underlying the "gender-specific" frame, any shift in terminology must be accompanied by a reinvigorated commitment to challenging inequality and bias directly.⁷⁴ The last several decades of advocacy reveal that we cannot rely on the gender-specific frame, or any frame alone, to do that work. It goes without saying that a gender-neutral frame will not eliminate challenges from those who reject the notion that intimate partner and sexual violence is linked with sex discrimination. Instead, challenges to gender-based biases and stereotypes could focus debate on challenging those and related biases, rather than debating whether men are *bona fide* victims.

This proposal is modest in that many initiatives already use gender-neutral but contextualized formulations.⁷⁵ The proposal calls for a more self-conscious use of frame and a move away from reflexive use of the woman-specific frame to better support inclusive services and revived political advocacy. A shift away from the woman-specific frame requires acknowledging that men are sometimes victims and that intimate partner and sexual violence takes many forms, not all of which replicate the classic gendered narrative. It recognizes that violence in intimate relationships may not be entirely distinct from other forms of violence in our culture. Recognizing that not all cases fit the classic gender narrative

⁷² See, e.g., U.N. WOMEN, PROGRESS OF THE WORLD'S WOMEN 28–31 (2011–2012), available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> (describing laws that explicitly discriminate against women).

⁷³ See, e.g., BLACK WOMEN'S BLUEPRINT, www.blackwomensblueprint.org.

⁷⁴ See Beth E. Richie, *Foreword to* NATALIE J. SOKOLOFF WITH CHRISTINA PRATT, DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER, AND CULTURE XV (Natalie J. Sokoloff ed., 2005).

⁷⁵ See, e.g., *supra* note 70; see also Goldscheid, *Gender Neutrality*, *supra* note *, at Parts I.B. and C.

need not minimize the value and importance of the gender lens. The nuanced realities instead reflect the complexity of the problem, which should be recognized rather than obscured.

Some may be concerned that a shift away from a woman-specific frame may result in the loss of that frame's expressive effect, and its power to shift the social meaning of abuse.⁷⁶ The frame "gender-violence" can convey the same symbolic meaning by drawing attention to the disproportionate impact intimate partner and sexual violence has on women. It has the advantage of doing so without implicitly suggesting that only women are adversely impacted as its victims.

In fact, a contextualized gender-neutral frame holds greater potential than a gender-specific frame to advance progressive reform. By emphasizing and challenging patterns of discrimination while not limiting the status of survivor to those of a particular identity category, a contextualized gender-neutral approach can best advance equality-oriented reforms.

IV. CONCLUSION

The issue of gender and violence illustrates how our increasing understanding of entrenched social issues requires us to embrace both general principles and the limits of those generalities.⁷⁷ If we track the core feminist principle of building policy based on lived experience, we should create opportunities to grapple with these seeming contradictions and complex realities. A contextualized gender-neutral approach can provide the frame to advance progressive reform.

⁷⁶ See, e.g., Cass Sunstein, *Law, Economics & Norms: On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2043 (1996).

⁷⁷ See, e.g., Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520 (1992).

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Colonization, Culture, and Resistance

UNIVERSITY OF MIAMI SCHOOL OF LAW

*Zanita Fenton (moderator)**

Sarah Deer

Val Kalei Kanuha

Eesha Pandit[†]

FENTON: The title of our panel is Colonization, Culture & Resistance. Consider: Colonization—also understood as imperialism—where the state exercises and extends its power over other nations through force or the threat of force. It is parallel to domestic violence whereby the abuser exercises control, power, and authority over his victim through force or the threat of force. So, indeed, there are multiple

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted. Eesha Pandit's remarks were redacted as she contributed the following essay: Eesha Pandit, *On the Same Bodies: Exploring the Shared Historical Legacy of Violence Against Women and Reproductive Injustice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 549 (2015).

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layers to the consideration of colonization. Culture—what world culture does not devalue women? I am not aware of any. When we discuss culture, we necessarily are also talking about subculture and counter-culture. Counter-culture is a nice segue into the discussion of resistance—resistance by finding modes of survival. Attempting to find, do or be something other than that which is promoted by general society (that is, the mainstream culture), attempting to survive the abuse and control that diminishes self. Resistance also means the manner in which marginalized and abused peoples manage to survive subordination and oppression. This brings us full circle to the first part of our title—colonization. These connections serve as a framework for listening to the panelists and forming your questions.

KANUHA: Beth Richie reminded us today that violence against women and children is set in a context of violence in our society. For Native Hawaiians as a colonized people, violence in our families and in our communities is an extension of the violence that has been wielded against us as native people by foreigners and now by the state.

I want to start with a brief history of Hawaii as I think a lot of people do not really understand the history of colonization in Hawaii. The first important context is that we see ourselves as island people, rooted in the entirety of what it means to be an island nation of Oceania, the largest continent on the globe. When James Cook arrived in 1778 to “discover” Hawaii he described Hawaiians as the most robust, healthy, and friendly peoples he had ever met.¹ At the time of Cook’s first arrival estimates of the indigenous inhabitants were 400,000 to a million people; but in less than a hundred years, there were only 40,000 Hawaiians remaining.² Part of the rapid decimation of our people was due literally to Hawaii’s geographic isolation and the pristine nature of our environment due to that isolation.³ So we were very vulnerable to diseases and other forms of colonization that foreigners brought. A second important context is that Hawaii was an independent, sovereign nation—part of the United Nations—before we were illegally occupied and overthrown by the United States in 1893.⁴ The illegal overthrow of the Hawaiian nation was based in land ownership, control of commerce, and racist imperialism by white, American capitalists who decades earlier established Christianity

¹ MARSHALL SAHLINS, ISLANDS OF HISTORY 6 (1985).

² DAVID E. STANNARD, BEFORE THE HORROR: THE POPULATION OF HAWAII ON THE EVE OF WESTERN CONTACT 32–37 (1989).

³ *Id.*

⁴ THE TREE OF LIBERTY: A DOCUMENTARY HISTORY OF REBELLION AND POLITICAL CRIME IN AMERICA 741–43 (Nicholas N. Kittrie & Eldon D. Wedlock eds., Johns Hopkins University Press rev. ed. 1998).

as their pathway to power over the indigenous peoples.⁵ Fast forward over a century, and Hawaii is today still a colonized state and a militarized state under control of the United States of America. In November 1993, Clinton signed the Public Apology Law (103-150).⁶ The law basically said, “We’re sorry that over one hundred years ago the United States did illegally occupy and assume control over you as an independent, sovereign nation and we shouldn’t have done it.” The reason this socio-political-historical context is significant is that it explains why our understanding of gender violence and violence in all forms is situated first in the loss of power and self-determination of our people due to colonization by the United States, a nation in which we are now deeply embedded.

In pre-contact Hawaii, there is evidence of intimate and family violence. However, it was considered deviant and therefore accompanied by clearly delineated familial, communal and social consequences. The important aspect of these strategies is that justice for social violations was not relegated to one institution or person, but was viewed by the entire community as their shared responsibility. We cared for and protected each other, as well as each other’s families, children and relationships. So when Beth Richie and others at this meeting recommend prison abolition as our aspiration, I would say returning to caring for and being responsible to/for each other is my aspiration for ending violence against women and children. That means we do not necessarily as a first measure call 911 or the police or Child Protective Services but that we think, strategize and intervene first as people, neighbors, friends and those “in community” to end gender violence. Every community prior to the formal establishment of state-sponsored institutions such as child welfare and courts had found ways to serve these functions. But now we have not only forgotten how to do this, but we automatically rely on the state as the arbiter and enforcer of conflicts in our families and relationships. Our aspiration is to abolish prisons and replace it with communities taking more responsibility for ourselves by intervening in the degradation or the harm caused by some to others. The norms, values and beliefs that underlie these interventions are imbedded in harmonious social relations characterized by peace and justice.

So my call and my aspiration is that we—all of us, not only indigenous peoples—get back to the roots of our cultural traditions, values, beliefs, and strategies to reclaim health, wellness, and justice, and

⁵ See, e.g., Jennifer M.L. Chock, *One Hundred Years of Illegitimacy: International Legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawai'i's Annexation, and Possible Reparations*, 17 U. HAW. L. REV. 463 (1995).

⁶ Act of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510.

to say we do not need to use the State to intervene in this most significant aspect of our lives. We affirm the insidious and historical damage of colonization that has resulted cultural loss, trauma and stress at the individual and collective levels. We state clearly that colonization was a strategy of white people, foreigners and Christian missionaries to domesticate and control the family life of a vibrant, independent, sovereign nation.

I believe the colonial project of domesticating our families is in large part responsible for family violence in indigenous communities because the state took away the gaze and oversight of our grandparents, our uncles and aunts, and our neighbors upon our families by codifying “the family” as one man, one woman and *their* children; anything that happened in that family was a private matter, it was no longer anyone else’s business in the communal context of everyday life.

Finally, we focus on the possibilities, the aspirations, and what you can and should be as a member of society—not what you were and what you are and what you did. We dream that those who cause harm and violence should not think they are responsible or accountable to the state, but that they are accountable to their families, ancestors, and elders. You do not batter, rape, or abuse your children because it would bring shame to your ancestors who are watching over you each and every day and because it would harm the next generation who see you in their dreams as they succeed you.

This idea of not care but control is really what constitutes colonization. So our goal is to de-colonize our minds and hearts because we know colonization is as bad on the colonizer as it is on those who are colonized. We aspire to a community of justice in which we create change not for the state or to avoid punishment by the State, but because our first responsibility is to other humans, our families and all of our peoples who came before us and who will come after us.

DEER: Thank you for this opportunity. My remarks will be focused on four aspects of the Violence Against Women Act (VAWA) from an indigenous perspective. The first is to provide an overview of the changes in the 2013 Violence Against Women Act that deal with tribal sovereignty.⁷ The second regards strategic alliances and whether or not it is counterintuitive to engage the federal government on addressing gender violence in tribal communities. Third, I would like to say a few words about tribal justice systems themselves as tools of addressing gender violence. I will close my discussion by being candid about some of my concerns about complete prison abolition.

⁷ 42 U.S.C. §13925 (2012) (current version at 42 U.S.C. §13925 (2013)).

I will start by providing a brief overview of one major new change in the 2013 reauthorization of the Violence Against Women Act. To back up a few years, tribal nations have struggled to provide a comprehensive response to violence because of limitations imposed by the federal government. In 1978, the United States Supreme Court issued a decision called *Oliphant v. Suquamish Indian Tribe* in which it ruled that tribal governments had lost certain attributes of sovereignty because they are dependent on the federal government.⁸ The facts of the case are actually not particularly interesting, although the result of the case has been devastating. In *Oliphant v. Suquamish*, two non-native men who lived on the reservation committed acts of violence on the Suquamish Indian Reservation. One of the men, Mr. Oliphant, was arrested by tribal police during an incident at the Suquamish Chief Seattle Days. He was charged with assaulting a tribal police officer and resisting arrest. The other man led the tribal police officers on a long high speed chase that ended when he collided into a tribal police vehicle. He was charged with reckless endangerment and damaging tribal property. The Suquamish Indian government arrested them, charged them and prosecuted them for the acts of violence that they committed. Governments do this every day. But Mr. Oliphant raised a different kind of defense than “I didn’t do it.” He argued that the tribe should not be able to prosecute him because he was not a member of the tribe. That would seem an absurd argument in other contexts. As a citizen of the state of Minnesota, if I were to commit a crime here in Florida, the state of Florida would be able to exercise jurisdiction over me—no question. This suggestion that tribes lacked jurisdiction over two men, who lived on the reservation, that they should escape tribal sanction because of their race seemed logically unsound for similar reasons. But they won their case in the United States Supreme Court.

The decision contains some baffling language about why the tribe should not be able to prosecute these men even though tribal governments never surrendered their authority. The Court ruled that the jurisdiction had somehow been lost (or maybe never existed) because of the relationship between the United States and tribal nations. The decision itself cites to nineteenth century cases that contain really racist language—suggesting that in some way white people would not be able to understand tribal laws, and that there were these unique aspects of tribal law which would be unintelligible for someone from the outside. In the context of this case, such a perspective was again absurd because there are probably very few cultures in which it is okay to hit a police officer or ram a police car. However, Mr. Oliphant won the case—it and

⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

ever since then, tribal governments have not been allowed to prosecute people who are not members of the tribe, and more specifically those who are non-Indians. Interestingly, the statistics today tell us that the vast majority of people who harm native women are non-Natives.⁹ The decision remained the law until March 2013 when President Obama signed the reauthorization of the Violence Against Women Act which restored part of what the *Oliphant* case stripped away.¹⁰ It was a victory in the sense that Congress was recognizing that tribes have the inherent right to protect their community from anyone who commits violence. Congress was not ready to address the full scope of tribal criminal jurisdiction though, and the law only covers acts of domestic violence. Still, it was a victory from my perspective.

We have a certain amount of celebration for that reform, but I do not believe that celebration and critique are mutually exclusive. I do think that we have room to critique the law even though it is too soon to be able to adequately assess its success.

The challenge that we have in tribal communities is whether we must now replicate the system of the state governments in response to domestic violence. The focus of VAWA has almost always been on the criminal justice system. Tribes were stripped of this criminal jurisdiction unilaterally. We fought to get it back and now that we have it back; we must be very thoughtful and careful about what we do with that power. We may now begin to focus more on arrest, incarceration, and lifetime stigmatization for perpetrators; I think whether to do that is an important discussion that each tribal community needs to have. But what is effective and useful for my tribe might be very different than what is true for another tribe might see. We have to keep in mind that culture in the context of Native communities includes over 560 separate tribal sovereigns. There will be hundreds of these conversations.

We also need to continually ask ourselves whether it is counterproductive or counterintuitive to engage the federal government on justice for Native women. The federal government is largely the origin of violence in our communities, so why would we go to them to resolve this crisis?

I certainly do not think that the federal government holds the ultimate solutions for tribal nations. But some of our tribal justice systems have been nearly completely assimilated—and perhaps have

⁹ STEVEN W. PERRY, U.S. DOJ, BUREAU OF JUSTICE STATISTICS, A BJS STATISTICAL PROFILE 1992-2002: AMERICAN INDIANS AND CRIME iii (Dec. 2004), available at <http://www.bjs.gov/content/pub/pdf/aic02.pdf>.

¹⁰ See LISA N. SACCO, CONGRESSIONAL RESEARCH SERVICE, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING (March 6, 2014), available at <https://fas.org/sgp/crs/misc/R42499.pdf>.

begun to internalize some of the anti-sovereignty sentiment that has flowed from the federal government. The sovereignty issue then becomes an excuse, a barrier. When tribes say, "That power has been stripped away from us and so we have to throw up our hands because only the state or federal government has the authority, and therefore we cannot do anything." It becomes a way for male leaders to excuse their inaction on gender violence. Now VAWA confirms tribal responsibility. Jurisdiction has been restored and now tribal governments have no excuses. They have the responsibility of engaging and making decisions about what that response will look like.

The other challenge that we have had in this dialogue is the argument that we may have inadvertently let Native men off the hook because we have focused almost exclusively on this reform having to do with non-Native perpetrators. It is true that most of the perpetrators are non-Native—statistically—but that does not get us to a discussion about what we do with Native men who commit acts of violence. Now that we have this restored jurisdiction, I think it is going to be very important to turn our focus inward.

Many contemporary tribal legal systems are largely copies of state systems. We have tribal courts, we have tribal judges, we have tribal probation officers, tribal prosecutors and all of those things are foreign. All of those concepts are largely foreign and we have had them for a while now. So, what do we do with that? We have focused so much on sovereignty and the right to have a tribal prosecutor. Now, do we want to critique that? One of the things that I have done in my work is research on what tribal laws are. What tribal laws are on the books? What do we use as tools to address violence? The laws are even more colonized, at some level, than are our courts systems. For instance, many tribes still have laws that were copied from state law in the 1930s and 1940s—and contain some of the flaws that second-wave feminism had put to rest, like a marital rape exemption. Exempting husbands and partners from rape law is not a concept indigenous to North America. That is a European concept. That is a "woman is property" concept. So one of the first things we need to do as tribal nations is to take a really good, hard look at how we have defined crimes. Some tribes, for a variety of reasons, may choose not to exercise their criminal authority. Still, I think for victims (and as a survivor myself), understanding that your experience is validated through law can be a very powerful healing tool. I am interested now that we have the Violence Against Women Act passed, in turning our look inward to take advantage of this restored jurisdiction. Reform of tribal statutory law is important. We must really rethink how we want to deal with the violence that native women experience on native women's terms.

One of the other things I am struggling with when we talk about the prison abolition movement and the challenge to structural violence as imposed by the state is what do we do with perpetrators of really serious cases of violence? Is it too late for some perpetrators? I will just give you an example and I will warn you that it is a bit graphic. I recently testified on the behalf of the state in a criminal matter and that was a difficult decision to make. The case involved a Native man who violently assaulted his girlfriend using a hammer and caused her to nearly bleed to death; she had to have emergency surgery with blood transfusions. I am not sure what we can do in terms of a restorative response to that. I am really struggling with that and I really want to talk about what we do with that level of very lethal violence. I testified to put him in prison and I am not sorry. Maybe as a feminist and as an indigenous feminist, I should have regret but I do not. That is just a final critique I wanted to offer and I hope we can talk more about those things because I am struggling as a feminist and as an indigenous feminist. Thank you for listening to my ideas and concerns.

FENTON: Kalei—could you comment further on your discussion of apology? What can we take from this issue? Was it good that an apology was made or was it patronizing? Did it benefit Hawaii (that is, the Hawaiian people) or, did it take them backwards?

KANUHA: You know, I think as with any kind of act like that of the state, it is to benefit the politicians. It is not necessarily to benefit the people. I think it was a brave move for Bill Clinton to do that but I would say the political underpinnings of it are two-fold. Native Hawaiians are not considered sovereign people legally and this has been a many decades long struggle for us to figure out what kind of relationship do we want to have to the United States of America. Opinions span and many positions include wanting to completely divest ourselves from the United States and become a sovereign nation once again. I think that apology was kind of to say we feel sorry for what we did and we want to embrace you back in and basically to encourage us to want to stay within the United States of America. So, I think that is part of it. I think the other part that for all the naysayers who said that colonization did not really happen, it was really was a very dramatic act to say the United States did invade the sovereign nation of Hawaii. So, I think that was symbolically a very, very important thing.

FENTON: Sarah—I am glad that you identified the wrongs from the *Oliphant* case and brought our attention to the recent restoration of justice to the tribes in VAWA. My comment regards the general nature of criminal justice on reservations currently. It seems that this restorative effect comes at a time when on most (if not on all) reservations, the tribal criminal justice system has been forced to mimic or become assimilated

to mainstream forms of American justice and now more closely resembles the operations of a state within a state, rather than as a separate culture and people.

DEER: Absolutely, and I think because we focus so much on the federal government as a source of reform, it has perhaps skewed our perspective on what criminal justice can or should look like. We have lost. Very similar to Hawaii, we have lost what we used to do to resolve gender violence. Things that would have been more protective and more restorative of a victim's life and all of the things that she would need to become whole again. We really have to have conversations about bringing that back and thinking outside the gavel, as I say—thinking outside of the courtroom.

FENTON: I have one more comment for the full panel and for the audience to consider. The cultures primarily explored here are ones that apparently do a better job of dealing with violence or would have not promoted or accepted these forms of violence in the first place. However, where all world cultures devalue women, all cultures are not identical. So, how do we deal with situations where the culture directly affirms and condones the perpetration of violence against women?

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Immigrant Rights, Women, and Gender Violence: Structural Violence and Organizing Strategies

UNIVERSITY OF MIAMI SCHOOL OF LAW

Donna Coker (moderator)^{†}*

Lis-Marie Alvarado

Beatrice Bianchi Fasani

Ramandeep Kaur Mahal

María Rodriguez

Rebecca Sharpless[†]

MAHAL: “We all have our stories and I smile to hide my pain.”
These were the words of one of the women immigrant detainees

[°] This transcript has been edited from its original transcription for clarity.

^{*} Donna Coker is a Professor of Law at the University of Miami School of Law. Professor Coker is a nationally recognized expert in domestic violence law and policy. Professor Coker was one of the co-chairs of the CONVERGE! conference. Lis-Marie Alvarado is a community organizer who has worked for over six years in movements for the rights of immigrant low-wage agricultural workers, day laborers, and youth of color in Miami Dade County public schools. Beatrice Bianchi Fasani and Ramandeep Mahal are University of Miami School of Law graduates who participated in the University of Miami School of Law Immigration Clinic under the supervision of Professor Rebecca Sharpless. María Rodriguez is the Executive Director of FLIC (the Florida Immigrant Coalition). Rebecca Sharpless is a Professor of Law at the University of Miami School of Law. At Miami Law, Professor Sharpless teaches in-house clinics in the areas of immigration and human rights and is a former attorney at Americans for Immigrant Justice.

[†] Original remarks from the CONVERGE! conference omitted.

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currently detained by immigration officials at Glades County Jail, approximately a three-hour drive from Miami. Good morning. My colleague, Ms. Beatrice Bianchi Fasani, and I are law students working with the Immigration Clinic at University of Miami School of Law. Today we are going to highlight some concerns related to women who are survivors of domestic violence in immigration detention.

The Immigration Clinic is one of the many clinics at University of Miami School of Law. The clinic gives students an opportunity to work on complex litigation cases and projects that are aimed at reforming the law and advancing social justice for immigrants. One of the projects that the Immigration Clinic is currently pursuing is improving the treatment of immigrant detainees at Glades County Jail.

There has been a shift in immigration enforcement policy from catching and releasing immigrants to detaining them for long periods of time. The average daily number of detainees increased from 5,000 in 1994 to 33,000 in 2010.¹ In order to detain more immigrants, Immigration and Customs Enforcement (ICE) has entered into inter-governmental service agreements with local and county jails. Glades County Jail is one of the many local and county jails which have a service agreement with ICE. Currently, Glades County Jail is holding immigrant detainees with criminal convictions.

BIANCHI FASANI: The University of Miami School of Law Immigration Clinic not only works on immigration cases, but it also works on different projects. For three years, the clinic has been going to Glades Detention Center. We have been collecting information about the immigration status of the detainees as well as information on conditions in the detention center. After our first visit, we highlighted some of the major problems at the jail in a letter to the officer in charge at Glades. The following comes from his response: “The Glades County Sheriff Office is not required or obligated to provide assistance or responses to University staff and/or its students. Specific to the biased and unsupported allegations and concerns with regards to the standard of care for immigration detainees.” It was obvious that he was not willing to cooperate with us in solving issues at the jail. We decided to hold a press conference in which our goal was to make the public aware of the problems at the detention center. The *DAILY BUSINESS REVIEW* wrote an article about us, stating “they might not be lawyers yet but law students

¹ SEATTLE UNIV. SCHOOL OF LAW HUMAN RIGHTS CLINIC & ONEAMERICA, VOICES FROM DETENTION: A REPORT ON HUMAN RIGHTS VIOLATIONS AT THE NORTHWEST DETENTION CENTER IN TACOMA, WASHINGTON 14–15 (2008), <https://www.weareoneamerica.org/immigrant-detention-report>.

at the University of Miami have taken on a powerful adversary—Glades County Sheriff Stuart Whiddon.”²

After our first visit, we realized that many of the women were survivors of domestic violence. Specifically, sixteen out of twenty women told us that they had experienced domestic violence. We decided that our next trip would focus more on the issue and we asked the women more specific questions regarding their experiences as domestic violence survivors. We decided to focus on five areas.

First, we focused on the frequency of the abuse. We asked how many times the women had been abused and what kind of abuse they had endured—and also if it was both physical and psychological. Second, we asked about their income level because we found that there is a relationship between the income level of these women and the likelihood that they would be abused. The third focus was contact with the police. We asked them whether or not they contacted the police and, if they did, what happened. Fourth, we also asked them whether or not they had children and where their children were living since their mothers were detained. Finally, we asked the women questions about drug use because we also found a connection between the experiences of domestic violence survivors and drugs.

Sixty-five percent told us that they were survivors of domestic violence. Of the 65%, the majority of them (64%) told us that they had been abused more than ten times. Some of them told us that they had been abused at least once during the day on a daily basis.

The second category was income level. The majority of the women who experienced domestic violence had an earned income of between \$0 and \$5,000 per year. Because they had such a low income, they were completely dependent on their abuser. It was much harder for them to get out of the relationship.

The third category was the contact with the police. We found that the majority of the women did not report the abuse and that the main reasons the women did not report the abuse were either that they were afraid that by calling the police they would come to the attention of immigration officers (and therefore they would face the risk of being deported), or they were afraid that the police would not be helpful and therefore the abuser would become even more aggressive.

We also asked the women whether or not they had children. Almost half of the women had children. These children were living with the abuser or they had gone back to their home country or the mothers lost

² Julie Kay, *UM Law Students Protest Immigration Detainee Conditions*, DAILY BUSINESS REVIEW, Nov. 21, 2013, <http://www.dailybusinessreview.com/id=1202629103245/UM-Law-Students-Protest-Immigration-Detainee-Conditions>.

their parental rights and these children were either being adopted or given to child services. Detained women lose their parental rights easily in cases involving domestic abuse. In cases involving abuse in the home, the dependency judge requires the family to achieve certain goals in order for the parents to be deemed fit. If, for example, the father is accused of being an abuser and the mother is in prison, it is almost impossible for the woman to achieve the goals and is more likely that the judge will terminate her parental rights.

Finally, the last category was drug use. The majority of the women had been using drugs. They told us the primary reason they were using drugs was to cope with the pain from the abuse.

MAHAL: There are certain types of immigration relief that are available to survivors of domestic violence who are immigrants. Due to their being detained, these women face certain barriers in their efforts to obtain the relief. We have categorized these barriers into two groups: practical and legal. With regard to the practical barriers, the first barrier is retaining and communicating with an attorney. Only two out sixteen detained women had immigration attorneys currently working on their cases. The women reported either that it was very difficult for them to find an attorney or that it was very difficult for them to communicate with the previously hired attorneys. One of the stated reasons was high phone call rates. From the data from our visit in the fall of 2013, we know that the phone call rate was approximately \$11 for fifteen minutes, which is extremely high for the detained women.

The second practical barrier to getting immigration relief is conducting legal research. The women did not know what relief was available to them. There is a law library in the detention center. But the majority of the women reported that they had inadequate access to the library. Those that did have access did not have the skill to use the legal research software on the computers that are in the library.

The third practical barrier we identified is that the women were being held in a remote detention center. As we mentioned earlier, Glades County Jail is approximately a three-hour drive from Miami. The distance deters attorneys, friends, family, and other people who could help from visiting the women.

Regarding the legal barriers, the first one is what is called mandatory detention. Under Immigration and Nationality Act, if someone has a criminal record, they may be mandatorily held in detention.³ Even if the

³ See, e.g., Margaret W. Wong, *Challenges to Mandatory Detention Under U.S. Immigration Law*, THE FEDERAL LAWYER, Sept. 2010, available at <http://www.fedbar.org/Federal-Lawyer-Magazine/2010/The-Federal-Lawyer-September-2010/Features/Challenges-to-Mandatory-Detention-Under-US-Immigration-Law.aspx?FT=.pdf>.

women were given a bond in a criminal case, they are not able to get out of the immigration detention center.

The second legal barrier is another effect of the criminal record. Although there are many forms of relief that are available to survivors of domestic violence, certain relief is not eligible for to people who have criminal records.

The third legal barrier is delayed adjudication of relief related to domestic violence. This barrier is further divided into categories. The immigration judge who is presiding over the removal proceedings sometimes lacks the authority to adjudicate the relief that is available to a survivor of domestic violence. The detained immigrant women have to send in their domestic violence petitions to the United States Citizenship and Immigration Services (USCIS). This adjudication might take a long time, as there is no set time period within which USCIS must make a decision on the petition.

The last legal barrier relates to obtaining a law enforcement official's certification for what is called a U visa. A U visa is one of the forms of relief available to survivors of domestic violence. In order to get U visa, a certification from a law enforcement official is required. Many detainees are not aware of the certification requirement. Those that are aware lack the ability to communicate with the relevant law enforcement officials to request the certification.

We developed some recommendations to help immigrant women overcome these barriers. The first is that women should have access to bond. If these women were not detained, they would have access to attorneys and other avenues of help.

The second recommendation is to end remote detention. As we said earlier, Glades County Jail is a three-hour drive from Miami. Attorneys, family, and friends are deterred from going there.

The third recommendation is that the adjudication of domestic violence cases by USCIS should be made shorter. Quicker adjudications would not only help domestic violence survivors but it would reduce the number of detainees. In the alternative, immigration judges should be permitted to adjudicate forms of relief for domestic violence survivors.

Fourth, eligibility for domestic violence survivors should be expanded so that more people with criminal records are eligible for some form of immigration relief.

Our last recommendation is that women should be transported from the detention centers to family court so that they have a better chance to avoid the termination of their parental rights.

ALVARADO: Hello everyone, and good morning. My name is Lis-Marie and I am a community organizer. My focus has been mostly in agricultural communities and homes in particular, and most recently in

Immokalee. I just want to share with you a little bit about the groundbreaking work that is happening. Many times when people hear about agricultural communities, they think about sub-poverty wages. They think about exploitation. But somehow, they forget that these communities, where the conditions are most difficult, are sometimes the places in which the most creative and effective solutions come from, as well.

I am excited about this space because we do not get many chances to brainstorm in ways that are useful to actually eradicating gender violence. In my organizing experience, gender violence was never part of my work plan, but it is definitely a reality, and it affects everyone.

WeCount!,⁴ was able to incorporate gender justice into our agenda without having to jeopardize the work that we are doing for immigrant justice. The way that it came about was out of necessity. We have many members—male members—who were up for immigrant justice, who were tremendous leaders, but then back in their home, they beat up their wives, their partners. That is a difficult situation to deal with, because on the one hand these are the people that are moving forward the campaigns forward to improve the general conditions for the community, but at the same time in their personal lives, they are replicating some of the atrocities that we want to avoid in the workplace and in our communities.

So, what happened was that a lot of women would contact me to complain. “Look, this is the situation, Lis-Marie. What can we do?” As an organizer, we are not there to solve the problems of the community; we are there to work with the community and to figure out solutions together—because I am just a single person. I do not have any magic powers. I cannot empower people. We can only empower each other.

So, what we did was something very simple. We gathered everybody together. We got all the women together and had our own space to talk about what was going on. That is how the group Las Comadres Para Las Americas⁵ came to be. And there was a space and an opportunity for women to learn from our different perspectives, regardless of sexual orientation. It was important to be intentional about creating this space as part of the organization that advocates for immigrant rights and workers’ justice. Sometimes these issues were ignored because there is not enough money—that is always one of the major excuses—or because we have a campaign to and we have specific goals to meet. But, we cannot forget that it matters what was going on in the lives of our members because that is a reflection of what was going on in the community. Just something as simple as creating a space for women to meet and talk

⁴ WECount!, <http://www.we-count.org/> (last visited May 20, 2015).

⁵ LAS COMADRES, <http://lascomadres.com/lco/> (last visited May 20, 2015).

about our issues made a tremendous impact. Three concrete things occurred. There was a creation of a network of support among the women in the organization which was not true before. It created a sense of trust and support among the women. We were fighting against police brutality, against racial profiling, but at the same time, we also have our own issues as women. That was one thing—creating that community support, a network of support.

The second thing that happened was a commitment within the organization to have a gender agenda. We know that even some of our key leaders are struggling with violence. That has been the most challenging thing because there were intentions to create a main caucus in dealing with violence. Some of the men that volunteered to do that were some of the main abusers. Maybe that is great that they saw there was a need for them to change, but somehow that is very problematic. That is the second concrete thing—making sure there is a commitment for organizations to include gender justice in their agenda, just verbally, not just writing pretty things but actually doing it.

The third thing is community policing. If you are an immigrant, or have ever lived in an immigrant community, you know that you do not want the police there. You definitely want to avoid any kind of relations with the police as much as possible. We hear many cases of people who have reported abuse, especially in immigrant communities, which have backfired on them. There was a situation in which one of Las Comadres was being abused, but she did not want to involve the police because she did not want him to be deported and she was afraid that she would be deported. We know who he is, we know where he lives. We decided that a bunch of us would talk to him. I do not want to sound simplistic, but this is also a way of creating accountability in communities and organizations. We know what you are doing and you know what we stand for as an organization and that is not acceptable and we are here not only to point fingers at you, but we are going to let you know that it is not okay and we are watching. That she is worth it just as much as you are worth it. It is starting the process; creating that sense of commitment amongst each other, but without necessarily exposing ourselves more to the criminal justice system.

I do not want to sound apologetic for abusers, but we also have to remember that the economic system in which we live creates those kinds of scenarios. Exploitation in the fields, having sub-poverty wages, pesticides, and harassment creates and leads to situations that are like modern day slavery, and it also leads to gender violence. We also have to remember the root of the problem. That is one other thing about the community policing that I feel that is very important, especially in our

communities, because it works. I am from Nicaragua, and I can definitely tell you that yes, it works, because we use it a lot over there.

Another example of how organizations can include gender justice in their agenda is the great work that the Coalition of Immokalee Workers have been doing not only to increase the wages of workers and change the conditions in the field, but also being very intentional and explicit about the importance of including gender justice in the program. They have created something that is called the Fair Food Program,⁶ with an agenda that includes increasing wages, workers' rights protection, and zero tolerance for sexual harassment. Sexual harassment is predominant in agricultural communities, particularly when you are picking in the fields. This is really groundbreaking because once again, it is changing the environment around us. It is changing, and it also allows women—or anyone who is dealing with harassment—to report that a situation has been happening.

People have the power to solve their own problems, and these are concrete examples of how that can happen. The Fair Food Program is now looked at by the United Nations as an example of groundbreaking work. This was a program created by workers, for workers. This work is something that we have to remember as well, that sometimes when we talk about gender justice and gender violence, we can get stuck in the fear of just being victims, and think “what can we do?” But there are solutions, and there are solutions that are happening right now, that are changing the realities. There are solutions being led by people of color, by workers, and that is important to know as well, because our communities are not always losing—we are also winning, and we can change our realities, and we are doing it right now. Thank you.

RODRIGUEZ: I am Maria Rodriguez with the Florida Immigrant Coalition⁷ (FLIC) and I am going to briefly talk about stories, systems, and struggle. There are many stories but let me start with these that have come out publicly that I think exemplify criminalization or one aspect of experiences of criminalization. I do not think that our work at the Florida Immigrant Coalition is characterized by leading with gender analysis but I do clearly understand that when we are looking at these stories, we are looking at women, not just in their reproductive selves, but in their productive selves and as victims of criminalization and in need of reproductive justice efforts.

⁶ For more information about the Fair Food Program, please visit <http://www.fairfoodprogram.org/>.

⁷ FLORIDA IMMIGRANT COALITION, <http://floridaimmigrant.org/> (last visited May 20, 2015).

We will start with a story. Maria, a passenger in a car in Lee County, was coming from the doctor with her husband and newborn when the police stopped them for no apparent reason. We are seeing more and more people picked up for not having a driver's license. There are over three million immigrants in Florida⁸—almost one million of whom are undocumented⁹ and have been denied many things, including access to driver's licenses.¹⁰ In this case, Maria's husband ended up in detention. The second case is Rita Cote. A lot of the cases of driving without a license are catalyzed by racial profiling because people are being stopped pre-textually, often for no reason. Rita was the interpreter for her sister who was in a domestic violence situation and in Lake County when the police came to their home. Did they arrest the abuser? No. They took the interpreter who gave her bank card as identification. She ended up being detained without a charge over the weekend and for almost a week. She is married to a United States veteran, for whatever that is worth. The third case is Emmy. She lived in Orlando since the age of three. Her family was not able to adjust her immigration status. They are from Bangladesh. They are business owners, and they spent nearly two decades here in the United States. Emmy spent her birthday and Christmas at the Broward Transition Center and ended up just giving up after a year. She asked to be deported with her brothers. They sent her back in shackles to Bangladesh. The fourth case is the case of Melba from Nicaragua who would leave her twin boys at night while she worked the night shift at a gas station. One morning, when her son Jose Machado woke up his mom did not come home. They waited. When they came home from school she still was not there. It ended up that she was deported to Nicaragua and is now in Spain. Jose fell into the foster care system. He has now aged out of it and was recently able to travel to Spain to see his mother. That is a family unnecessarily and cruelly separated by the broken immigration system.

Let us look at the lack of driver's licenses, identifications, and social security cards. The driver's licenses were taken away through legislation

⁸ See IMMIGRATION POLICY CENTER, *New Americans in Florida* (2015), <http://www.immigrationpolicy.org/just-facts/new-americans-florida> ("Florida was home to 3.8 million immigrants in 2013 . . .").

⁹ See CTR. FOR MIGRATION STUDIES, *Estimates of the Unauthorized Population for States*, <http://data.cmsny.org/> (last visited May 26, 2015) (In 2012, the number of unauthorized immigrants in Florida was 725,621.); Jeffrey S. Passel & D'Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, PEWRESEARCHCENTER Table 1 (Nov. 18, 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/> (In 2012, the number of unauthorized immigrants in Florida was 925,000.).

¹⁰ See FLA. STAT. § 322.08 (2014) (provisions regarding applications for license including requirements for license and identification card forms).

in 2003. Over a dozen states allow driving permits for undocumented people. Florida does not. Without an ID, mothers cannot go on field trips, or into hospitals. We have been seeing ICE raids where they started charging people criminally with identity theft for the fraudulent use of social security numbers.

There was a case in Southwest Florida where grandparents were in a supervised visitation program with their grandchild and the social worker called “the Sheriff” when she realized that the grandparents were undocumented.

When the police take on immigration enforcement that has huge repercussions for public safety with a disproportionate impact on women. The intermingling of the criminal justice system and immigration enforcement is very dangerous because we need to protect the integrity of public safety mission of law enforcement. And in terms of immigration enforcement, it has been \$18 billion in fiscal year 2012 used towards immigration enforcement.¹¹ That represents 24% more than all other federal enforcement combined.¹² Twenty-four percent more of our tax dollars going towards immigration enforcement than the FBI, DEA, Alcohol, Tobacco, Firearms combined.

For those of you who are lucky to have pensions or mutual funds, they are likely being invested in prisons too. FLIC is part of the national prison divestment campaign, both to cut the public money that goes towards the beds for immigration detention and the money in private prisons.

FLIC has adopted a racial justice analysis where we understand that xenophobia and racism are intertwined and that these are systems that seek to exclude and challenge the notion of defining “American” and asking what does “American” mean. We could get provocative with all those questions. We have also been very clear that the immigrant rights movement in Florida is not a Latina movement. Much of our leadership has been from the Haitian community and other communities of African descent. FLIC is a founding member of the Black Immigrant Network for example, but it is also been a worker rights movement. We have been very clear that farm workers are key and are not getting representation or labor protections, addressing wage theft, supporting the domestic worker organizing, etc. FLIC is a founding partner and convener of the Florida Wage Theft Task Force to address issues of low-wage workers.

¹¹ See DORIS MEISSNER ET AL., MIGRATION POLICY INSTITUTE, IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY 15 (2013), available at <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

¹² *Id.*

I think we have been really clear on race and class, but I have to be very honest, I do not think our organization has really adopted or led with a gender lens or analysis. This is true even though our rhetoric, our analysis, and our membership manual speaks on gender and even though we are led by feminists and the Board and staff are women. I think that is a shame. I am just going to end here and say that it has been a privilege to be here. I thank you for your invitation and I look forward to the ensuing conversation.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Problematizing Assumptions About Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

Rashmi Goel^{*}

Tamara Lave[†]

Elizabeth MacDowell

Adele Morrison

MACDOWELL: As Beth Richie described in her keynote address, we are here to reimagine a movement to end gender violence, and that goal creates space for a feminist analysis that is at once broader and more particularized than the initial feminist analysis of the problem.¹ So, for example, our analysis can be broader in that we consider the experiences

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

Recommended Citation: Rashmi Goel et al., *Panel on Problematizing Assumptions About Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 347 (2015).

¹ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

of men as well as women—and, I will argue, perpetrators as well as victims. But what do I mean by more particularized? I mean that we can consider both parties to a domestic violence case in detail, and in relationship to the social stereotypes and norms that adhere to both victims and perpetrators.

The article that I am discussing today, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*,² was inspired by my experiences representing victims of domestic violence in family court, and is part of my effort to try to reconcile inconsistent outcomes in those cases. As an example of that phenomenon, I discuss two child custody and visitation cases with similar facts tried before the same judge. Both involve couples with relatively long histories of domestic violence. The last domestic violence incident in both cases had happened after a period of separation, occurred in public, and resulted in substantial physical injuries to the victims. Both cases had also been preceded by a criminal case where the perpetrator had been found guilty of misdemeanor domestic violence charges. Thus, in both cases there had already been a determination that domestic violence had occurred, what had happened, and who had committed the violence. Moreover, under applicable state law, the victims met the criteria for a number of different kinds of relief, including the issuance of a civil restraining order that could protect the children as well as the victim. There was also a statutory rebuttable presumption that sole custody should go to the victims. Additionally, both victims were seeking supervised visitation with the children for the defendant, and there was a statutory requirement that the judge consider the safety of the children in making her custody decisions, and a strong presumption that supervised visitation was appropriate.

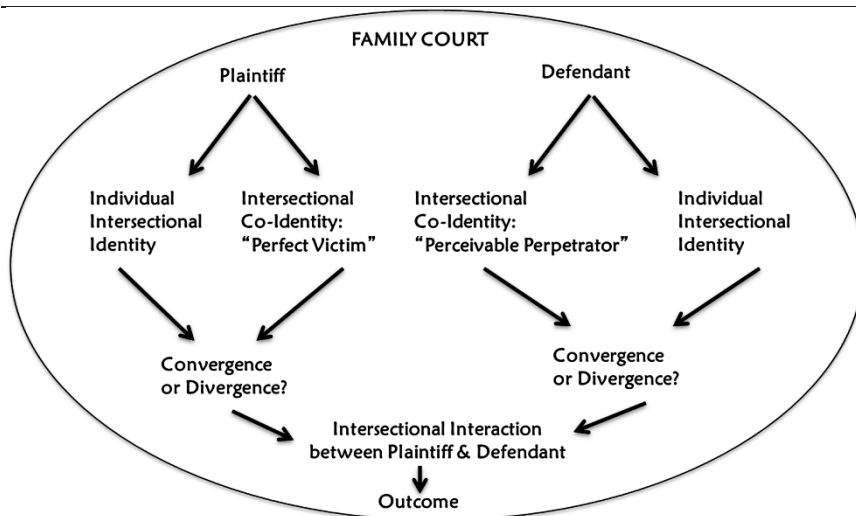
Even with these laws, these orders can nonetheless be very difficult to get, as many of you are aware. But one of the victims in these cases, who I call Sandra, did get supervised visitation, as well as sole custody. The other, who I call Madeline, got custody but was denied supervised visitation. Moreover, unlike Sandra, Madeline was treated as blame worthy by the judge, who ordered her to attend parenting classes along with her children's father. As Madeline said afterwards, "The judge knew I was beat and did not care. I was less than zero." How can we understand these different outcomes?

Critical feminist theories like intersectionality help us to understand why some women may be recognized as victims more readily than others because of the ways that dominate social norms about victims interact

² Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER RACE & JUST. 531 (2013).

with race and gender stereotypes. In particular, scholars like Adele Morrison and Leigh Goodmark have shown how domestic violence law and policy is informed by an ideal of the perfect victim: a female who is white, middle class, heterosexual, and passive.³ Women who diverge from that norm are less likely to be recognized as victims.

Slide 1

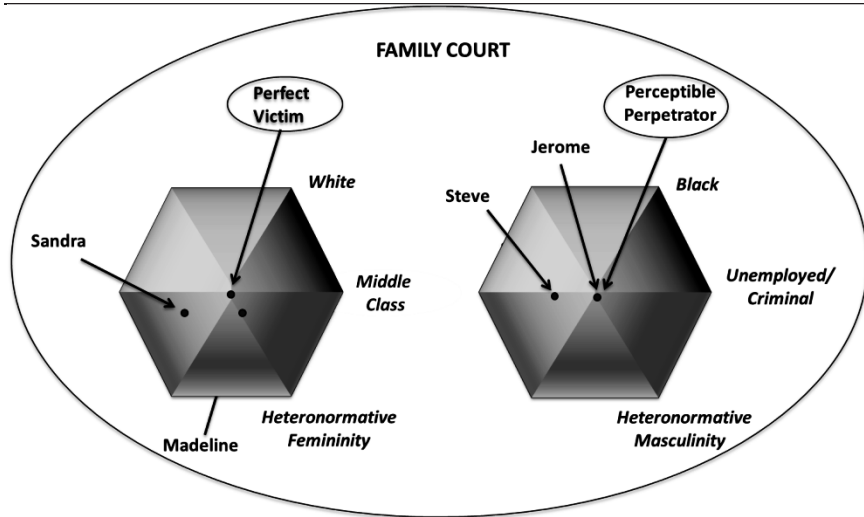


Slide 1 depicts the individual identity of a plaintiff in a domestic violence case alongside a co-identity—in this instance, that of the perfect victim. However, we know that some women who are unlike the perfect victim are successful in cases involving claims of domestic violence, and some women who seem more like the perfect victim are unsuccessful. The question remains what accounts for the difference? One answer is that outcomes also depend on the identity of the perpetrator—the person on the other side of the case—who I call the perceivable perpetrator. Like the victim identity, the identity of the perpetrator is hinged on racialized and sexualized assumptions—this time, about criminality. Investigating this question therefore requires extending critical feminist theory to perpetrators, who have not typically been the subject of a feminist analysis of gender violence. Returning to Slide 1, we must also examine the defendant, whose individual identity may converge or diverge from the perceivable perpetrator identity.

³ See, e.g., Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061 (2006); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 96–113 (2008).

Returning to my two family law cases, how did the parties measure up to the perfect victim on the one hand and the perceivable perpetrator on the other?

Slide 2



Slide 2 depicts two hexagons crossed by lines that each stands for an absolute value: white, middle class, and heteronormative. The dots in the hexagon on the left depict where Sandra and Madeline are located in relation to those values. Both were heterosexual women employed in semi-professional jobs, but they differ in other ways. The successful victim, Sandra, is an African-American woman. Therefore, I have placed her away from the “White” line. She had also been arrested several times as the perpetrator in incidents with the same defendant and on one occasion was charged with resisting arrest. Therefore, I have placed her far from the heteronormative line. Stereotypes about African-American women and other aspects of her individual gender expression place her further from those values, as well. In contrast, the unsuccessful victim, Madeline, is an American-born Latina for whom English is a first language. She had no history of fighting back or being arrested and she was very feminine in her gender expression. She also appeared traumatized and very vulnerable during her testimony. Because of these various features of her expression, I placed her closer to the white and heteronormative lines than Sandra. Yet ultimately Sandra was the more believable victim. I argue that this is because of the way the identities of the *defendants* played out in the courtroom, as depicted in the slide.

Sandra appeared opposite her African-American ex-boyfriend, Jerome, and Madeline appeared opposite her ex-husband, Steve, who is Latino and non-Latino. Both men were unemployed and again, both had been convicted of domestic violence. In the paper, I discuss more specifically what kinds of stereotypes were in play with the men in these cases and how stereotypes about men of color conform with the perceivable perpetrator image, just as stereotypes about women of color push them away from conforming with the ideal victim. I also discuss the ways in which identity is not static, but is performed within particular settings. I do not think we can assume that Steve had an easy court win because he was perceived as White, but his race certainly did play a factor. While Sandra's persona did not conform to the perfect victim, Jerome's did not conform to a very limited repertoire of available acceptable images for African-American men in this type of setting. That left him as what scholar Frank Rudy Cooper calls the bad Black man: a quintessential, perceivable perpetrator.⁴ Although we cannot know precisely how the judge reached his decision, the routine operation of stereotype suggests that Sandra received her orders for the wrong reasons no matter how right it was for her to receive them based on the evidence in the case, and Madeline was not awarded supervised visitation based on something other than the merits of her case. My conclusion is that if we want to dismantle the stereotypes underlying the perfect victim and understand the differences in case outcomes such as these, we have to acknowledge and dismantle the stereotypes underlying the perceivable perpetrator, as well.

MORRISON: The title of the work-in-progress on which my remarks are based is *That's Just Not the Case—The Heteronormativity of Separation Based Interventions and Why They Won't Help End Domestic Violence*. What I do in this work is to challenge an assumption grounding what is the most prominent legal intervention designed to address intimate partner violence, that being to separate the parties whether through arrest, incarceration, stay away and protective orders or a force/required divorce. The assumption inherent in the law's efforts to keep an individual away from a party whom he, and I am being purposely gendered here, has abused, is that by doing so a batterer has been held accountable for his choosing to be abusive and a victim is safe and well on the road to empowerment. The idea is that this leads to furthering the anti-domestic violence movement's goals of ending intimate partner and gender-based violence. I argue that separation-based

⁴ See Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006). See also Slide 2.

interventions do not hold a batterer accountable, do not create victim safety and empowerment and ultimately will not help end domestic violence because separation remedies are heteronormative.⁵

I am sure that some domestic violence advocates, activists and scholars, including some in this room, think that being heteronormative is the least of the problems with separation-based remedies and that a more pressing issue is that separation remedies regularly fail to do what they are designed to do, which is to end violence being perpetrated against a particular person at the hands of a current or former intimate partner. Leigh Goodmark and others have pointed out that there are numerous accounts of separation not even effecting minimal interruption to abuse, let alone ending it.⁶ Martha Mahoney has identified the problems with separation by calling attention to the increase in violence upon separation.⁷ My point continues this thread by asserting that even if separation actually did stop person X from abusing person Y, every time it is utilized it has intended and unintended consequences that help perpetuate intimate partner violence because, among other reasons, separation-based interventions are heteronormative.

When I say heteronormative, I mean punitive rules that force us to conform to hegemonic, heterosexual, and cisgender⁸ standards for identity and practice. Heteronormativity constructs normative sexualities and impacts not only those who are LGBT identified, but also those who identify as heterosexual and cisgender. Fundamental to heteronormativity are sexual and gender conformity, which are directly counter to gender equality. Conformity to sexual and gender norms are socially supported aspects of the attitudes and behaviors of a person who chooses to utilize abuse—so too is the abuse used to force heteronormative sex and gender behaviors upon victims. Heteronormativity and domestic violence are similarly problematic in that they both do the following: perpetuate a dominant/ subordinate social structure and help maintain patriarchy, both of which have as a cornerstone gender conformity, which are part of gender subordination.

⁵ MICHAEL WARNER, FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY xxi-xxv (1993).

⁶ LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 81 (2012).

⁷ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation* 90 MICH. L. REV. 1 (1991).

⁸ The first recorded Usenet post of *cisgender* was in the *alt.transgendered* Usenet group in May of 1994 by Dana Leland Defosse. In April of 1996, Carl Buijs, a transsexual man from the Netherlands said in a Usenet posting “As for the origin; I just made it up.” The origin of the term is logically based on the Latin prefixes, in which “cis” (“on the same side”) is the opposite of “trans” (“on the opposite side”). These terms find use in a range of subjects, including Geometric isomerism in chemistry.

I single out separation interventions because they are the most prominent way the law works against intimate partner violence. I have come to the conclusion that separate interventions may not be completely eliminated they may bring about short or even longer-term safety for individuals, families and friends being victimized. However, the effects of separation can be over punishment. As Jeannie Suk has noted, in punishing a misdemeanor, the state has terminated an individuals' relationship or at the very least made maintaining the relationship a criminal action.⁹ Also, separation does not actually prevent or end domestic violence. There is nothing prohibiting the abusive individual from starting a new relationship and continuing with the old "bad behaviors." The message from the state is essentially, "Try again. Maybe you'll get it right this time."

One might argue that criminal law's utilization of separation actually changes the heteronormative structure by prescribing what is and is not proper masculine behavior. This argument is that criminal laws are broadcasting proper masculinity and thus countering the heteronormative rule by articulating that it is not okay to abuse your spouse or girlfriend and that if you do, the legal system is going to separate you and possibly end your relationship. Arguably, this changes the standard notion of at least gender roles and behaviors within a heterosexual relationship. However, I argue that the opposite results because the criminal law system's coercive control is only implemented with the victim's involvement, and she is constructed in a particular manner and with a particular role. A victim must call the police and cooperate with prosecutors and child protective service. It is still the victim, gendered woman, who is seen as responsible for what has occurred and is still being controlled, this time by the system instead of her partner. Fundamentally, what criminal law is attempting to do is to construct the way individuals behave with intimate partners and doing so by either changing or ending the relationship. However, the relationship is not the problem—the batterer's behavior is. What needs to happen is to get that behavior to change. Criminal interventions may not be able to do this and separation generally does not accomplish this. Not only is changing a relationship not the job of the criminal legal system, it is an impossible task for this system.

State interventions, particularly criminal law based ones, exist in order to punish behaviors that are supposed to be harmful to society in order to specifically or generally deter, incapacitate, rehabilitate or

⁹ See Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006); JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009).

provide retribution. I argue that if separation based interventions accomplish any of these goals, it is only retribution, and it is retribution based not on the needs of victims or on anti-subordination ideals, but spite. The state is doling out punishment for making it get involved in personal affairs. But even if the criminal law system's responses, including separation, stop one particular individual from violating the domestic violence statutes of a given state, this does not mean: a) that he has abandoned *all* abusive behaviors, just those that violate the law; b) that he has changed mindset about the place or the status of the particular woman he is involved with or women as a whole; or c) anything has been done to undermine heteronormative-based gender subordination. In the paper I explore alternatives such as restorative justice and transformative justice. In the end we must ensure that whatever the approach, it is, among other priorities, not heteronormative.

GOEL: My talk today is about female complicity in domestic violence. I wanted to look at a type of violence that is usually perceived as occurring only in certain countries—violence perpetrated by women on other women, not in the context of same-sex relationships, but in situations where there is a cultural norm supporting the violence. We see it sometimes with female circumcision, female genital mutilation. We also see it in India in dowry deaths or bride burnings. I really wanted to unpack that and figure out—why we perceive it as being culturally entrenched why it happens. Could it help us understand why violence against women is an international phenomenon?

The purpose of this paper is really twofold: first, is to examine that phenomenon of violence against women perpetrated by other women in that context of dowry deaths and bride burnings; second, to uncover the ways in which we limit our understanding of violence against women by notions of who the perpetrator is and who the victim is. Our understanding of domestic violence, and particularly our understanding about violence against women, is a story of worldwide oppression where the picture of our victim is female, and the perpetrator of violence is usually a man. But some cases defy that understanding and they force us to revisit those notions of women and of violence altogether.

I am struck by the way we approach domestic violence differently in different contexts even though we recognize it to be a universal phenomenon, and we recognize the world to be universally patriarchal. Depending on the context, we problematize it very differently and we perceive it very differently. So, I will look at dowry deaths in India. There is a phenomenon in India that involves young brides, or women who have not been married for a very long time, being subjected to harassment, torture, and abuse in the homes of their in-laws. Most are living in a joint family system where they live with their husband and his

parents. These brides are harassed because they did not bring enough dowry or because the groom's family wants the bride's parents to provide money on an ongoing basis. The bride or the young woman in this case is used as leverage. Her parents are quite aware that if they do not comply with the requests or demands for money, their daughter will have a much more difficult experience in her marital home.

These brides are harassed for more dowry, abused, and sometimes even killed. The most common method of killing in these cases seems to be to douse her with kerosene and light her on fire. The in-laws can call it a kitchen accident; "she was cooking something, and her sari (six yards of fabric she's wearing) caught on fire, (because in India, all of the cook stoves are gas stoves—nobody uses an electric stove) and she was just enveloped in flames, there was nothing we could do."

In India, we have seen in ten years, 79,404 registered cases of dowry death.¹⁰ That cannot be happening where the mother-in-law in the home does not know. She is either complicit, or she is at least aware and that is a very scary thing. Some women who survive have said, "my mother-in-law was the one who held the match." We hear horrible stories that in fact, the mothers-in-law were involved.

We are not really sure about the numbers of mothers-in-law who participate because we do not have studies on those women who participate in these killings and attempted killings.

It is difficult to determine conclusively why that happens and how much it happens. First of all, because the very notion of women killing at all is aberrant. It is such a small set of violent crime. The notion of women killing other women is so tiny that you cannot even find it in the literature; you cannot find a study.

Why do these women kill? We do have a number of theories, almost all of which portray the other woman, the mother-in-law, as also a victim: 1) because women are so perpetually devalued that they begin to see themselves and other women as worthless and subhuman; 2) because oppressing women is a kind of survival mechanism—they know if they do not oppress the other woman, they might be oppressed themselves; 3) because it is some kind of resistance for them—it is their last grab at power in a world where they have no power at all or very little power; and 4) we also hear that because it is part of their culture, which is a complex interaction of history, religion, social class, social familial circumstances, wherein this conduct even though it is not acceptable, it is understandable. All four of those theories involve the perpetrator woman being some kind of victim. It is only the last theory that includes the idea

¹⁰ NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, CRIME IN INDIA 2013 (2014), available at <http://ncrb.gov.in/index.htm>.

that they are just evil, power hungry, angry people. It is only that one that actually involves some full agency on the part of the perpetrator woman. I wanted to ask then, how is this qualitatively different than the other kinds of female-on-female violence that we are familiar with?

We actually do have three primary archetypes of women who hurt other women. The first archetype is the evil stepmother. The evil stepmother is punishable because she cannot love other people's children as she does her own children. She is supposed to be compassionate and nurturing, but the evil stepmother sees herself in competition with these children for the husband's resources. The second archetype is the whore-house madam who exploits other women and their sexual favors for monetary profit for herself. It is disconcerting to us that she exploits her own kind, but we also find it a little bit admirable because she is entrepreneurial and she is exploiting a weakness, the sexual insatiability of men. And the third archetype is the evil mother-in-law who is griping and controlling because her son has married someone who she thinks is not good enough for him. But even this is not an evil mother-in-law who will kill.

So, the real question is how do we respond to this kind of violence? We can call it cultural and intractable and do nothing; we can say it is cultural and systemic but changeable, and try to change this huge problem of attitude toward women and say that the mothers-in-law are also victims; or we can consider those women evil, aberrant, and deserving of punishment.

We do not have clear ways to understand where the line is between victim and offender in the context of women, because for women most of our theories limit their agency and describe them as victims, too. Many believe the system itself helps to perpetuate violence, they believe that we have men who are trapped in a cycle of violence just the way women are trapped in a cycle of violence, and yet we still believe that those men are in need of punishment, accountability, responsibility, reform, or rehabilitation. But unless women fit one of those archetypes, we really have no idea what to do with them. We are really stuck with our notion of women being victims all the time and the perpetrators always being men. So, there are no ways that women can legitimately express their anger, their frustration, and their lack of power. Our notions of how victims are situated and how offenders are situated prevent us from dealing with these particular kinds of violence.

TRANSCRIPT[°]

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)^{†}*

Margaret Johnson

Nicole Matthews

Hillary Potter[†]

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

[°] This transcript has been edited from its original transcription for clarity.

^{*} 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.

[†] 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 research¹ 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.² 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?

¹ 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.

² 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 yesterday³ 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.⁴ 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

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

⁴ 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 (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.⁵

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

⁵ 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 presentation⁶ 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.

⁶ 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 ejectment 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.⁷

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

⁷ 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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

⁸ FY 2013 APPROPRIATIONS BRIEFING BOOK (Campaign for Funding to End Domestic Violence and Sexual Assault) at 6, 8, http://nnedv.org/downloads/Policy/FY_13_Briefing_Book.pdf.

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

¹⁰ Kamei 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).

¹¹ 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.¹² 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.¹³ 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.¹⁴ Focusing on strong community networks helps to build social capital, "social relationships

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

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

¹⁴ 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,”¹⁵ 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.¹⁶ 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.

¹⁵ JO ANNE SCHNEIDER, SOCIAL CAPITAL AND WELFARE REFORM: ORGANIZATIONS, CONGREGATIONS, COMMUNITIES 9 (2006).

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

Part II: Reimagining Responses to Gender Violence

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TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Plenary 3—Harms of Criminalization and Promising Alternatives

UNIVERSITY OF MIAMI SCHOOL OF LAW

Donna Coker (moderator)^{†}*
sujatha baliga
Alisa Bierria[†]
Mimi Kim

BALIGA: So folks, my name is sujatha baliga and I am thrilled to be here. This space is incredibly close to my heart and I am excited that folks are thinking about alternatives to mass criminalization for ending sexualized violence. The alternative that has kept me busy for the past decade is restorative justice. I do not think it is a panacea. It is one of many tools in the toolbox we should be thinking about in terms of reducing our reliance on the state to heal the harms we do to one another. What most inspires me about restorative justice is that it offers a genuine

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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paradigm shift in the way we think about healing harm. To paraphrase Albert Einstein, someone who knows a bit about paradigm shifts: “If we want to solve a problem we can’t solve it if we continue to think the same way we *were* when we created it.”¹

“What is the Problem?” I am sure that Beth Richie and others talked at length about the problems of our criminal legal system, including racial and ethnic disparities, high recidivism rates, astronomical costs, and the fact that the system fails to centralize the needs of crime victims. There are many ways we can think about our system’s shortcomings, but this snapshot of the problem is particularly close to my heart as a survivor of child sexual abuse: one in four girls and at least one in six boys are sexually abused before their eighteenth birthday.² Astounding. But in 100 cases of sexual abuse, only ten—maybe depending on the jurisdiction up to eighteen—end up on the radar of the systems generally.³ Of those, six are referred for prosecution,⁴ and of those only three are actually convicted⁵ of something. The *something* is important. We know that the vast majority of criminal cases in the United States are resolved through plea deals. Just about every survivor I know who ended up engaging the criminal legal system (or had it engaged for them in their childhood) tells the same story: their abuser was sentenced for a crime far less severe than the abuse actually suffered. There are reasons for this; there has been a lot of press since the Sandusky case about why child testimony often is not effective in front of juries. This makes sense; I cannot think of a setting or system more poorly designed to get children to talk about the sexual harm they experienced than the trial process. So the numbers in this slide show us that the criminal legal system is not producing real solutions that could end child sexual abuse. This graph is something that I have adapted from a report called *A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse*.⁶ I would check it out on line; there is a lot to learn from this report more broadly.

Another thing that has been really interesting to me is not just our desire to incarcerate the problem away, but also to surveil the problem

¹ These remarks were delivered with the assistance of a PowerPoint, and the speaker makes references throughout to that slide deck.

² THE NATIONAL CHILD TRAUMATIC STRESS NETWORK, Child Sexual Abuse Fact Sheet, available at http://nctsn.org/nctsn_assets/pdfs/caring/ChildSexualAbuseFactSheet.pdf (last visited May 21, 2015).

³ JOAN TABACHNICK & ALISA KLEIN, ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, *A REASONED APPROACH: RESHAPING SEX OFFENDER POLICY TO PREVENT CHILD SEXUAL ABUSE* (2011), <http://www.atsa.com/pdfs/ppReasonedApproach.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

away through sex offender registries. My misgivings about registries and the surveillance of those who have caused sexual harm reached new levels when I learned about the number of people in the United State on sex offender registries. I would strongly suggest we all read *Raised on the Registry*.⁷ It was published by the Human Rights Watch and written by Nicole Pittman. It is brilliant and really shows the degree to which sex offender registries are extremely damaging, particularly for the ten- and twelve-year-olds who are put on it for sexual offending behavior that they had engaged in within their families.⁸ Families are decimated by the registry requirements, siblings are separated, etc. So this is a really important thing to look at.

So the failings of the incarcerate/surveillance method of addressing sexual offending are clear. This leads us back to Einstein’s admonition to examine how we *were* thinking when we created this problem. How are we thinking when we look at crime and harm and wrongdoing? Howard Zehr, my mentor and friend who is known as the “grandfather of restorative justice,” describes the paradigm shift from punitive to restorative justice with what we call “The Three Questions.” When I train prosecutors, I ask, “When you get a file what are some questions that come to mind?” They tend to rattle these off pretty quickly: What law was broken? Who broke the law? How should they be punished? These three questions are how we *were* thinking when we created the problem and provide the general framework for our criminal legal system. The paradigm shift offered by restorative justice calls us to ask a very different set of questions: Who has been harmed? What do they need? Whose obligation is it to meet those needs? When you look at these questions side-by-side it really asks us, who and what do we attend to? To whom do we attend to in these processes *first*?

| Our Current Legal System | Restorative Justice |
|------------------------------|---|
| What law/rule was broken? | Who has been harmed? |
| Who broke it? | What are their needs? |
| What punishment is deserved? | Whose obligation is it to meet those needs? |

I am coming to CONVERGE! from a meeting Howard Zehr organized to imagine the future of the restorative justice movement. A recurring theme in that gathering is what many of us feel is a serious

⁷ RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE U.S., HUMAN RIGHTS WATCH (2013), *available at* http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf.

⁸ *Id.*

crisis in the movement—that restorative justice has been coopted by the state and other systems, and is being treated as simply an add-on to the punitive/surveillance menu the state already offers. Many of us that were in that meeting are committed to bringing restorative justice back to a community-based paradigm instead of being so aligned with the state. It is not that the state should never have a role. But if restorative justice is simply reduced to a feel good add-on, we will not see the same victim-centered benefits a truly restorative model can offer. To this end, I am personally dedicated to seeing restorative justice be used in the pre-charge, and ideally even pre-arrest, procedural posture.

This is Howard Zehr's⁹ definition of restorative justice: "An approach to justice that involves, to the extent possible, those who have a stake in a specific offense, to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible."¹⁰ These three words: harms, needs, and obligations—my hope is that if you walk away from this talk with one thing in your head it is that restorative justice is about harms, needs and obligations.

The big picture is that crime is a violation of people and interpersonal relationships, not primarily the state. Those violations create obligations and the central obligation is, as much as possible, to do right by the folks you have harmed. It speaks to the notion of a decolonized golden rule, which is "do unto others as they would have you do unto them." This is another critical shift. So much of what we do for folks is really deeply patronizing because we assume that we know what they need. But through restorative justice, I get to sit down with folks and say, "How do *you* define the harm? What do you think you need moving forward? What are your safety concerns? What are your material needs? How are you harmed—all the different ways you could be harmed—financially, emotionally, physically, spiritually?" In restorative justice, we spend a lot of time up front with the person who was harmed. In helping them identify how they have been harmed, it often looks completely different than what I might imagine it to look like. That has been a really amazing learning curve for me, to see the wonderful, creative requests for healing that crime victims come up with.

To operationalize the three questions, I simply ask folks: How were you harmed? What do you need? Whose obligation is it to meet those needs? We can think about these questions broadly; community members are also harmed by crime. And people who caused harm are also harmed by their own actions and have needs that need to be addressed. The two

⁹ The next series of slides involve statements by Howard Zehr. The quotes come from his book, *The Little Book of Restorative Justice*.

¹⁰ See HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002).

restorative models I primarily work with are peacemaking circles and family group conferencing. Family group conferencing has been so effective in New Zealand that they have closed their juvenile detention facilities nationwide.¹¹

People always ask me, when you facilitate these dialogues, what do crime victims ask for? I will start by sharing a case that is not in the realm of sexualized violence, but is illustrative of how creative things can be. When we let crime victims drive outcomes, we can get some really amazing positive healing results. Let us talk about a case of a stolen and stripped car I recently facilitated. The victim was a woman who worked for a police department and was initially very disappointed that the case got diverted to restorative justice. The district attorney diverts felonies, and a few high level misdemeanors, to the program before the youth is even charged with the crime. So the victim felt that her case was not being taken seriously. In our prep meetings she made it clear she needed \$4,000 in order to make this thing right. The young person who committed the crime definitely did not have \$4,000, nor would his family ever have \$4,000 to repay the damage to the car. At some point, during the conversation someone who came as her supporter had a very powerful moment with the young man who had stolen and stripped her car. He talked to him at length about how he had also been in trouble with the law in the past and how he turned his life around. It was as if the room disappeared, two of them engaged in a conversation about how to keep your old friends in your heart and not keep them in your life. How do you know to show up for some of their kids' baptisms but not go to the after party? It was a very profound conversation. He also asked this young man, "What are you good at? What makes you happy? You're just bored, hanging out with these guys stealing cars, but what if you spent time doing something you love? What are you really good at?" So the kid says, "I'm an artist, I'm a really good artist," and his mother starts laughing. She said, "We owe her \$4,000, how are you going to pay that back with your art?" The victim pipes in and says, "Actually he can." She proceeds to explain that she really loves Tinker Bell. This woman is really tough and she loves Tinker Bell? She proceeds to say, "If you paint me a 5 foot tall Tinker Bell on canvas, I will forgive the debt you owe me." So this is what this young man produces. When people ask what victims want, it could be this Tinker

¹¹ See CHILD, YOUTH & FAMILY, *The Family Group Conference* (or FGC), <http://www.cyf.govt.nz/keeping-kids-safe/ways-we-work-with-families/family-group-conference-or-fgc.html> (last visited May 26, 2015).

Bell. And when they ask, “What does redemption look like?” I say, “It looks like that.”¹²

So we do this process with car theft, burglaries, arson, and robberies. When we move into the realm of domestic violence and sexual assault it gets much, much more challenging. But what I hear most from people in those cases is that they want to hear these words from the abuser: “This was my fault, not yours.” And they want some deep and genuine commitment to shifting the underlying patterns that gave rise to that problem.

So here is a case that I can tell you about briefly that happened here in Florida. I had the incredible honor of being involved in this case; this is a picture of the Grosmaires and the McBrides. Some of you who are local may have heard about this. It was a teen dating violence case, a homicide case. This is a picture of Connor and Ann; this was them on prom night just a few months before Connor took Ann’s life. This is Andy at Ann’s memorial service. I love this picture so much because there could be no better way of showing the degree to which these parents loved their child. I actually heard from people, and there were comments in the New York Times article about this case,¹³ that the Grosmaires must not have really loved Ann if they could sit down with the young man who killed her. I can tell you I know for sure that they did love Ann, and you can see that love on Andy’s face in this photo. This is a man who could not have loved his daughter more.

One of the outcomes of this case was that the Grosmaires asked for a fifteen-year sentence instead of the mandatory life sentence that Connor was looking at. Another thing that they wanted was for Connor to be released in shackles from time-to-time to speak in high schools across the State of Florida with them about taking their daughter’s life. And Kate, Ann’s mother, wanted the terms of Connor’s parole to include volunteering at the places Ann was committed to. She said, “You have the good works of two people to do now, Connor, because Ann would have done great things with her life.” As a homicide case, this was a case that necessarily involved the state, so the prosecutor, the defense attorney, and others were in the room for the five-hour restorative circle process inside Connor’s jail which helped produce a plea deal in the case. What I have been thinking about since then is why are we not doing this more and more in crimes of severe violence; the Grosmaires are far

¹² A photo of the young man painting Tinker Bell was shown at this point in the presentation.

¹³ Paul Tullis, *Can Forgiveness Play a Role in Criminal Justice?*, N.Y. TIMES, (Jan. 4, 2013), available at http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html?pagewanted=all&_r=0.

happier with the way this case was addressed and with the outcome than they would have been if the case had gone to trial.

Restorative justice is about accountability and shifting your offending behavior. Some of you may have heard about a case in California, a young trans girl in high school, who has been bullied for years, was charged with assault when she got in a fight.¹⁴ I had the honor of facilitating a restorative justice resolution in that case. There was some criticism that restorative justice was not appropriate for that case because the case should have been dismissed. Without sharing too much information about the case (restorative processes are strictly confidential), there was some physical violence going in both directions which, from my understanding, makes it a very different scenario than the Marissa Alexander case. But it is important that we be really careful because this is an accountability-based model, it is not something we want to use in lieu of dismissal, when dismissal is the appropriate approach.

One of the things that I would love to see us do is to take this approach to addressing sexualized violence in India. In India, 53% of children are sexually abused.¹⁵ Over half of those abused are boys, and some of the most severe forms of abuse are against boys in India.¹⁶ This has been going on for some time, and to my mind, is the root of a cycle of sexualized violence. The response since the Delhi rape case has been to adopt more punitive responses, to say, “Let’s create the death penalty for youth who rape.” It is as if India is starting where we were thirty years ago. I hate to see India follow in our failed footsteps.

I have become interested in understanding the landscape of sexual abuse in South Asian diaspora communities. We are curious about the degree to which child sexual abuse may be linked to the suicide rate amongst teenagers in South Asian American populations. The tyranny of the “model minority” story is linked to the inability to report. But there are other reasons we keep silent about the abuse; structural, not cultural reasons. If you have seen me talk before, you have probably heard me say that it was the crimmigration Child Protection System cluster muck of South Central Pennsylvania in early 1970s that was the reason my father got to continue sexually abusing me. What I mean by this is that I had no interest in my father being incarcerated or my mother being

¹⁴ James Michael Nichols, *Jewlyes Gutierrez, Transgender Teen, Enters Agreement That Could See Criminal Charges Dropped*, HUFFINGTON POST, (Feb. 7, 2014), available at www.huffingtonpost.com/2014/02/07/jewlyes-gutierrez-petition_n_4746084.html.

¹⁵ STUDY ON CHILD ABUSE: INDIA 2007, MINISTRY OF WOMEN AND CHILD DEVELOPMENT GOVERNMENT OF INDIA (2007), available at <http://wcd.nic.in/childabuse.pdf>.

¹⁶ *Id.*

deported or in being taken away from my family. Even as a child I knew that if I told anyone what was happening in my home, any of these things could have happened, especially because, for much of my childhood, we were the sole immigrant family in our rural patch of America. This is really important for us to understand, that the systems designed to protect us are actually doing us harm because they disincentivize truth telling and help seeking. But we can do things differently. We can incentivize telling the truth and seeking help without feeling like we are putting our communities and families at risk. I would ask folks to take a look a film called "Hollow Water."¹⁷ It is about an Ojibwe community in Manitoba. They were decimated by the boarding school crisis. So many of them were forcibly taken away by the Canadian government when they were children and sent to boarding schools where they suffered unthinkable harms. The fallout was a transgenerational pandemic of child sexual abuse. Rather than relying on the Canadian government to prosecute the abusers and remove the children from their homes, the Hollow Water community dove deeply into the roots of the problem and engaged in a restorative justice process which did a very good job of effectively eradicating child sexual abuse.

One of the most powerful things I get to see is when a young man makes amends in a sexual harm case. He admits what he has done, and looks his victim in the eye and takes responsibility. When he does this, he is not harmed, he is not punished; rather, through the community, through family support, and through understanding the impact of his behavior on his victim he is made into someone who will never do this again. That is actually to his great benefit, and to all of our benefit. Finally, in the words of Dr. Martin Luther King, Jr., "Whatever affects one directly, affects all indirectly."¹⁸ I can never be what I ought to be until you are what you ought to be. This is the interrelated structure of reality. I have yet to see something more effective than restorative justice in achieving this. That is it for me. Thanks folks.

KIM: Thanks everybody. I am just thrilled to be here. It is nice to get together in Miami to talk about our shared work. In this panel we are talking about harms of criminalization; we are talking about alternatives; and also I was asked to talk more specifically about the relationship between state and non-state responses. So I am going to try to address those three things in my time.

¹⁷ HOLLOW WATER (National Film Board of Canada 2004). For more information, visit https://www.nfb.ca/film/hollow_water.

¹⁸ MARTIN LUTHER KING, JR., *Letter from Birmingham Jail*, in WHY WE CAN'T WAIT 85, 86 (1963).

I took seriously this question of state versus non-state approaches. I was thinking about state responses and to get a little bit more grounded in the specific thinking about arrest, incarceration, mandatory arrest, and minimum sentencing. So what do we mean by things that are non-state responses? Without getting into a lot of details about definitions, people probably have heard terms like community accountability. I know many people here are very familiar with this whole arena. I am sorry about being basic for those who are very familiar with concepts such as Transformative Justice and community accountability. Social network responses, shelters, and crisis lines, at least at their start, have been autonomous spaces that were very distinct for the state, and many are struggling to remain so. Advocacy Centers, similarly. For some of the restorative justice responses that sujatha named, we are still engaged in conversation about the fact that many of them are very much coming from the state. This is true if we look at “Hollow Water,” for example.¹⁹ This is not to undermine the importance of these specific examples and these practices but to remind ourselves that many of these are very much engaged in criminal justice responses, the system in which many of us feel like we cannot engage with. So what does that mean about what our conversation about alternatives to the state? Batterer intervention programs in some ways are in that in-between space, diversion, similarly. Many of these on each side are in the in-between spaces between state and non-state responses.

So we all know that we have a crisis in the anti-violence movement. We might think that crisis is the over-reliance on criminalization or in the criminal justice system or we may think that the crisis is the reliance on criminalization at all.

I just wanted to remind everyone about how recent this problem is and how serious this problem is about the increase in what some people call the carceral state. If we look at this a timeline showing the United States’ rates of incarceration from 1945 to 2012, and if we brought this timeline all the way back to 1920 we still have a pretty flat line.²⁰ So what happened in 1973 makes the rates of incarceration increase by 500% between 1973 and 2012?²¹ This increase, as we all know, disproportionally affects communities of color. As I, I came on to the practice world, I knew that I viscerally felt this to be a problem,

¹⁹ *Id.*

²⁰ *Sourcebook of Criminal Justice Statistics*, UNIVERSITY AT ALBANY, HINDELANG CRIMINAL JUSTICE RESEARCH CENTER, (Kathleen Maguire, ed.), Table 6.28; PRISONERS IN 2011, BUREAU OF JUSTICE STATISTICS, U.S. DOJ, Table 6 (2012), <http://www.bjs.gov/content/pub/pdf/p11.pdf>; PRISONERS IN 2012 – ADVANCE COUNTS, BUREAU OF JUSTICE STATISTICS, U.S. DOJ, (2013), <http://www.bjs.gov/content/pub/pdf/p12ac.pdf>.

²¹ PRISONERS IN 2012 – ADVANCE COUNTS, *supra* note 20.

especially when I saw the Violence Against Women Act passed in 1994 as part of the Crime Bill.²² That for me signaled my own personal crisis. What have we done that I am asked to applaud when VAWA was passed as part of the Crime Bill? But also looking back historically, I was really surprised that people marked the beginning of the battered women's movement and anti-domestic violence movement in the exact year 1973. This is not to say that there is a causal relationship between the two, but this gives us an opportunity to think about what it is; what were the links and the tensions between the rise in the carceral state and this development of our movement, but also the movement as it moved toward criminalization. How are those linked together? As I was saying, 1994 marked the crisis for me and, as many of you know, the passage of VAWA brought a lot of money to the movement—about \$1.6 billion over six years.²³ I was looking at the statistics and about over 60% of that money went directly to law enforcement. It moved the Office of Violence Against Women, which used to be in the Department of Health, Education and Welfare, directly into the Department of Justice. This really marked a big shift in our movement, one that had already been started before this time.

In thinking about this in my own practice, I thought this linked to what I would call an underdeveloped community response. As we turned more and more to criminalization, it seems that we turned less and less to creativity about how we engage communities. Program crisis lines saying, "If you are in danger, call 911." Even if that organization works primarily with undocumented people, who probably should be very careful before calling 911, that is what we automatically say on our crisis lines. We really need to reexamine that common practice. So I was thinking a little bit about some of the institutions that we have developed over time, the Victim Witness Program, the Community Coordinated Response. Many of you have been aware of the critiques, and many of us have worked in these spaces and continue to work in these spaces. I do not mean this to be a complete condemnation or demonization of the kind of practices we have taken on but really an opportunity, as we have all have done today, to reflect on what the implications are and what the consequences have been. I have looked at Victim Witness programs as a way in which we were embedded within the very walls of the state itself. The Community Coordinated Response was a way that we actually linked these systems together in an institutionalized form. On the one

²² See LISA N. SACCO, CONGRESSIONAL RESEARCH SERVICE, THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING (March 6, 2014), available at <https://fas.org/sgp/crs/misc/R42499.pdf>.

²³ *Id.*

hand, you can say that this legitimized the practice of saying that domestic violence advocacy had to be joined together with the state or that it was wise to do so. But I think what we can also say is that these boundaries between the two became more and more blurred over time. In fact, we might say that not only are they blurred, not only have we created these new institutional forms that are vulnerable to becoming increasingly taken over by the state, but, in fact, we have ourselves become the state. If we think now about the Family Justice Centers,²⁴ we no longer ask to come to the same table. We are now actually being asked to come to a building now controlled entirely by law enforcement under the rubric of a domestic violence resource “shopping mall.” That is what they say in Oakland. I do not know if that is true everywhere else. We might think that our programs are shrinking. I am not sure what the budgets are for the Family Justice Centers, but my guess is that they are not shrinking. In fact, there might be a linkage between why we are getting less money and somebody else is getting more.

So if you want to see this kind of crude step-by-step thinking of the reason why some of us started engaging the state, we can say that in the first place there was of contestation. You, law enforcement, are doing nothing. You had better do something. We made demands. This very quickly turned into some form of collaboration, and feminist control over this relationship diminished over time and often very quickly. We might look then to the increasing institutions that were hybridized forms of social movement institutions linked with criminal justice. These institutions are increasing and occupy what we might call our whole social movement field, and eventually perhaps this is what led to our current subordination to the criminal justice system. We initially thought that we had won the battle, but increasingly found that perhaps they were the ones that won the battle with us. So if we were to call these as steps to a dance, we might call this the carceral creep.

Going back to this crisis of the underdeveloped community response, We are getting better at the critique, but what are the alternatives going to be? sujatha baliga has done some incredible work starting to look at this on the ground, and there are many ways to think about alternatives. How do we reform our ideas of justice? How do we increase our community response?

I started thinking of this again in terms of non-state, state, or civil society and the state as a kind of continuum, looking again at the same categories that I put up earlier but also thinking of so many different kinds of tensions we can look at between do we criminalize or do we not

²⁴ FAMILY JUSTICE CENTER ALLIANCE, <http://familyjusticecenter.com/home.html> (last visited May 21, 2015).

criminalize? Do we have state responses or non-state responses? Do we take state funding or do we take non-state funding? These are the kinds of questions that we are grappling with every day. Are we going to use an individualized service model or are we going to use a more collective organizing engagement kind of model? Then thinking more institutionally as somebody who founded an organization and who has worked in the nonprofit industrial complex and who hopes to be working more on this soon, we could also look at whether we are grassroots organizations or are we institutionalized fund-driven organizations. Are we volunteer organizations or are we part of this nonprofit system? A lot of those things that we live with every day can be very critical. My guess is that for most of us, we are in some kind of paradoxical space, hybridized space, so these are very real questions for us. I just want to remind everybody that we are not in this alone as any individual or as any organization, and we are not going to get very far if we are. We really have to do this as a collective effort, and I want to give a nod to so many organizations that have been working collectively.

One example is an organization, Creative Interventions,²⁵ that I helped to found in 2004 out of frustration about the status of alternatives in the field. Everybody said we have to do alternatives, but when we actually sat down and started looking around, there seemed to be so few. So I decided that I wanted to start an organization that put values and principles into practice, that would create and promote community-based responses, create and make available models and tools and that people can actually use. We have to acknowledge that, these are not new, these are old, and we have to build on legacies of resistance and resilience from our own communities. But we need to make them public knowledge. It is an organizing approach as opposed to a direct service approach. It is one where the interventions are not happening in the office space of Creative Interventions, but the interventions are happening in the space of the community, the home, the streets, in the faith institutions, wherever it needs to happen. It is not run by professionals, although professionals can play a role, and not by law enforcement. It is a place where we would share knowledge and skills, where we would share models, where we would share stories, but we would not put them up for sale. I was thinking of Beth Richie's talk, I think she called it "everyday knowledge and authority."²⁶ We really need to think about that more. We became reliant upon the authority of the

²⁵ CREATIVE INTERVENTIONS, <http://www.creative-interventions.org/> (last visited May 21, 2015).

²⁶ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Antiracism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257, 266 (2015).

state, but how it is that we actually build our own authority in order to build the kind of self-determined communities that we want and not be shy of “authority,” something which I think many of us have been in the movement.

On a very practical level, we did not engage with law enforcement, and we did not engage with child welfare either. We did not use the language of law enforcement, meaning we did not use the language of perps, perpetrators, offenders, and so on. We said “people doing harm.” But usually when people came in, we simply said their name. We did not take government money, but we did take foundation money. You could definitely ask, “What is the difference?” We tried to resist marketing, and what I mean by that is that even though the logo is kind of cute, this was not all about “Wow, look at Creative Interventions.” We certainly went out and tried to raise funds and make ourselves look good, but this was not about tooting our horn and saying this is the Creative Interventions motto. This was about adding something to our communities, our shared communities, and to put it out there as something that might be useful that people can take and adapt and use as they will. Because of that, we did create a 501(c)3 non-profit, and I could talk about the contradictions and the difficulties that come with that. We created an organization that was short term. We knew we were taking some risks that might get us within the gaze of law enforcement. But we also did not want to be in a position of trying to keep this organization going and shifting from the mission we had from the beginning. We have our websites available even though the organization is no longer in institutionalized form. And we continue to get me to come to things like this which is also a way to continue the work. You can find the tools and stories on these web spaces.²⁷

I just wanted to add a couple of questions about where we go from here if we think of all of these different tensions that we all deal with all the time as people who want to make a difference, but do not want to create more harm. How do we keep building liberatory spaces? How can we who are still engaging with the state, with foundations, with academia do this in a strategic way that leverages resources we have, without simply buying into them and not succumbing to them? How is it that we need to be engaged in this collectively? How do we do that? What are the dangers? And to be literal about these questions and collective about these questions, we need to keep asking ourselves, “Where do we go from here?”

²⁷ See CREATIVE INTERVENTIONS, *supra* note 25.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Alternatives to the Crime-Centered Approach to Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

Staci Haines^{*†}
C. Quince Hopkins
Tiloma Jayasinghe[†]
Andrew Sta. Ana

HOPKINS: I am just super excited and charged up. I am Quince Hopkins. What I am going to talk about first, is the restorative justice

[°] This transcript has been edited from its original transcription for clarity.

^{*} Staci Haines is the founder of *generative somatics*, whose mission it is to grow a transformative social and environmental justice movement that integrates personal, community, and systemic transformation. Haines is also a founder of generationFIVE. C. Quince Hopkins is a Professor of Law at Florida Coastal School of Law. Professor Hopkins created and directed the Domestic Violence Legal Clinic at the University of Arizona College of Law and was also the Legal Advisor and a National Advisory Board Member for the RESTORE Program in Arizona. Tiloma Jayasinghe is the Executive Director of Sakhi for South Asian Women and is formerly a Social Affairs Officer at the United Nations Division for the Advancement of Women. Andrew Sta. Ana is the Supervising Attorney of Day One, a New York City based organization that partners with youth to end dating violence through legal and social services, community education, and advocacy.

[†] Original remarks from the CONVERGE! conference omitted. Tiloma Jayasinghe's remarks were redacted as she contributed to the following essay: Soniya Munshi, Bhavana Nancherla & Tiloma Jayasinghe, *Building Towards Transformative Justice at Sakhi for South Asian Women*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 421 (2015).

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work I have done with victims of acquaintance sexual assault in a pilot restorative justice program in Tucson, Arizona called RESTORE.¹ I have been working on restorative justice for about the same amount of time, for ten years, and I have been working with victims of domestic violence, in particular intimate partner violence, for twenty-five years. I came to the point of recognizing that rates of violence against women or gender-based violence are not changing despite all of the efforts of many excellent advocates out there.

Restorative justice speaks to me, in particular, as a survivor of sexual abuse that happened when I was sixteen, and was finally able to reach some healing when I was forty years old. Twenty-five years later, this person—my mother's former boyfriend—had reconnected with my mother and was possibly going to be coming back into my family. I had been involved with restorative justice in my professional life, and thought it might help my sisters, my mother and I address what had happened. We had a restorative justice conference with a very experienced restorative justice counselor; we held a family group conference without him being there. The family group conference was to be just within our family because the damage that had been done had split our family so deeply. Twenty-five years later, I found an opportunity where we did a lot of healing within our group family. (And I am happy to say he did not come back into the family. He was an external part of the family—and my mother finally understood the damage he had done to our relationships with each other.) In any event, restorative justice speaks to me. It speaks to me; I have felt the benefits of doing it—doing restorative justice family group conferencing, in particular.

So, what I am going to start with is to talk about the program I worked on with sexual assault survivors. I will then transition into talking about my thinking about using restorative justice specifically for violence in the lesbian, gay, bisexual and transgender community, which is the direction my thinking has gone most recently.

The program that I was working with was a five year pilot restorative justice program, funded by the Centers for Disease Control and Prevention to study acquaintance sexual assault—not sexual assault that happened in ongoing relationships. We specifically excluded ongoing relationships as more problematic because of the power dynamics that exist in intimate partner relationships. We also did not take cases involving children, even though the prosecutors we worked with really

¹ C. Quince Hopkins et al., *Expanding a Community's Justice Response to Sex Crimes Through Advocacy, Prosecutorial, and Public Health Collaboration: Introducing the RESTORE Program*, 19 J. INTERPERSONAL VIOL. 1435 (2004).

wanted us to take cases they refer to as “Romeo and Juliet cases.” Those are ones involving consensual relationships between young people whose parents were upset and were pressing for statutory rape charges to be filed, or the cases that take what today would be thought of as sexting cases, where young people are being charged with child pornography by sending pictures of themselves. Our research focused specifically on acquaintance sexual assault.

The community we were working in was in Tucson, Arizona. The University of Arizona in Tucson was within our research area so we had a lot of campus sexual assault. Most of our cases ended up coming from the fraternity parties and other campus sexual assault. But we also had cases coming from our undocumented community as Tucson is close to the border of Mexico. We had a fair number of undocumented people who did not feel comfortable going forward with full-on prosecution. In our research area, we also had a number of Native American tribal communities where there were unique dynamics and issues about interpersonal acquaintance sexual assault. Those were the kinds of cases we took. We did not take cases with children. We did not take the “Romeo and Juliet cases.” We were focused specifically on acquaintance sexual assault.

When we set up the program it was really important to us that we did some community building and outreach and made sure that we had the prosecutors on board, law enforcement on board, and public defenders on board. There were some questions as to whether they would agree to go through these programs with their clients. But most importantly, we worked closely with the campus and community sexual assault programs to make sure that they were comfortable with the program and processes and to make sure that they would be our partners in this process. We set our program up as a community conferencing model, where the parties involved would define what their community was. That is one of the questions that has come up repeatedly today: What is community? How do we define community?

We saw what we were doing also as a community empowering project, a community building project and a community improvement project. So there were a number of things that we had as our major goals.

The central inspiration for the project was a response to what was happening with sexual assault cases, particularly acquaintance sexual assault—these cases were not being prosecuted. The prosecutors were not going forward with prosecutions because of all of the classic things that prosecutors say make these cases difficult to win: “he said, she said,” “there was alcohol involved,” etc. And yet, this did not mean that the cases did not have merit. We wanted to provide an opportunity for victim redress that worked parallel to the criminal justice system. Our program

offered a process that would provide all of those great things that restorative justice can bring about—victim empowerment, identification of the harm, and offender accountability. In our program, we were bringing together all of these folks in what would be sometimes five hour conferences, and with even more time for preparation in advance of that. We also incorporated into our thinking and program design a concern and a remedy to the concern about the need for sex offender treatment for offenders. The concern was that if the case were to go forward with prosecution, and lead to a conviction and incarceration, incarceration was rarely accompanied by sex offender treatment. And this is despite the fact there is evidence that sex offender treatment is effective. To address this gap in the traditional criminal justice system, our program mandated that any offender coming into the program (we called them “responsible parties”) had to go through a sex offender evaluation and go through sex offender treatment.

Our reason for mandating this sex offender treatment aligns with the concerns of the survivor who spoke in the last panel who was concerned about the person who assaulted her being out there in the world and doing it again to someone else. Having some sex offender treatment and oversight during the entirety of the program was a critical component to it.

Although we had a number of cases referred to the program from the prosecutor’s office at the request of the victim, we ultimately found that our biggest barrier to having cases move forward to an actual community conference were our partners in the sexual assault centers. Our sexual assault advocates had been enthusiastic about having some redress for victims through RESTORE, but when the rubber met the road, we found that they were still invested in and committed to prosecution as the best outcome. They still held that as a sacred cow—the position that prosecution was the best thing that could happen for these victims, even though the victims were saying “no, that’s not what I want,” “I have to go back to school,” or “I just don’t want to go through a trial.” That was our biggest barrier, and I say that because I think it is such a sacred cow when you have advocates who are committed to prosecutions, so committed to the criminal justice process that it is hard to step back and take a chance on something completely outside of their experience. So we had fewer cases come through the program than we had expected and hoped. More importantly, we saw very few lesbian and gay victims come forward in the program. We were based in Tucson where there is a large LGBT community.

That being said, we had very good success with the cases that did proceed to a community conference resolution. The victims uniformly came through the process feeling much more empowered, feeling like

justice had been done, feeling better about themselves, feeling like they had been personally transformed in the process and that their bonds with their family members had been reestablished as well.

We asked the question: Is that something that we can move forward to expand for use in the LGBT community? This question is part of an overarching project on which I am working. What I want to talk about is the specific issues and potential benefits for transgendered people and why restorative justice might be a particularly good thing for transgendered members of the larger LGBT community.

One of the things that I think is going on in the LGBT community that makes it an area ripe for a restorative justice response to crime within our community is that we have a number of intersectionalities going on, as well as what are sometimes some schisms within the LGBT community. That, again, brings us back to this question: what is community? For instance, bisexual persons have this experience about are *they in, or are they out?* Are bisexuals fully enfranchised and accepted members of the L-G-and-T community? Bisexuals continue to have experiences of exclusion by their lesbian and gay brothers and sisters.

Relatedly, a number of different gender performances, gender expressions, and sexed bodies still lead to experiences of exclusion from the L-G-B-T community. For example, the Michigan Womyn's Music Festival² continues to have internal community conflicts about using a woman-born-woman policy to exclude trans-women from the festival. Similar issues come up in single-sex schools, athletic competition, single-sex bathrooms and other situations. We saw another example of exclusionary practices in our community connected with the push for the passage of Employment Non-Discrimination Act (ENDA). There was a lot of fighting within the LGBT community about whether to include or exclude transgendered persons in the list of protected persons when ENDA was initially being discussed.

When we are talking about transgendered persons who are experiencing violence, we are talking about a particularly vulnerable population. I want to talk about violence against transgendered persons, specifically with respect to intimate partner violence (although, again we did not take that in as part of our project with the RESTORE Project.) My comments, here, thus focus specifically on violence within the LGBT community committed by someone who is part of the community, against another member of the community with whom they are involved in an intimate partner relationship.

² MICHFEST, <http://michfest.com/> (last visited May 21, 2015).

My emphasis on intimate partner violence against transgendered people builds on recent research that more carefully fleshes out and dissects the data on violence against transgendered persons. This recent research clearly demonstrates that most violence against transgendered persons is intimate partner violence. And this intimate partner violence is primarily sexual violence. Thus, even though the rates of intimate partner violence within the LGBT community mirror those in heterosexual relationships, and even though there are similarities in some of the power and control dynamics that exist in cases of intimate partner violence that occur in heterosexual communities, there are nuances and differences that we need to pay attention to.

One of the critically important differences is that transgendered victims of intimate partner violence are less likely than other groups to report the violence to law enforcement. There are a couple of reasons why this is probably the case. There are certainly other reasons, but I am going to focus on those that are related to this theme of exclusions.

As noted earlier, transgendered people experience ostracism within and exclusion from the LGB (supposedly-T?) community. There is resistance from some feminists to any shift of emphasis away from (biological) sex and towards gender, particularly when the issue is intimate partner violence or acquaintance sexual assault. Violence against women, the argument goes, is real and pervasive, and ignoring a reality that is directly tied to women's bodies undermines efforts to eradicate it. That resistance, for some in the movement, also comes up in conversations about transgendered people. "Gender is not sex. Sex matters, particularly when it comes to violence against women." With this resistance, the work to combat intimate partner violence against transgendered men and women will continue to be difficult.

Another issue confronting transgendered people experiencing intimate partner violence is that the LGBT community, if there is such a cohesive thing, is, by default, smaller and at times more insular than the heterosexual community. Within insular communities, particularly where one is already experiencing some ostracism, there may understandably be more reluctance to raise intimate partner violence as an issue, particularly when the offender is also a member of that same community.

Transgendered men and women face another level of silencing directly related to their identity. I had the privilege of speaking about issues of intimate partner violence against transgendered people at Harvard for the Journal of Gender and the Law's 2012 Symposium, and one of the speakers, a trans-woman, spoke movingly when explaining that being able to pass on the street as a woman could literally save her

life.³ Of course, the notion of being closeted or passing is something that is not unique to someone who is transgendered, but there exists a special layer of complexity for a transgendered person.

And lastly, low reporting of intimate partner violence to law enforcement is undoubtedly also related to fear of negative treatment by law enforcement because of the victim's transgender identity. This same issue confronts lesbian and gay victims of intimate partner violence. But for both, without reporting, there are no consequences.

Now, I want to address a few final points. First, I want to address the issue of restorative justice as it relates to community building. I will then conclude with a couple of cautions. First, with respect to community building, use of restorative justice in the context of intimate partner violence against transgendered men and women might be of actual benefit to the LGBT community as a whole. Using restorative justice, as an intervention to violence against transgendered people, and particularly the "community conferencing" restorative justice method, the victim-identified community is likely to involve those who are within the LGBT community. As a result, a restorative justice response will bring to light the too often hidden issue of intimate partner violence against transgendered people. You would have those community members at the table of the community conference with the potential for increased openness about the existence of the problem. Second, the community conference approach could possibly reduce some of the other exclusion that happens in other contexts mentioned previously. And lastly, restorative justice has the effect of building stronger community bonds that could help the community organize on all sorts of issues going forward.

A couple of cautions. Some of these caveats have been raised by others with respect to restorative justice generally, and then also to the use of restorative justice as a response to intimate partner violence. Is restorative justice even appropriate for interpersonal violence because of the safety issues and power/control dynamics that often accompany violent intimate partner relationships? Is restorative justice just "justice light" when compared with traditional criminal justice prosecution? Will the existing fissures within the LGBT community that I discussed here make restorative justice less possible for intimate partner violence against transgendered men and women? And is the suggestion that restorative justice leads to long-term enhanced community building and advocacy merely pie in the sky idealism? In conclusion, might it nonetheless be worth a try?

³ See HARVARD JOURNAL OF LAW & GENDER, *2012 Symposium*, <http://harvardjlg.com/2012-symposium/> (last visited May 26, 2015).

STA. ANA: My name is Andrew Sta. Ana. I work at an organization called Day One⁴ based in New York City. We are solely devoted to the issue of teen dating violence. I formerly ran a project working with LGBTQ survivors of domestic violence for about six years. In preparing what I was going to say today, I realized that a lot of the things that I am talking about are snippets of things that I have learned from others, but then I have this awkward feeling that all of the people whose ideas I am incorporating are at this conference. I took ideas from the Northwest Network,⁵ from Mimi Kim, and from others and incorporated them into the work I do at Day One so my work is the result of the support of fantastic, radical, hilarious, and beautiful colleagues.

Day One is an organization that works with young people up to age twenty four who are survivors of teen dating violence. Most of our clients are Black and Latino women. We work with some queer folks. We provide legal representation in family court for orders of protection, child custody/visitation, child support, and other related work. We also do a lot of community education, including in schools, with professionals and with community based organizations. We talk to young people about relationships. We do one-on-one and group counseling. We also have a Youth Voices Network, which is a group of young survivors. These young people work with to Day One and talk publicly about their experiences in advocacy, organizing, and community education. We also assist clients with U visas and deferred action for childhood arrivals, and we accompany clients who file orders of protection or who file police reports.

At Day One, we try to check our “adultism” and our sense of privilege as we talk to our clients about their options. We are frank about how all of the options are incredibly imperfect, and we talk to them about what are the risks. Using our institutional knowledge, we discuss with them the opportunities and how a particular choice might play out. We do not tell people to never call the police and we do not tell people that court is universally a bad option.

I want to discuss what we are hearing from the young people that we are working with. They are asking things like, “Who is going to pay child support if he (the abuser) is arrested?” Or “If he’s arrested, who will watch our child on the weekends?” Or, “He didn’t grow up with a father and I want him to know what love is by having a relationship with his child.” Some of them will say, “He grew up in foster care and he doesn’t know any better.”

⁴ DAY ONE, <http://www.dayoneny.org/> (last visited May 21, 2015).

⁵ THE NORTHWEST NETWORK, <http://nwnnetwork.org/> (last visited May 21, 2015).

Our tag line at Day One is “Love should always be safe.” We are concerned with how to end dating violence in relationships and to prevent it from happening at all. We are also thinking about how do we get there? Some people believe that batterers intervention programs are a waste of resources. At Day One, we are asking at what point is it too late to intervene? When someone turns eighteen? Is that when it is too late? We believe that early engagement and education is critical.

So, with that said, I am going to talk about some of the projects that we are involved with. The Northwest Network has this really great seven week course curriculum for adults on relationship skills. We partnered with the Staten Island LGBT Community Center and adapted this curriculum for young people. These workshops include discussions of anti-oppression; values; expectations; accountability; and ask, “What you do when there’s conflict?”, “How do you communicate your boundaries?” and “How do you make community connections?” We have also adapted this curriculum for use at the Harvey Milk High School in Manhattan.

One of the other unique collaborations we are involved with is something called YODVC, Youthful Offender Domestic Violence Court. YODVC was created by the Brooklyn District Attorney’s Office and other partners, for young people experiencing dating violence where the defendant is between the ages of sixteen to nineteen. A special court exists for these cases and often young women who are the victims or survivors of abuse are referred to our services. There are also services available for those young people who are offenders. A third collaboration is with the Green Point Youth Court. The youth courts are based on restorative justice principles. The idea is that if you are a young person involved in a misdemeanor offense, rather than going through the criminal justice process, your case can be diverted to a youth court. In youth court other young people from your community act as the judge, the jury, the prosecutor and the defense attorney. The young person is judged by his or her peers in what they call a “positive peer pressure environment.” They give people sanctions instead of jail sentences. The sanctions can be things like working at a community garden, participating in a food pantry or writing an essay, and apologizing for all of those other things. Day One does a workshop with the students who participate in youth court about healthy relationships, and tech abuse, including one titled, “Let’s Talk About Sext.”

Day One also engages in a lot of school based advocacy. For example, we assist survivors who want to leave their schools. We will talk to the school safety officers, teachers, school counselors, and social workers to advocate for the student to receive a school safety transfer.

In our workshops we talk about gender roles, relationships, and healthy masculinity. We have one called “What’s a Real Man?” We have workshops on consent and coercion. We also reexamine everyday language. For example, we have a workshop called “Not a Wife Beater.” We recently did a brown bag on transformative justice using Creative Interventions material.⁶ We are thinking about how those principles impact and transform our work?

We are also supporters of the Community Safety Act⁷ that addresses stop and frisk incidents going on in New York City. When young people, have to contact police, we want to make sure that the situation is handled well.

Many of the young people I work with experience a lot of technology-based abuse. I think this is not taken seriously enough, and our laws have not caught up to the experiences of survivors. Many of our clients experience online stalking. These clients are reporting the abuse to the authorities, but it is not stopping the abusive partner from sending harassing emails or posting naked pictures of them in their apartment building when no one is around.

Online communities have a big impact on young people with respect to how they stay connected and how they stay safe. When I started doing this work ten years ago, the response was, “If you’re getting abusive voicemails or emails, just change your phone number or email address.” But the young people I work with do not find this to be useful advice. Some of them want to stay connected so that they can keep tabs on their abuser. They feel that if the abusive person is sending nutty emails, then they know that he is really angry, but if he is sending emails to try to reconcile, they know he is in a different frame of mind. They want to know where he is coming from. I also know that asking young people to take down their Facebook profile means asking them to cut themselves off from community resources and friends—sources of support and strength.

See you later. Thank you.

⁶ For more information, see generally Mimi Kim et al., *Plenary 3—Harms of Criminalization and Promising Alternatives*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 369 (2015).

⁷ For more information, see generally Deborah M. Weissman, *Rethinking a New Domestic Violence Pedagogy*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 635 (2015).

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on the Possibilities and Limits of Criminal Justice Reform

UNIVERSITY OF MIAMI SCHOOL OF LAW

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Connie Burk[†]

Michelle Kaminsky

Sandra S. Park[†]

KAMINSKY: Hi everyone, I want to thank the organizers for asking me to be here, it is really an honor. A lot of what I have heard discussed here are criticisms of the system that I do not hear often, coming from a prosecutor's office. So, having said that, I want to acknowledge that I agree with pretty much everything I have heard thus far. I wrote a book about my experiences prosecuting domestic violence crimes.¹ I have been in the Brooklyn District Attorney's office for twenty-one years. I

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted. Sandra S. Park's remarks were redacted as she contributed to the following article: Sandra S. Park, *Equal Protection for Survivors of Gender-Based Violence: From Criminalization to Law Enforcement Accountability*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 401 (2015).

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¹ Michelle Kaminsky, *REFLECTIONS OF A DOMESTIC VIOLENCE PROSECUTOR: SUGGESTIONS FOR REFORM* (2012).

started in 1992. I had no background in domestic violence issues. In 1997, I was asked if I wanted to join the domestic violence bureau for the sole reason that they were short staffed and needed another assistant to come into the unit. When I joined, what really struck me is that the vast majority of the crime victims that we were working with were women and they did not want to go forward with criminal charges. So I thought that was really fascinating, how did we arrive at a policy that the very people we were supposed to be helping were opposed to what we were doing? The prosecutors would be pitted against the very people we were supposed to help. This would lead to frustration and reinforcing belief systems, such as “why is she calling the police if she doesn’t want to cooperate,” and “why doesn’t she just leave?” So that really started me on this journey of figuring out how we arrived at criminalization.

I have never been to a training like this. All the trainings I have attended have been sponsored through the office of Violence Against Women; and they have dealt with prosecuting domestic violence cases and best strategies. In those trainings I heard a lot about the ways the twin goals of safety and accountability could be met in the criminal justice system. I think we have done great work and we have a lot in place where we can help to keep people safer, but we have tons of cases that come into the office which are violations of orders of protection, so I do not believe that if you get an order of protection you are going to be safer.

Also, this concept of accountability, what does that really look like in the criminal justice system? There are not a lot of options. You either have a case which goes to trial, or you get a plea disposition, or the case is dismissed. Even if a case goes to trial, there are limited options—jail, probation, batterer intervention programs—and the research shows that the batterer intervention programs are not really effective; you cannot change someone’s belief system. I was also struck by the very things that we were repeatedly hearing the women say to us about what they wanted; safety, affordable housing, child care, living wages, and help finding a job. Those were the very things they were asking for when they would sit in our office and yet, we would be talking about pursuing criminal charges. The resources to provide those very things were limited.

Now acknowledging all of this, I still believe the criminal justice system is a critical partner in addressing domestic violence and the reason for that is, when people are afraid and want help, people call 911. They call the police who respond to 911 calls. In New York City in any given day, the police respond to close to 700 domestic violence calls. It is a very high number. In Brooklyn, we see about 8,000 domestic violence cases a year—the numbers are really high—and 98% of those

cases are misdemeanor cases, really low level crimes. Also, we have maybe 150 felonies, more serious cases, a year. So we have very high numbers. So I do not see a way that the criminal justice system cannot be involved, given what these numbers look like.

I acknowledge things need to be done better and the question is what are the alternatives to the way we currently do things? I have to say, one, I am so surprised because I feel like I am the token law enforcement person at this conference, which is fine, but I think that so many people would benefit from what is being said here. Not that I think it is going to be transformative change. I know people do not think like this in the office and it is not as though they would not want to. No one talks about it; these are not discussions being had. I sat in yesterday on the conference for restorative justice and I think that, I mean it sounds wonderful, but I would like to bring the people from the restorative justice community and from the district attorney's office together to talk. We see violent people, so the question becomes can we safely use other models? In the criminal justice system we have access to a tremendous amount of information. We get an offender's criminal record. We get information from the crime victim; we get a lot of information about the history of abuse. So knowing that all those risk factors are there, what do we do with that information if criminalization is a problem? How do we incorporate that within a restorative justice model? I think that is where we need to go.

In terms of reimagining moving forward, it would be great if all these players could come to the table and sit down with members of the criminal justice system and figure out how we do things better. I certainly do not think that we resolve it if the majority of the cases are misdemeanor cases and we are talking, at best, someone going to jail for a short time. What we are talking about is maybe they will serve nine months of local time, they are back out in the community, it is not changing anything, it is not stopping the violence, and it is not really making any meaningful change.

I lay out in my book a number of suggestions. Things can be done better. I think prosecutors can be trained better to consider more things and not treat every single case as if it is the same because these cases are not the same. We really need an individualized approach and we need to listen. Often prosecutors think they know better than the people sitting before them, that we know how to solve the problems in their lives, which just is not true. We really need to incorporate what people are telling us and the impact that prosecution will have on their lives. As to the judiciary, despite all the training for judges, my experience is that you get some judges who understand, and you get some judges who are never going to get it no matter what. No matter how many training

sessions they go through. Some will say things that are completely outrageous. I think we need to do a better job than just having an administrative judge appoint anyone to serve as a domestic violence judge. It is meaningless. There has to be a meaningful process of finding who is appropriate to hear these cases

I heard a lot of talk about the problems with the police and really horrific stories about encounters with the police. I do want to say though, working with the police there are police who are really dedicated and who care. I have dealt with many officers who have called me and said “You know, I think this woman is going to be killed and I do not know what to do; can we think of something to help her? She does not want to go forward; she does not want the criminal justice system involved; what else is there that we can do?” I have fielded many phone calls like that. I primarily handle the homicide cases in my bureau and just last week I had a case in court that happened to coincide with the victim’s birthday. She would have been forty-three years old the day the case was on the calendar. The whole family was in court and the case detective came to sit with the family to show his support for them because it was a very difficult day for them—not only being in court, but the realization that she would have been forty-three years old that day. They were having a midnight mass that night and another detective, the homicide detective, was going to the midnight mass. So, there are wonderful police officers out there who do the right thing by people.

Also, the last thing I wanted to say is about the Family Justice Center. I heard Mimi Kim yesterday talk about criticisms of the Family Justice Center. I thought the Family Justice Center was the best model, which touches on something Carrie Bettinger-Lopez said before. We have international delegations that come to our office to look at the way we do things. So, if this is a problem, we really need to have a dialogue about that. The Brooklyn District Attorney’s office has been part of the Family Justice Center since 2005, and the wonderful thing for me about the Center is that you have twenty-three partner agencies in one location. Prior to 2005, if you had a woman in your office for the criminal case, but she told you about a host of other issues, you would sit there with a white piece of paper and scribble all the other agencies across the city she would have to go to. So if she worked, she would have to take off time from work, maybe use a vacation day, or lose a day. The Family Justice Center stopped that from happening. It made an overwhelming process less burdensome. She would just go down the hall and see all these different agencies; she could do it in one day. So that, I think, has been really a wonderful thing that has eased the burden on people looking for services.

GOODMARK: There is a long history of police abuse of women, particularly women of color, lesbians and transgender women. What I want to look at is the abuse that police do in their private capacities as intimate partners, although the private and the public overlap to the extent that state training makes a police officer a much more dangerous abuser. I want to ask whether criminalization of domestic violence as a policy can ever work given the disproportionate number of police officers who are also abusers.

On May 7, 2013, Baltimore City Police Officer James Smith shot Kendra Diggs outside of the couple's home. When officers arrived, they heard Diggs calling for help. When they knocked and did not get a response, they kicked in the door and they brought Diggs outside. They asked Smith to come outside to talk to them; instead, he ran to the second floor of the house. Diggs was standing on the sidewalk with an officer when Smith fired a shot from his second floor window and struck Diggs in head.

Given the social science evidence on police officer abuse of their partners, perhaps the responding officers should have expected the worst. Studies show that police officers commit intimate partner abuse at rates twice to four times higher than the general population. There are problems with these studies. First, they rely on self-reporting, but the incentive to self-report is low, particularly since the passage of the Lautenberg Amendment, which prohibits those convicted of domestic violence crimes or subject to protective orders from possessing firearms. Not surprisingly, the rates of violence self-reported in the studies go down after the Lautenberg Amendment was enacted. Most of the studies look at arrests or suspension rates, but investigations are problematic in these cases, especially in small departments, where the officers' friends and colleagues are doing the investigation. Most of the studies only measure physical abuse. But the studies are sufficient to show that officers involved domestic violence is a serious problem.

Police are particularly skilled abusers, for a number of reasons:

- Because they are trained to walk in and take control of a situation;
- Because they know how to intimidate through their presence, by their tone of voice, or by the stance they take;
- Because they know how to obtain information through interrogation and surveillance;
- Because they know how to deceive and manipulate when necessary to obtain information;
- Because they know how to use weapons and deadly force;

- Because they know how attribute their use of force to the other party;
- Because they are skilled in verbal intimidation and degradation;
- Because they have weapons.

State-based systems are not easily accessible to the partners of police officers. Going to court is perceived as an act of aggression. An officer's partner faces a legal system that is hostile and foreign to her but is his daily work environment. The partner of a police officer is forced to walk into his work place, tell his colleagues who trust in him and rely upon him for backup, who are part of "The Blue Wall of Silence," that he is abusive, to ask them to believe the claims about his behavior, and to take steps that might jeopardize his job. Once in court, police officers have inherent credibility as the function of the uniform that they wear. The officer is there with the badge of authority of the state and his partner is asking the state to find him accountable. And the same kind of symbiotic working relationships that exist between police officers also exist between police and prosecutors. The officer's knowledge of the system helps him to manipulate it; other officers may refuse to help the prosecutor make the case against him. Prosecutors need cops as witnesses in domestic violence cases; the prosecutor may not have that in a case where a cop has been abusive.

Using the state may also not be good option for a spouse because of the ramifications of doing so. Post-Lautenberg, a successful prosecution means the cop loses his gun; if he loses his gun, he loses the ability to provide financial support and to support himself, which could make him more dangerous. Most police departments do not have a policy on officer-involved domestic violence, notwithstanding the work of the International Association of Chiefs of Police to create a model policy. No large jurisdiction in the country has adopted the IACP policy and only twenty-nine jurisdictions have adopted any kind of policy at all.

Officer-involved domestic violence is a phenomenon that is deeply tied to notions of masculinity among police officers and exacerbated by the increasing militarization of police forces. Policing is gendered male. It is similar to other all male institutions with strong norms around hegemonic masculinity. Policing is a macho culture that features things like control, dominance, authority and lack of sentimentality. Militarism is a key source of violence in United States society and it links masculinity and the state. Feminists have posited a relationship between militarism and violence against women. Militarized masculinity is characterized by a focus on dominance, violence and control that sustains a myth of manly protection and that legitimates the abuse of women. Police operate within a militarized context that reinforces and perpetuates violence against women.

Given how high the rates of abuse are, it may seem surprising that the battered women's movement has not had more to say about officer involved abuse. But the battered women's movement is deeply enmeshed with the police. Many programs require serious cooperation between the domestic violence community and the police. Enforcement of existing criminal law and policy, VAWA grants including the STOP grant and the Grants to Encourage Arrests program, coordinated community responses and lethality assessments all require close collaboration between service providers and police. How do you send the partner of a police officer to any of these agencies knowing that these linkages exist?

In a recent interview, retired police lieutenant Mark Wynn said, "Could you imagine us sitting here talking about this and saying . . . How do you feel about officers using crack before they go to work? Or how do you feel about the officer who ever once in a while just robs a bank or ever once in a while decides to go in and steal a car from a dealership?" People would be appalled at the thought of police committing those kinds of crimes. How can criminalization of domestic violence possibly succeed as a policy when those who are enforcing the laws against domestic violence are four times more likely to violate them?

Equal Protection for Survivors of Gender-Based Violence: From Criminalization to Law Enforcement Accountability

Sandra S. Park*

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What is the role of the criminal justice system in addressing gender-based violence? Forty years ago, advocates in the United States zeroed in on the nearly non-existent criminal justice response as a priority for reform. Activists argued that the criminal justice system’s consistent refusal to address domestic and sexual violence was rooted in the

* Senior Staff Attorney, ACLU Women’s Rights Project. I thank Marcia Olivo, Leigh Goodmark, and Donna Coker for the invitation to participate in this symposium, my co-panelists and other participants for insightful discussion and comments, Move to End Violence and the NoVo Foundation for their support, Ramya Sekaran for valuable research assistance, and the staff of the University of Miami Race & Social Justice Law Review. The views expressed here, however, are my own.

Sandra S. Park also participated as a speaker at CONVERGE! Reimagining the Movement to End Gender Violence Conference that took place at the University of Miami School of Law on February 7-8, 2014. See Michelle Kaminsky et al., *Panel on the Possibilities and Limits of Criminal Justice Reform*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 393 (2015).

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assumption that violence against women is undeserving of societal concern. New laws were enacted that criminalized domestic violence, redefined sexual violence offenses, and governed how these crimes were policed and prosecuted. Millions of dollars flowed into funding law enforcement work. But as these changes were put in place, little attention was paid to how survivors and advocates could hold law enforcement accountable when the same biases that led to systemic sanctioning of gender-based violence also shaped the implementation of the new legal regime.

In this essay, I argue that strengthening the accountability of law enforcement to survivors of abuse and violence, such as survivors of domestic and sexual violence, is a necessary step toward ending gender-based violence and ensuring justice for survivors. I also describe how the civil and human rights frameworks can be used as tools for law enforcement oversight, community engagement, and building survivors' power.

Anti-violence advocates committed to marginalized communities have pushed for greater accountability for many years, taking on law enforcement abuses toward LGBT survivors, women of color, Native American survivors, and immigrant survivors. Yet, many in the mainstream anti-violence movement have not examined and critiqued law enforcement policies and practices, even as groups support the continuing flow of resources towards law enforcement responses. To the extent that advocates have pursued reforms of law enforcement practices, they generally have emphasized increasing the numbers of arrests and prosecutions—for example, through mandatory arrest or no-drop prosecution policies—without a deeper analysis of how bias and overreaching state power can play out in law enforcement.

A focus on holding law enforcement accountable is vital in order to improve how governments respond to gender-based violence—including confronting governmental acquiescence to violence—to improve the criminal justice response for those survivors who seek it, and to transform the relationship between governments, advocates, and survivors. Stronger accountability can be achieved by drawing on civil and human rights principles, forming robust collaborations between domestic and sexual violence advocates and police reform advocates, requiring law enforcement to be transparent about its policies and practices, and creating and using formal mechanisms for community engagement and oversight.

I. CRIMINALIZATION WITHOUT LAW ENFORCEMENT ACCOUNTABILITY

As many others have described, the movement to end violence against women and girls in the United States adopted criminalization as a primary approach to reform.¹ Thus, much of the early work centered on changing criminal laws and law enforcement practices to ensure arrest and prosecution for domestic and sexual violence, and the federal Violence Against Women Act (VAWA), first enacted in 1994, stressed building up police and prosecutorial capacity to respond to domestic violence.² This work was based on an important insight: Society—including governments and law enforcement—treated gender-based violence as acceptable, a private matter unworthy of public concern, based on sexist stereotypes about the roles and rights of women and men.³

However, there were and continue to be serious ramifications to relying on criminalization so heavily. Criminalization harmfully impacted many from communities who had a troubled relationship with law enforcement, including people of color and immigrants, by discouraging those who might otherwise seek emergency assistance from doing so and opening the door to law enforcement misconduct based on preexisting biases based on race, gender, national origin, and sexual orientation, among other grounds.⁴ It also allowed politicians and other

¹ ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 4–5, 182–84 (2000); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1666, 1668–72 (2004).

² SCHNEIDER, *supra* note 1, at 5, 92, 183, 188–90.

³ Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 FLA. ST. U. L. REV. 731, 735–36 (2007); *see also* SCHNEIDER, *supra* note 1, at 12–28; Sally F. Goldfarb, *Violence Against Women and the Persistence of Privacy*, 61 OHIO ST. L.J. 1, 57, 85 (2000); Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1539 (1998); Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 983–85 (1991).

⁴ *See* Geneva Brown, *Ain't I a Victim? The Intersectionality of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 CARDOZO J.L. & GENDER 147 (2012); Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo—Addendum*, Human Rights Council, ¶ 14, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011); Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 35–37 (2004); Leslye E. Orloff et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43, 77–79 (2003); Hanna, *supra* note 3, at 1507, 1571–72; Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 23–33 (1998); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1251, 1255–56, 1267 (1991).

stakeholders to use the anti-violence agenda to advance goals that departed sharply from the social justice origins of the movement.⁵ Thus, many anti-violence reforms have not prioritized preserving the due process and other rights of the accused, though many survivors find themselves in precisely that position.⁶ For example, the 2006 authorization of the Violence Against Women Act included a provision authorizing the collection of DNA from anyone detained or arrested by federal authorities, even if they are never charged with a crime or convicted.⁷ While such a provision transfers a vast amount of personal, identifying data to the government, casting such a wide net does not help identify perpetrators, and in fact undermines the ability to efficiently test DNA rape kits.⁸ Likewise, huge amounts of government funding have been spent on sex offender registries, despite no evidence that they effectively prevent sexual violence.⁹ Registries do greatly increase the power of governments, which routinely penalize and incarcerate those

⁵ KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 2, 4–9 (2008).

⁶ Sack, *supra* note 1, at 1680–81; Harvard Law Review, *Developments in the Law: Legal Response to Domestic Violence - V. Battered Women Who Kill Their Abusers*, 106 HARV. L. REV. 1574, 1597 (1993). The case of Marissa Alexander, a domestic violence survivor who states she fired a warning shot after being chased and abused by her husband, is a compelling example. *Alexander v. State*, 121 So. 3d 1185 (Fla. Dist. Ct. App. 2013). At the time of the conference, Alexander had won her appeal and was facing a new trial. She was subsequently granted a plea deal for time served (three years), which included probation requiring her to wear an ankle bracelet for two years. She was released on January 27, 2014. See FREE MARISSA NOW, <http://www.freemariissanow.org/>.

⁷ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162 at tit. X, § 1004 (2006).

⁸ Michael T. Risher, Staff Attorney, Am. Civ. Liberties Union Found. of N. Cal., Statement at the Hearing on H.R. 3361 “Utilizing DNA Technology to Solve Cold Cases Act of 2011” before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security (April 25, 2012), available at <http://dnapolicyinitiative.org/wp-content/uploads/2012/04/Risher-04252012.pdf>; *Untouched, Thousands of Rape Kits Await Justice*, NATIONAL PUBLIC RADIO (April 21, 2012, 2:05 PM), <http://www.npr.org/2012/04/21/151113247/untouched-thousands-of-rape-kits-await-justice>; Erin Murphy, *Relative Doubt: Familial Searches of DNA Databases*, 109 MICH. L. REV. 291, 291–92 (2010); NANCY RITTER, NAT’L INST. OF JUSTICE, SPECIAL REPORT, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases* iii, 1, 14 (2011), <https://ncjrs.gov/pdffiles1/nij/233279.pdf>; ACLU Washington Legislative Office, *ACLU Letter to Congress Urging Opposition to an Amendment to H.R. 5057 Pertaining to the Collection of DNA Samples from Arrestees*, ACLU, July 14, 2008, available at <https://www.aclu.org/racial-justice-prisoners-rights-drug-law-reform-immigrants-rights/aclu-letter-congress-urging-opposi>.

⁹ HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 4, 115–117 (2007), available at <http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf>; Deborah Jacobs, *Why Sex Offender Laws Do More Harm Than Good*, AM. CIV. LIBERTIES UNION OF N.J., <http://www.aclu-nj.org/theissues/criminaljustice/whysexoffenderlawsdomoreha>.

who do not comply with numerous notification and residency requirements.¹⁰

Largely missing from the push towards criminal justice intervention was its complement and counterpoint: oversight of how law enforcement addresses and prevents gender-based violence. While laws were changed to mandate law enforcement interventions, and resources were concentrated into law enforcement agencies and groups working with them, mechanisms were not put in place to monitor and review how law enforcement implements the laws.¹¹ Instead, the relationship between law enforcement and advocates became one of unequal alliance—advocates support survivors and help train officers, but law enforcement largely has unfettered authority to determine how it responds to violence.¹² To some extent, this might also reflect the lack of effective mechanisms in many jurisdictions to hold law enforcement accountable for misconduct.¹³ But until recently, with some notable exceptions, anti-violence groups did not make any concerted effort to ensure that police response to gender-based violence was included in already-existing mechanisms, such as civilian oversight bodies or civil rights investigations into discriminatory conduct by police departments.¹⁴

¹⁰ HUMAN RIGHTS WATCH, *NO EASY ANSWERS*, *supra* note 9, at 7–8, 49–64, 100–18.

¹¹ A federal bill authorizing the Attorney General to bring suit when a state or state official “has discriminated on the basis of gender in the investigation or prosecution of gender-based crimes and that discrimination is pursuant to a pattern or practice of resistance to investigating or prosecuting gender-based crimes” was introduced after the Supreme Court issued *United States v. Morrison*, but never enacted. *See* Violence Against Women Civ. Rights Restoration Act of 2001, H.R. 429, 107th Cong. (2001); Violence Against Women Civ. Rights Restoration Act of 2003, H.R. 394, 108th Cong. (2003).

¹² Karen Rick & Patrick Seffrin, *Police Officers’ Collaboration with Rape Victim Advocates: Barriers and Facilitators*, 28 *VIOLENCE & VICTIMS* 681, 681–696 (2013).

¹³ HUMAN RIGHTS WATCH, *CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA* (2013), *available at* http://www.hrw.org/sites/default/files/reports/us0113ForUpload_2.pdf; ACLU HUMAN RIGHTS PROGRAM, *ISLAND OF IMPUNITY: PUERTO RICO’S OUTLAW POLICE FORCE* 103–17 (2012), *available at* https://www.aclu.org/files/assets/islandofimpunity_20120619.pdf.

¹⁴ *See, e.g.*, HUMAN RIGHTS WATCH, *CAPITOL OFFENSE*, *supra* note 13, at 27, 181; Police Executive Research Forum, *Critical Issues in Policing Series: Improving the Police Response to Sexual Assault* 9–10, 36–39 (March 2012).

The Department of Justice did include gender considerations as part of two 1997 investigations that the Special Litigation Section conducted into the Pittsburgh, PA and Steubenville, OH police departments. The Pittsburgh investigation focused on use of excessive force and false arrests. The subsequent consent decree briefly discusses gender and mandates that police undergo “annual training by qualified instructors that includes, at a minimum, training on how to relate to . . . persons of the opposite sex” and “training in communications skills and avoiding improper . . . sexual communications.” Consent Decree, *U.S. v. City of Pittsburgh, Pittsburgh Bureau of Police*, No. 97-0354, at ¶ 33 (W.D. Pa. Apr. 16, 1997). In Steubenville, the Department of Justice found that the police

Therefore, the last four decades of anti-violence reforms have created a system that relies primarily on criminal justice intervention, with few formal checks on law enforcement misconduct.

II. THE IMPORTANCE OF LAW ENFORCEMENT ACCOUNTABILITY ADVOCACY AS A CHECK ON MISCONDUCT AND IMPUNITY

The void of law enforcement accountability and oversight has serious consequences for survivors. Such a void permits law enforcement to continue to act according to its own mandates and biases, undermines survivors who do seek protection through the criminal justice system, and contributes to the vastly unequal power dynamics between law enforcement, advocates, and survivors. And because the criminal justice response to gender-based violence affects so many other aspects of survivors' lives—including their rights in housing, education, employment, and child custody—the failure to address these biases weakens their security in other fundamental ways.

The experience of Lakisha Briggs, an African-American domestic violence survivor in Norristown, PA, provides a starting point for examining the complex individual and community-wide harms that result when checks are not in place to monitor and review policing of domestic and sexual violence.¹⁵ In April 2012, Ms. Briggs' adult daughter called the police when Ms. Briggs was assaulted by her then-boyfriend. A police officer responded, arrested Ms. Briggs' boyfriend, and then informed Ms. Briggs: "You are on three strikes. We're gonna have your landlord evict you." At that moment, Ms. Briggs learned that Norristown had a "three-strikes" law on the books, which authorized the city to revoke or suspend a landlord's rental license and forcibly remove a

caused and condoned excessive force and false arrests through inadequate policies and failure to train and supervise. Consent Decree, *U.S. v. City of Steubenville*, No. 97-0966 (S.D. Ohio Sept. 3, 1997). The consent decree there added language regarding mandatory training in domestic violence response and investigation, and identifies domestic violence and racial bias allegations against officers as areas of police misconduct. *Id.* at ¶¶ 14(d), 65(d), 67.

¹⁵ The facts discussed here are taken from the federal lawsuit filed on behalf of Ms. Briggs by the ACLU, ACLU of Pennsylvania, and the law firm Pepper Hamilton. The complaint charged that Norristown and its officials violated Ms. Briggs' right to petition the government under the First Amendment, and her rights to due process, equal protection, fair housing, as well as under the federal Violence Against Women Act. Complaint, *Briggs v. Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 24, 2013). The lawsuit settled in September 2014, with Norristown repealing the ordinance, paying \$495,000 in damages and attorneys' fees, and agreeing not to pass a similar ordinance in the future. Release and Settlement Agreement, *Briggs v. Norristown*, No. 2:13-cv-02191-ER, (E.D. Pa. Sept. 8, 2014), available at <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al-release-and-settlement-agreement>.

tenant from any property where the police responded to three instances of “disorderly behavior” within a four-month period. “Domestic disturbances” were explicitly included in the list of “disorderly behaviors” triggering the ordinance.

Ms. Briggs was terrified of losing her home, so she instructed everyone in her life not to call the police. Though she ended the relationship, her ex-boyfriend took advantage of the law and continued to harass her with the knowledge that she could not seek assistance. As his physical violence against her escalated, including stabbing her in the neck, she did not reach out to law enforcement, but others did—and the city forced her landlord to begin eviction proceedings against her and threatened to condemn the property and remove her for trespassing.

These ordinances—often called chronic nuisance, disorderly behavior, or crime-free ordinances—exist across the country and are proliferating. Yet, little attention has been paid to them and their impact on people of color, survivors of gender-based violence, and people with disabilities, who are most likely to suffer discrimination, heightened danger, and homelessness because of them.

Ms. Briggs’ experience represents the myriad barriers survivors face and the need for law enforcement accountability. First, she encountered the starkest form of victim-blaming from the city. The ordinance itself codified victim-blaming, by treating survivors as “nuisances” even when they were sincerely requesting assistance. Here, the city designated Ms. Briggs’ home as a police-protection-free-zone and silenced her. Either she could refrain from calling for assistance, or she could call and then lose her home altogether.

Second, Ms. Briggs’ identity as an African-American, low-income, domestic violence survivor rendered her particularly vulnerable to harm based on the ordinance. Norristown enacted a law that specifically provided for enforcement of the ordinance based on domestic violence, even as it knew that domestic violence survivors make up 20% of its homeless population.¹⁶ It crafted the ordinance to give absolute discretion in its enforcement to the chief of police, thus providing few checks on discriminatory implementation.¹⁷ Simultaneously, it expressed concern in filings to HUD about the increasing numbers of minorities and Section 8 voucher holders moving into rental properties.¹⁸ As a

¹⁶ NORRISTOWN, PA., MUN. CODE § 245-3 (Jan. 5, 2009) (repealed Nov. 7, 2012), available at <http://ecode360.com/11550738>; MUNICIPALITY OF NORRISTOWN, U.S. DEP’T OF HOUS. & URBAN DEV. THIRD PROGRAM YEAR ACTION PLAN 26 (2012).

¹⁷ NORRISTOWN, PA., MUN. CODE § 245-3, *supra* note 16.

¹⁸ MUNICIPALITY OF NORRISTOWN, *supra* note 16. Section 8 vouchers are an essential resource for domestic violence survivors, who often experience unstable and insecure housing.

Section 8 voucher holder, Ms. Briggs had limited housing options.¹⁹ She could not easily relocate from Norristown given her economic circumstances. Thus, the ordinance ultimately denied Ms. Briggs access to police protection and undermined the stability of her housing. These ordinances similarly have harmed women of color who experience domestic violence in other parts of the country. A study of a Milwaukee nuisance ordinance showed that domestic violence was the third most common basis for receiving a citation and that the ordinance was disproportionately enforced in African-American communities.²⁰

Third, there was little awareness about the ordinance, which was enacted in 2009, or police implementation of it in the community.²¹ It was passed with minimal discussion and no input from relevant stakeholders, such as domestic violence or housing advocates, despite the obvious impact on survivors and tenants. Calls relating to domestic violence make up the single largest category of calls police receive; thus, any law that limits or penalizes police calls will necessarily affect domestic violence survivors.²² Moreover, Norristown, as a recipient of HUD funding, has an obligation to analyze its policies and practices to determine whether they affirmatively further fair housing as required by the Fair Housing Act.²³ It does not appear that the municipality studied whether enforcement of the ordinance would restrict housing and services to women, people of color, or people with disabilities. The ordinance should have been analyzed and evaluated according to these consequences, among others, before it was passed.

Fourth, the ordinance silenced Ms. Briggs and other domestic violence victims. The ordinance stripped Ms. Briggs of her right to seek police assistance in the first instance. It then deprived her of any opportunity to advocate for herself. The ordinance did not formally provide her with notice of any strikes that might be issued or a mechanism to challenge each strike. With the support of her landlord and her friend, she attended a meeting with city officials including the police

¹⁹ See, e.g., Eliza Hirst, *The Housing Crisis for Victims of Domestic Violence: Disparate Impact Claims and Other Housing Protection for Victims of Domestic Violence*, 10 GEO. J. ON POVERTY L. & POL'Y 131, 133–35 (2003) (discussing limited housing options available to survivors).

²⁰ Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIOLOGICAL REV. 117, 127, 130 (Feb. 2013).

²¹ NORRISTOWN, PA., MUN. CODE § 245-3, *supra* note 16.

²² ANDREW R. KLEIN, NATIONAL INSTITUTE OF JUSTICE, SPECIAL REPORT: PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES § 1.2 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

²³ 42 U.S.C. § 3608(e)(5) (2013).

chief, but was unable to convince them of the injustice of the law. Later, she was able to defeat the eviction case that Norristown pressured her landlord to bring against her, but she continued to face the threat of being removed from her home by the municipality pursuant to the ordinance.²⁴

Fifth, once police protection was withdrawn from her, she had no other viable options to secure her safety and keep her home. As she said, “If I called the police to get him out of my house, I’d get evicted. If I physically tried to remove him, somebody would call 911 and I’d be evicted.”²⁵ Given these experiences, Ms. Briggs no longer sees the government as a potential source of assistance, but instead a threat to her home and family.

Ms. Briggs’ experience exemplifies the encounters that too many survivors have with law enforcement: abuse and hostility from law enforcement, execution of policies and practices that heighten the danger survivors face and disempower them in light of other structural inequalities, inability to change police practices using informal mechanisms, and ultimate isolation. There is much more that could be said about what happened to Ms. Briggs. Here, I highlight three main points from her experience that explain why strengthening law enforcement accountability would help address the causes of gender-based violence.

A. Connecting State-Perpetrated, State-Created, and State-Condoned Violence

A focus on law enforcement accountability places a spotlight on the ways that law enforcement condones and perpetrates gender-based violence, and stresses how the government can address causes of violence. United States law traditionally has distinguished state-perpetrated violence—in other words, violence committed by government officials or employees—from violence committed by private individuals, and often absolves the government of any legal obligation to

²⁴ Complaint, *Briggs v. Norristown*, *supra* note 15. Ms. Briggs ultimately was able to vindicate her rights, as well as the rights of other tenants in Norristown, through the federal lawsuit. When the settlement was announced, she stated, “While what happened to me was shocking and frightening, I am relieved that no other family will have to choose between their safety and their home.” *American Civil Liberties Union, Pennsylvania City Agrees to Repeal Law that Jeopardizes Safety of Domestic Violence Survivors*, ACLU, Sept. 8, 2014, <https://www.aclu.org/womens-rights/pennsylvania-city-agrees-repeal-law-jeopardizes-safety-domestic-violence-survivors>.

²⁵ Erik Eckholm, *Victims’ Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES, August 17, 2013, at A1.

address the latter.²⁶ Ms. Briggs' case is just one example of why these distinctions are false for so many survivors.

When governments do not respond to or prevent violence committed by police officers, that same bias infuses departments' responses to violence committed by private individuals and makes such violence possible. Ms. Briggs' case might be a particularly clear example of how government policy and practices give rise to violence, because the local law punishes survivors who seek police protection. Yet, survivors of gender-based violence experience governmental withholding of protection and sanction of private violence everyday across the United States²⁷ They are especially likely to face this misconduct if they are members of marginalized communities, such as Ms. Briggs.

Unless advocates hold law enforcement accountable for the violence it perpetrates, creates, and condones through its failures to act, we will not address a primary contributor to the perpetuation of gender-based violence. Accountability will also improve the state's responses to violence, by focusing on how discrimination by law enforcement compounds the barriers to justice for survivors. Challenging the state's role in sanctioning violence committed by its employees as well as private individuals is key to eliminating a structural cause of gender-based violence and strengthening how the government addresses violence.

B. Preserving Criminal Justice Responses for Survivors Who Seek Them

Although most survivors do not report violence they experience, thousands of survivors of gender-based violence still seek law enforcement assistance every day.²⁸ Without the ability to hold law

²⁶ See Dinah Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, 13:1 FORDHAM INT'L L.J. 1-3, 27 (1989); see also *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 109 S. Ct. 998 (1989); Julie Goldscheid, *Rethinking Civ. Rights and Gender Violence*, 14 GEO. J. GENDER & L. 43, 55, 67 (2013).

²⁷ See, e.g., *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748 (2005); U.S. DEP'T OF JUSTICE, CIV. RIGHTS DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT (2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf; U.S. DEP'T OF JUSTICE, CIV. RIGHTS DIV., INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (2011), available at http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; U.S. DEP'T OF JUSTICE, CIV. RIGHTS DIVISION, INVESTIGATION OF THE MISSOULA POLICE DEPARTMENT (2013), available at http://www.justice.gov/crt/about/spl/documents/misoulapdfind_5-15-13.pdf; ACLU HUMAN RIGHTS PROGRAM, ISLAND OF IMPUNITY, *supra* note 13, at 102-117; HUMAN RIGHTS WATCH, CAPITOL OFFENSE, *supra* note 13.

²⁸ *Domestic Violence Facts*, FEMINIST MAJORITY FOUNDATION, 2014, available at <http://www.feminist.org/other/dv/dvfact.html#notes>; KLEIN, *supra* note 22, at Ch. 1, Sec. 2.

enforcement accountable for its responses, they are far too likely to face hostility, disinterest, and concrete harms as a result of these interactions. For many survivors, however, the criminal justice system can provide important relief. Law enforcement action can result in immediate intervention into dangerous situations, where other resources or community support may not exist.²⁹ Moreover, effective criminal justice response often significantly impacts other aspects of a survivor's life, including her ability to maintain her home, job, education, and custody of her children.³⁰

Enforcing the criminal laws and holding police accountable for such enforcement are essential to justice and equal protection. Other parts of the movement to end gender-based violence are developing alternative models that do not rely on the penal approaches of criminal justice, but instead look to restorative and transformative justice models.³¹ This work is vitally important. I argue here that prioritizing law enforcement accountability should not privilege criminal justice responses above all others, or support efforts to blindly institute increasingly penal and punitive responses to gender-based violence. It also should not ignore or overlook the violence that criminal justice interventions can inflict on people and communities. It instead acknowledges that, for many survivors, criminal justice responses can serve as an important remedy for the violence they are experiencing now. This recognition has driven activists in the United States to work towards strengthening criminal justice responses to gender-based violence committed against service members, Native Americans, and students.³² It has spurred advocates in

²⁹ T.K. Logan & Robert Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence Challenges Remain in Rural Areas with Access and Enforcement*, UNIVERSITY OF NEW HAMPSHIRE CARSEY INSTITUTE POLICY BRIEF NO. 18 (Spring 2011).

³⁰ *Id.* at 3–5.

³¹ Donna Coker, *Enhancing Autonomy For Battered Women: Lessons From Navajo Peacemaking*, 47 UCLA L. REV. 1 (Oct. 1999); GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE: A LIBERATORY APPROACH TO CHILD SEXUAL ABUSE AND OTHER FORMS OF INTIMATE AND COMMUNITY VIOLENCE § 1.3 (2007), available at http://prisonbookscollective.files.wordpress.com/2010/10/g5_toward_transformative_justice-booklet.pdf; *Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence*, CREATIVE INTERVENTIONS, (2012), available at <http://www.creative-interventions.org/wp-content/uploads/2012/06/CI-Toolkit-Complete-Pre-Release-Version-06.2012-.pdf>.

³² *Sexual Assault on Campus: A Frustrating Search for Justice*, THE CTR. FOR PUBLIC INTEGRITY, (2009–2011), <http://www.publicintegrity.org/accountability/education/n/sexual-assault-campus>; *Basics*, KNOW YOUR IX: EMPOWERING STUDENTS TO STOP SEXUAL VIOLENCE, <http://knowyourix.org/basics/> (last visited May 22, 2015); *Statistics on Violence Against Native Women Policy Insights Brief*, NAT'L CONG. OF AM. INDIANS (NCAI) POLICY RESEARCH CTR., (February 2013); *Vote YES for the Military Justice Improvement Act of 2013* (S. 967), ACLU, (Nov. 18, 2013), available at <https://www.aclu.org/military-justice-improvement-act>.

India to push for a comprehensive package of remedies to address sexual violence, including criminal law amendments, because the system so often failed to protect survivors.³³ These efforts are stirring vital awareness and debate about, as well as reforms of, the government's role in systematically ignoring and contributing to violence.

C. *Building Power of Survivors*

Advocacy to hold law enforcement accountable for how it responds to gender-based violence is a tool for building survivors' power. It can help shift how survivors see and interact with law enforcement agencies, which typically act with few, if any, checks. The current framework of laws, police practices, and social service agencies often disempowers survivors. Survivors are told that criminal laws exist that will address sexual and domestic violence they experience and are advised to turn to the criminal justice system to obtain protection. Yet, they too often are re-victimized by that system. While advocates may be willing to support individual survivors in navigating the system, they are much less likely to engage in systemic reform work in partnership with survivors. Advocacy focused on law enforcement accountability broadens the understanding of how survivors interact with the state and provides a basis for building power from the ground up.

The movement to end military sexual violence is a notable example. Perhaps no institution in the United States is more patriarchal and hierarchical than the military, and it is one of the last institutions to formally exclude women from many positions.³⁴ The military justice system, the military's analogue to the civilian criminal justice system, embodies this top-down ethos, by authorizing the chain of command to determine whether a case is referred for prosecution or otherwise disposed of.³⁵ Service members shared their experiences with retaliation from other service members and the chain of command after reporting

clu.org/womens-rights/aclu-letter-support-military-justice-improvement-act-2013; AMNESTY INT'L, *Maze of Injustice: The Failure to Protect Indigenous Women From Sexual Violence in the USA* 4-8, 17 (2007); Serv. Women's Action Network (SWAN), *Military Judicial Reform—SWAN's Campaign to Reform Military Justice*, available at <http://servicewomen.org/military-judicial-reform-2/>.

³³ JUSTICE VERMA COMMITTEE, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (Jan. 23, 2013).

³⁴ In January 2013, the Department of Defense announced it would lift women's exclusion from combat positions, a process that is ongoing. *Defense Department Will Lift Policy Excluding Women from Combat*, ACLU, (Jan. 23, 2013), <https://www.aclu.org/womens-rights/defense-department-will-lift-policy-excluding-women-combat>.

³⁵ Lindsay Rosenthal & Lawrence Korb, *Twice Betrayed: Bringing Justice to the U.S. Military's Sexual Assault Problem* 14–15, 28–33, Ctr. for Am. Progress (Nov. 2013).

sexual violence, including harassment and disciplinary measures.³⁶ Within the last few years, survivors have organized around the issue of accountability, calling for checks on commanders' complete authority over disposition of cases and naming the sexism at the root of military justice responses to violence.³⁷ Survivors and advocacy groups have used their power to push for serious reforms of military justice, treatment of and support for survivors, and the rights of veteran-survivors.³⁸

Activists working to end violence against Native American women also have made significant progress in using law enforcement accountability as a tool to build power for survivors and tribes generally. The history of colonialism and stripping of tribal sovereignty resulted in criminal justice responses that utterly failed Native American survivors of sexual violence. Federal and state authorities often refused to investigate, arrest, or prosecute, and under federal law, tribes had no jurisdiction over non-Indians who committed violence. After years of advocacy, Native American activists successfully pushed for legislative reforms that give more authority to tribes when dealing with criminal cases, particularly those involving domestic violence.³⁹ These laws also require federal, state, and local governments to coordinate more closely with tribes in responding to cases, including reporting on how cases are

³⁶ U.S. DEP'T OF DEF. SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM, RESPONSE SYSTEMS PANEL, sl. 17 (June 27, 2013), available at http://www.sapr.mil/public/docs/speeches/DoD_SAPRO_ResponseSystemsPanel_Briefing_27Jun13_Online.pdf (reporting that 62% of female survivors reported experiencing some form of retaliation as a result of reporting the sexual violence).

³⁷ Rosenthal & Korb, *supra* note 35, at 28–33; Service Women's Action Network, *About*, TRUTH AND JUSTICE SUMMIT, <http://truthandjusticesummit.org/about/>; Equality Now, *United States: Sexual assault of women in the military must be stopped*, Action No. 44.1, http://www.equalitynow.org/take_action/sexual_violence_action441.

³⁸ Military Justice Improvement Act of 2013, S. 967, 113th Cong. (introduced May 16, 2013); Anu Bhagwati, Statement to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, *Invisible Wounds: Examining the Disability Compensation Benefits Process for Victims of Military Sexual Trauma*, Hearing, July 18, 2012, available at <http://veterans.house.gov/witness-testimony/ms-anu-bhagwati-0>; Am. Civ. Liberties Union (ACLU), ACLU of Conn., Serv. Women's Action Network (prepared by Veterans Legal Services Clinic, Yale Law School), *Battle for Benefits: VA Discrimination Against Survivors of Military Sexual Trauma* (Nov. 2013), <https://www.aclu.org/sites/default/files/assets/lib13-mst-report-11062013.pdf>.

³⁹ Tribal Law and Order Act of 2010, Pub. L. 111–211 at tit. II (July 29, 2010); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113–4, tit. IX § 901–910 (Mar. 7, 2013); INDIAN LAW RESOURCE CENTER, RESTORING SAFETY TO NATIVE WOMEN AND STRENGTHENING NATIVE NATIONS: A REPORT ON TRIBAL CAPACITY FOR ENHANCED SENTENCING AND RESTORED CRIMINAL JURISDICTION, 17–23 (2013) available at http://indianlaw.org/sites/default/files/TribalCapacityReport_Final.pdf.

handled and resolved.⁴⁰ While far from complete, these reforms are notable, given the long history of oppression of indigenous peoples and Native women specifically in this country.

Immigrant women and advocates, in the face of tremendous anti-immigrant fervor and enactment of anti-immigrant policies and laws, also have pushed successfully for law enforcement accountability.⁴¹ Since the first enactment of VAWA, the law has been strengthened to provide immigrant survivors with greater access to immigration remedies.⁴² In part, the rationale for these reforms was to allow survivors to access police assistance without fear of deportation.⁴³ Immigrants have been able to use their right to reach out to law enforcement to protest and limit the impact of some of the most regressive immigration policies that require local law enforcement to play an active role in immigration enforcement.⁴⁴ Some of this advocacy has been done in partnership with law enforcement, such as police leaders.⁴⁵ The Department of Justice also has highlighted the rights of survivors to equal protection as part of their racial profiling investigation into Sheriff Joe Arpaio and the Maricopa County Sheriff's Office.⁴⁶ Asserting the right to hold law enforcement accountable for its misconduct in responding to domestic and sexual violence has been vital to ensuring that the concerns of

⁴⁰ INDIAN LAW RESOURCE CENTER, *supra* note 39, at 55–63.

⁴¹ IMMIGRATION POLICY CENTER, REFORMING AMERICA'S IMMIGRATION LAWS: A WOMAN'S STRUGGLE: SPECIAL REPORT, 9-10, (June 2010), *available at* http://immigrationpolicy.org/sites/default/files/docs/A_Womans_Struggle_062810.pdf.

⁴² *Violence Against Women Act of 1994*, Pub. L. 103–322, tit. IV, 108 Stat. 1796 (Sept. 13, 1994); *Violence Against Women Act of 2000*, Pub. L. 106–386, div. B, 114 Stat. 1491 (Oct. 28, 2000); *Violence Against Women and Department of Justice Reauthorization Act of 2005*, Pub. L. 109–162, 119 Stat. 2960 (Jan. 5, 2006).

⁴³ Sreeharsha, *supra* note 41, at 8–11; *Domestic Violence Victim's 911 Call for Help Results in Deportation Proceedings*, ACLU OF S. CAL., (May 12, 2011), <http://www.aclusocal.org/a-domestic-violence-victims-911-call-for-help-results-in-deportation-proceedings-secure-communities-program-endangers-crime-victims/>.

⁴⁴ Am. Civ. Liberties Union, Written Statement to the House Homeland Security Subcommittee on Border and Maritime Law, *Building a Secure Community: How Can DHS Better Leverage State and Local Partnerships?*, Hearing, 8-11 (July 20, 2012), *available at* https://www.aclu.org/files/assets/aclu_statement_on_hearing_re_dhs_state_local_partnerships_final.pdf; Proposed Amicus Curiae Brief of Legal Momentum In Support of Plaintiffs' Motion for Preliminary Injunction, *Friendly House et al., vs. Michael B. Whiting et al.*, No. 2:10-cv-01061-MEA (June 11, 2010), *available at* https://www.aclu.org/files/assets/amicus_brief_Legal_Momentum.pdf.

⁴⁵ THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES, 21, 29–30 (July 2007), *available at* <http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.

⁴⁶ Complaint, *U.S. v. Maricopa County*, No.12-cv-981 (D. Az. May 10, 2012); Letter from Thomas E. Perez, Assistant Attorney General, to Bill Montgomery, Maricopa County Attorney (Dec. 15, 2011), http://www.justice.gov/crt/about/spl/document/mcso_findletter_12-15-11.pdf.

immigrant survivors are addressed. This advocacy benefits immigrants as a whole, by highlighting the devastating impact that the enlistment of police officers as immigration agents has on immigrant communities.

III. ACHIEVING LAW ENFORCEMENT ACCOUNTABILITY—INSIGHTS FROM CIVIL AND HUMAN RIGHTS LAW

Law enforcement accountability is a foundational tenet of both civil and human rights law. Civil rights law provides that law enforcement cannot discriminate based on membership in protected classes, such as sex, race, and national origin.⁴⁷ When police responses are based on bias, such as stereotypes about victims of domestic violence, the government violates its obligation to provide equal protection.⁴⁸ Human rights law also adopts nondiscrimination as a core tenet, but goes further in imposing due diligence obligations on the government.⁴⁹ Accordingly, governments are held responsible for addressing violence perpetrated by both public and private actors through direct interventions—such as appropriate criminal justice, social services, and other responses—supporting efforts from civil society, providing remedies to victims, and working to prevent gender-based violence.⁵⁰ Human rights law’s focus on preventing violence and analyzing how police practices impact survivors helpfully places the spotlight on the state’s conduct.⁵¹ It also emphasizes victims’ right to be treated with dignity and an intersectional analysis, examining how a person’s sex, class, race, sexual orientation,

⁴⁷ See, e.g., 42 U.S.C. § 14141; 42 U.S.C. § 3789d.

⁴⁸ See, e.g., *Watson v. City of Kansas City*, 857 F.2d 690, 695–96 (10th Cir. 1998); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1990); *Smith v. City of Elyria*, 857 F. Supp. 1203, 1212–13 (N.D. Ohio 1994); see also Niji Jain, *Engendering Fairness in Domestic Violence Arrests: Improving Police Accountability through the Equal Protection Clause*, 60 EMORY L.J. 1011 (2011).

⁴⁹ Convention on All Forms of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19, ¶ 9, 11th Session (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>; *Jessica Lenahan (Gonzales) v. United States*, No. 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (July 2011), <http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc>.

⁵⁰ CEDAW General Recommendation No. 19, *supra* note 49, at ¶¶ 9, 24; United Nations, Comm. on the Elimination of Discrimination Against Women, Communication No. 5/2005, 39th Sess., Jul. 23–Aug. 10, 2007, U.N. Doc. CEDAW/C/39/D/5/2005 (Aug. 6, 2007) [*Şahide Goekce (deceased) v. Austria*]; United Nations, Comm. on the Elimination of Discrimination Against Women, Communication No. 6/2005, 39th Sess., Jul. 23–Aug. 10, 2007, U.N. Doc. CEDAW/C/39/D/6/2005 (Oct. 1, 2007) [*Fatma Yildirim (deceased) v. Austria*].

⁵¹ See Sandra S. Park, *CEDAW’s Promise for Strengthening Law-Enforcement Accountability to Survivors of Domestic and Sexual Violence in the United States*, 2014 MICH. ST. L. REV. 357 (2014).

disability status and other identities shape their experiences with the government.⁵²

The recognition under civil and human rights law that law enforcement bias in policing domestic and sexual violence is a form of sex discrimination (as well as other types of discrimination) has important legal and policy implications that can bolster accountability work. The Department of Justice has used this argument to open its civil rights investigations into policing of domestic and sexual violence aimed at reforming departments.⁵³ The ACLU and its coalition partners have pushed the Department of Justice to issue guidance on this issue, as few departments have rooted their treatment of domestic and sexual violence in their civil rights obligations. As a first step, the Office of Community Oriented Policing Services, the Office for Victims of Crime, and the Office on Violence Against Women of the Department of Justice issued a crucial joint statement on addressing gender discrimination in policing. Because “gender bias plays a role in undermining the effective response by law enforcement to crimes against women,” the statement announced that the prevention of sex-based discrimination by law enforcement is a “top priority” of the Civil Rights Division of the Department of Justice in its oversight of law enforcement agencies.⁵⁴ Similarly, the latest reauthorization of the Violence Against Women Act uses the equality framework by prohibiting discrimination by grantees based on actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability.⁵⁵ Many law enforcement agencies receive VAWA funding and thus are governed by this provision, and

⁵² *Id.* at 377-80; Special Rapporteur on violence against women, *supra* note 4, at ¶¶ 17–20; Crenshaw, *supra* note 4.

⁵³ U.S. DEP’T OF JUSTICE, CIV. RIGHTS DIVISION, MEM. OF UNDERSTANDING BETWEEN THE U.S. DEP’T OF JUSTICE AND THE CITY OF MISSOULA REGARDING THE MISSOULA POLICE DEPARTMENT’S RESPONSE TO SEXUAL ASSAULT (May 15, 2013), *available at* http://www.justice.gov/crt/about/spl/documents/missoulapdsettle_5-15-13.pdf; Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW (E.D. La. Jan. 11, 2013); Agreement for the Sustainable Reform of the Puerto Rico Police Dep’t, *U.S. v. Commonwealth of Puerto Rico et al.*, No. 3:12-cv-2039 (D.P.R. Dec. 21, 2012), *available at* http://www.justice.gov/crt/about/spl/documents/prpd_agreement_12-21-12.pdf.

⁵⁴ U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, *Joint Statement of The Office of Community Oriented Policing Services, The Office for Victims of Crime, and The Office on Violence Against Women on Addressing Gender-Discrimination in Policing* (June 20, 2013).

⁵⁵ 42 U.S.C. § 13925(b)(13)(a) (2013); U.S. DEP’T OF JUSTICE, FREQUENTLY ASKED QUESTIONS—NONDISCRIMINATION GRANT CONDITION IN THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013, 1–9 (April 9, 2014), http://ojp.gov/about/ocr/pdfs/vawaf_aqs.pdf.

potentially other federal statutes.⁵⁶ This discrimination analysis, particularly with respect to gender, should be deployed anytime police practices and policies are implemented or changed; because domestic violence calls are the largest category of requests for police assistance,⁵⁷ seemingly neutral policies—such as local nuisance ordinances—should not be adopted until an analysis of how they affect survivors, particularly those who are from marginalized communities, has been completed. This would be a proactive tool to prevent the adoption of discriminatory policies.

Community engagement and organizing are essential to law enforcement accountability work under both the civil and human rights frameworks. The human rights framework prioritizes the experiences of survivors and affected communities in addressing human rights violations and creating proactive policies and practices that prevent such violations. Civil rights advocates similarly stress that societal change can only occur by focusing on the experiences of those directly affected in identifying rights violations that are already occurring as well as in shaping police practices that will address the needs of the community. In Puerto Rico, the ACLU of Puerto Rico is part of a coalition effort with other women's rights and anti-violence organizations to push for significant reforms of the Police Department's practices there.⁵⁸ They achieved a substantial victory in 2013, passing legislation to ensure that LGBT survivors and people who are assaulted in the context of extramarital relationships are covered by already-existing domestic violence laws.⁵⁹ In DC, survivors and advocates launched the DC Justice for Survivors Campaign seeking multiple reforms of how the police department responds to sexual assault cases.⁶⁰ The DC City Council

⁵⁶ Goldscheid, *supra* note 26, at 43, 74–75.

⁵⁷ KLEIN, *supra* note 22, at §1.2.

⁵⁸ Amici Brief of the American Civil Liberties Union et al., *United States v. Commonwealth of Puerto Rico and Puerto Rico Police Department*, No.: 12-2039 (filed April 1, 2013) (agreement signed Dec. 21, 2012).

⁵⁹ Michael K. Lavers, *Puerto Rico Governor Signs LGBT Bills into Law*, WASHINGTON BLADE (May 29, 2013), available at <http://www.washingtonblade.com/2013/05/29/puerto-rico-governor-signs-lgbt-bills-into-law>.

⁶⁰ THE COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY, PUBLIC HEARING ON BILL 20-417, *Sexual Assault Victims Rights Amendment Act of 2013* (Dec. 12, 2013), available at <http://dccouncil.us/events/judiciary-and-public-safety-hearing-on-b20-417-sexual-assault-victims-right>; see also D.C. RAPE CRISIS CENTER, *Recommended Changes to B20-417: Sexual Assault Victims' Rights Amendment Act of 2013 (SAVRAA)* (2013), available at <http://dcrapccrisiscenter.org/wp-content/uploads/2013/12/Advocates-Recommendations-Summary-FINAL.pdf>; *Grassroots Group Delivers Signatures to DC Council Sexual Assault Reforms*, COLLECTIVE ACTION FOR SAFE SPACES, Jan. 28, 2014, <http://www.collect>

enacted legislation in June 2014 as a result of this activism, providing for an independent expert to assess the Metropolitan Police Department's policies and training and certain rights to victims, including the right to be notified of the results of any toxicology report and after police contact with the suspect.⁶¹

An independent expert or panel can play a key role in providing redress for survivors and ensuring accountability. This type of oversight can prove to be a valuable resource for survivors, given the difficulty in some communities to challenge police practices. It also helps ensure that survivors have some access to remedies when violations occur, as guaranteed by human rights law. The Department of Justice has included the appointment of an expert monitor to oversee the implementation of police reforms in New Orleans, Puerto Rico, and Missoula in its agreements with the police departments, and this monitor must consult with community members.⁶² In these jurisdictions, the agreements require a survey of community members regarding their experiences with policing.⁶³ The agreement with Puerto Rico specifically mandates the monitor to meet with community stakeholders, including representatives of minority communities, LGBT communities, and civil rights and women's advocacy groups to hear their perspectives on police practices.⁶⁴ Survivors thus have the ability to directly influence the way reforms are carried out. In Philadelphia, an independent panel with members from women's rights organizations and other groups review how each department deals with sexual assault cases.⁶⁵ One survey showed that the Philadelphia model of external review or audit has been adopted by 35% of responding police agencies.⁶⁶

iveactiondc.org/2014/01/29/grassroots-group-delivers-signatures-to-dc-council-demanding-justice-for-survivors.

⁶¹ D.C. Council Bill No. A20-0348, *Sexual Assault Victims' Rights Amendment Act of 2013* (enacted June 4, 2014).

⁶² Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, *supra* note 53, at ¶¶ 14, 231-33, 444-46, 461; Mem. of Understanding between the U.S. Department of Justice and the City of Missoula, *supra* note 53, at ¶¶ 2, 3, 32, 35; Agreement for the Sustainable Reform of the Puerto Rico Police Department, *U.S. v. Commonwealth of Puerto Rico*, *supra* note 53, at ¶¶ 17, 220, 225-28.

⁶³ Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, *supra* note 53, at ¶¶ 231-33; Mem. of Understanding between the U.S. Department of Justice and the City of Missoula, *supra* note 53, at ¶ 12 (a); Agreement for the Sustainable Reform of the Puerto Rico Police Department, *U.S. v. Commonwealth of Puerto Rico*, *supra* note 53, at ¶ 241.

⁶⁴ Agreement for the Sustainable Reform of the Puerto Rico Police Department, *U.S. v. Commonwealth of Puerto Rico*, *supra* note 53, at ¶ 254; *see also* Mem. of Understanding between the U.S. Department of Justice and the City of Missoula, *supra* note 53, at 2.

⁶⁵ Police Executive Research Forum, *supra* note 14, at iv, 16, 36-40.

⁶⁶ *Id.* at iv.

Requiring departments to report on how they handle cases and provide accurate data to the community is an important element of accountability. Nearly all agencies collect and keep data on how they respond to domestic and sexual violence cases; yet, most do not view data as a tool for engaging in dialogue and review with advocates or other stakeholders.⁶⁷ The human rights framework stresses the importance of collecting data about government practices and sharing such data in order to uncover problems and best practices.⁶⁸ The Department of Justice's agreements all provide that the monitor must release key pieces of data regarding sexual and domestic violence, including numbers of cases and their dispositions.⁶⁹ Advocates have used these types of data to hold departments accountable.⁷⁰ For example, extremely low numbers of reported sexual assaults such as those found in Puerto Rico by the Department of Justice and the ACLU and in D.C. by Human Rights Watch are strong indicators that police are engaging in conduct that discourages reporting or misclassifies complaints.⁷¹ One scholar recently estimated that departments failed to properly classify between 796,213 to 1,145,309 complaints of rapes of female victims in the United States.⁷² Such widespread undercounting creates a false understanding of the prevalence of sexual violence and the effectiveness of government responses. Collection and dissemination of accurate data is thus key to examining law enforcement practices and changing them to serve the experiences of survivors.

⁶⁷ *Id.* at 4 (only one-third of police agencies said they collect data for review by organizations external to the police department).

⁶⁸ UNITED NATIONS POPULATION FUND, *THE ROLE OF DATA IN ADDRESSING VIOLENCE AGAINST WOMEN AND GIRLS*, (2013), available at http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/finalUNFPA_CSW_Book_20130221_Data.pdf.

⁶⁹ Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, *supra* note 53, at ¶ 457; Agreement for the Sustainable Reform of the Puerto Rico Police Department, *U.S. v. Commonwealth of Puerto Rico*, *supra* note 53, at ¶¶ 216–17, 250–51; Mem. of Understanding between the U.S. Department of Justice and the City of Missoula, *supra* note 53, at ¶¶ 46, 48.

⁷⁰ Another example of a data collection mechanism is the Clery Act, which requires post-secondary schools and universities to report on incidents of sexual assault, domestic violence, dating violence, and stalking, and the programs and procedures in place to respond and address them. Campus Sexual Violence Elimination Act, Pub L. No. 113–4, §304, 127 Stat. 89 (2013). Advocates are currently pushing for more accurate Clery Act reporting at a number of institutions.

⁷¹ ACLU Human Rights Program, *Island of Impunity*, *supra* note 13, at 113–16; Human Rights Watch, *Capitol Offense*, *supra* note 13, at 6–8, 10, 58–59, 61–62.

⁷² Corey Rayburn Yung, *How to Lie with Rape Statistics: America's Hidden Rape Crisis*, 99 IOWA L. REV. 1197 (2014).

IV. CONCLUSION

Law enforcement accountability work is difficult and resource-intensive, achieves change only over the long-term, and requires constant vigilance. Yet, progress has been made in many communities. This advocacy can be used to highlight how discriminatory law enforcement policies and practices are a structural cause of gender-based violence and connect work to end domestic and sexual violence with the violence experienced by other people and communities due to police misconduct. It also helps ensure that the criminal justice system, which is often the only form of justice offered to survivors in the United States, will serve as a source of protection for those survivors who choose to access it. Lastly, a focus on law enforcement accountability puts in place mechanisms and uses strategies that shift the prevailing dynamics between survivors, advocates, and law enforcement and build survivors' power to make change.

Building Towards Transformative Justice at Sakhi for South Asian Women

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I. CONTEXTUALIZING SAKHI’S APPROACH TO ANTI-VIOLENCE INTERVENTIONS

Sakhi for South Asian Women is a South Asian women’s anti-violence non-profit organization working with survivors of domestic violence in the New York metropolitan area. Sakhi was founded in 1989, and over the past two and a half decades, has worked in the areas of direct service provision, community outreach and mobilization, and policy advocacy.¹

In its work, Sakhi walks the line between meeting a need for culturally competent services for South Asian survivors, while also furthering the idea that domestic violence is not unique to South Asian communities. In other words, Sakhi simultaneously identifies the

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¹ SAKHI FOR S. ASIAN WOMEN, <http://www.sakhi.org/about-sakhi/mission-and-history/> (last visited Sept. 5, 2014).

complex, culturally-specific needs of survivors of domestic violence in South Asian communities, while also resisting cultural racism that attributes the roots of this violence to culture. As one of the first South Asian Women's Organizations (SAWOs)² in the United States,³ Sakhi's approach is an example of (and perhaps helped define) the model of anti-violence work in the South Asian community. Most SAWOs follow a two-pronged approach of providing culturally-specific services to survivors as well as conducting community outreach and education about gender-based violence.⁴

Survivors in need of assistance reach out to Sakhi to access legal and/or immigration support, social and emotional support, access to social services, and help in meeting other needs such as health services or economic empowerment through skills-based trainings. In providing these services, Sakhi focuses on meeting these needs within a culturally appropriate frame, with multi-lingual support for survivors with limited English proficiency, and on addressing the manifestations of violence that emerge from patriarchal dynamics in South Asian communities.

Within and across various South Asian diasporic communities, Sakhi also functions to grow awareness that domestic violence exists across class and community, and that community members can play a role in preventing and addressing this violence. Sakhi's engagement with community outreach and mobilization exists both to support its services in reaching more survivors, and as programming in its own right with an aim to shift commonly held beliefs about domestic violence. This latter work understands awareness as the first step towards action, and community members are thus encouraged to support survivors by directing them to Sakhi or other service-based entities for assistance.

Sakhi's existence as a non-profit anti-violence organization has been influenced by the growth and direction of the broader anti-violence movement during the past several decades. Through legislative acts such as the Violence Against Women Act, domestic violence has increasingly been recognized as a crime and, as such, responses that have emerged to

² See generally Margaret Abraham, *Ethnicity, Gender and Marital Violence: South Asian Women's Organizations in the United States*, 9 GENDER AND SOC'Y 450, 450 (1995) (The abbreviation for South Asian Women's Organizations (SAWOs) was first coined by Margaret Abraham.)

³ See generally Margaret Abraham, *SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AGAINST SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES* (Rutgers University Press 2000) (providing a fuller history of Sakhi's founding).

⁴ See SAHKI FOR S. ASIAN WOMEN, <http://www.sakhi.org/resources/sawos/> (last visited Sept. 7, 2014). Currently, there are close to thirty anti-violence groups based in South Asian American communities. Almost every metropolitan area in the United States houses a South Asian women's organization (SAWO). Many South Asian women's organizational websites make a national list of groups available as a resource.

address domestic violence engage the criminal legal system. Anti-violence scholar-activists have shown that this approach limits the scope of domestic violence interventions, and that legal remedies produced through the criminal legal system can be dangerous for survivors of violence who are in precarious relationships with the state.⁵

For South Asian women, engagement with the criminal legal system can be complex and harmful for reasons ranging from fear, language barriers, and misunderstanding of legal rights, to structural vulnerabilities that are produced through the relationships between immigration enforcement and law enforcement. Survivors belonging to communities that are vulnerable in their relationship with the state are especially at risk for harm when interacting with the criminal legal system; for Sakhi, then, the need to offer alternatives to legal system strategies has been a concern for some time.

Specific conversations with survivors indicate a desire for interventions that do not require the involvement of the state. Throughout Sakhi's history, survivors have often requested assistance in the form of conversations with the individual and/or family members who are causing harm. Sakhi's model of support has not included engaging with abusive partners/family members. The organization understands itself as a set of outsiders to a power-imbalanced relationship, which does not position it well for motivating individuals causing harm to change their behavior. Survivors coming to Sakhi also name wanting greater support from their communities; many survivors who come to Sakhi lack community support, and often have no one else to turn to. Sakhi's desire for a possible means of intervention that exists outside of state systems and engages more actively with a survivor's individual community (or potential community) is grounded in the needs of survivors seeking resources and assistance via Sakhi. These goals are articulated explicitly by survivors reaching out to Sakhi for support and by advocates who

⁵ See generally Anannya Bhattacharjee, *Whose Safety? Women of Color and the Violence of Law Enforcement* (Justice Visions, Working Paper, 2001), available at <http://www.safetyandjustice.org/story/whose-safety-women-color-and-violence-law-enforcement>; INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *COLOR OF VIOLENCE THE INCITE! ANTHOLOGY* (South End Press 2006); MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* (2006); Statement from INCITE! Women of Color Against Violence and Critical Resistance, *Gender and Violence and the Prison Industrial Complex* (2001) available at http://incite-national.org/sites/default/files/incite_files/resource_docs/5848_incite-cr-statement.pdf; Mimi E. Kim, *Challenging the Pursuit of Criminalisation in an Era of Mass Incarceration: The Limitations of Social Work Responses to Domestic Violence in the USA*, 43 BRIT. J. OF SOC. WORK 1267 (2012); BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012).

have noticed these needs over time, sometimes as unnamed requests and/or through community silences.

In prioritizing the realities of survivors needing alternatives to criminal legal solutions to domestic violence, Sakhi finds itself caught at the intersection of two conflicting approaches: 1) a culturally-specific service model that generally aligns with mainstream anti-violence models, which rely heavily on criminal legal system and other systemic interventions to respond to domestic violence, but with a focus on making them more accessible (e.g., through language access, or know-your-rights education); and 2) a transformative justice approach which envisions and builds responses to domestic violence outside of state engagement and punitive strategies, based in communities instead of professional experts, and concerned with increasing safety and wellbeing for survivors, people who cause harm, and communities overall.

The other conflict that Sakhi finds itself in is the tension of time. A lot of the work that Sakhi does is in support of survivors needing immediate assistance to address a crisis or urgent situation of violence. Like many anti-violence organizations, Sakhi needs to both respond to the immediate needs of survivors, and build capacity for long-term change; with limited resources, the immediate issues often take priority at the expense of the social change vision.

II. FINDING OPPORTUNITIES IN CONFLICTS TO DEVELOP A PROCESS

We stepped into this process with Sakhi as individuals familiar with anti-violence movement building, including through past experience as staff members of SAWOs, and a strong commitment to the need for alternatives to criminal legal solutions to domestic violence.⁶ We arrived at Sakhi with a shared analysis of what a transformative justice approach might include, as well flexibility and openness as to what this might look like in the context of Sakhi's work.

Our first step was to better understand how Sakhi was positioned in its values, vision, and practical strategies for moving towards community-based responses to domestic violence that do not engage the state. We found that the organization was clear that it wanted to develop responses to domestic violence that offered survivors alternatives to the criminal legal system. It was unsure, however, about whether it was

⁶ Both Soniya and Bhavana are familiar with the internal workings of SAWOs, having each spent time working within various organizations. We have continued to be involved in anti-violence movement building, and have engaged in different types of community-based and/or transformative justice work through these efforts.

moving towards a restorative justice model or a transformative justice model.⁷

Restorative justice approaches to domestic violence generally work within criminal legal responses.⁸ Transformative justice, on the other hand, seeks safety and accountability without relying on punishment-based strategies or systemic violence, including incarceration, policing, and other criminal legal responses.⁹ In other words, restorative justice models usually work as alternatives within criminal legal processes whereas transformative justice approaches work outside these systems. Additionally, through some initial training on restorative justice with the Center on Violence and Recovery at NYU, Sakhi had begun to explore the possibilities of holding Healing Circles with survivors, thus introducing work in the realm of healing justice as a part of their desired model.

At this early stage of the project, it was tempting to dismiss these distinctions as semantics to work through later. However, the tensions that emerged here were instructive, as they revealed crucial differences in perspectives across program areas and/or staff positions. For example, staff members who provide direct services are generally working with survivors who have little or no community support; this is often a factor in why survivors come to Sakhi for assistance. This experience informs their perspective on the needs of survivors and the role that community plays (or does not play) in supporting them. In comparison, staff members working on community engagement see an opportunity in the willingness of community members to learn how to respond to violence. These differences, grounded in experience, impact the broader vision for possible interventions, and whether these strategies can exist within or beyond the criminal legal system. In its efforts to address the need for a wider array of responses to violence, Sakhi simultaneously holds different political visions and philosophical commitments for the

⁷ CTR. ON VIOLENCE & RECOVERY, *What We Do*, <http://centeronviolenceandrecovery.org/our-activity.php> (last visited Sept. 7, 2014). Sakhi began this project by exploring restorative justice models, such as the Peacemaking/Healing Circles developed by the Center on Violence and Recovery at NYU. This approach brings together the person who has caused harm, family and community members, and a facilitator to create different dynamics within the family. Sakhi was working to integrate some of the healing justice elements of these circles into its work, while still holding an organizational boundary against working with people who cause harm.

⁸ See RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN (James Ptacek ed., Oxford University Press. 2009).

⁹ SARA KERSHNAR ET AL., GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE: A LIBERATORY APPROACH TO CHILD SEXUAL ABUSE AND OTHER FORMS OF INTIMATE AND COMMUNITY VIOLENCE (2007).

pragmatic realities that immigrant women face while experiencing violence and then interfacing with systems.

At this point, the organization faced some fundamental questions exposing disconnections between their everyday practice and their broader hopes for utilizing a transformative justice approach. First, how does Sakhi strike a balance between providing services to immigrant women whose struggles for everyday survival often require them to interface with the criminal legal system, and offering an approach that eschews systemic solutions? At the heart of this conflict is the question of what role community can play in this balance. Broadly generalizing, in the mainstream anti-violence approach, communities are at worst a part of the domestic violence problem, or at best, allies in enabling access to resources, provided by an entity that exists outside the community (e.g., the legal system). Many organizations like Sakhi have a similar analysis of community, as it was the lack of community attention to domestic violence that led to their organizational founding in the first place. “Community” has generally been seen as a barrier rather than a resource. Transformative justice, on the other hand, re-envision the scope and possibility of community as both a space and active agent for addressing violence within itself. Sakhi’s ability to envision beyond state-based interventions arises from an active reexamination of how community might play a greater role in resourcing survivors.

Additionally, how does Sakhi maintain its historical focus on the needs of survivors when strategies that approach violence in a more holistic manner include engaging the people who cause harm? Underlying this question is the issue of gender. As a self-identified South Asian women’s organization, the survivors that Sakhi works with are generally cisgender women.¹⁰ If the majority of people enacting violence in intimate relationships are men, and men are not included in the scope of the organization, is there an inherent limit in Sakhi’s ability to build a transformative justice approach? These questions expose productive tensions between the assumptions of the anti-violence movement and transformative justice frameworks.

After several meetings with the staff as a group, and separate informational interviews with program and administrative staff, we came to a working agreement that a transformative justice framework, with its critical understanding of the criminal legal system and its attention to responses that center safety and healing without engaging the state, could best respond to the needs and desires of Sakhi’s constituency. Given the role that Sakhi plays in offering services support to survivors,

¹⁰ We use cisgender here to mean people whose gender identity and/or gender expression is aligned with the sex they were assigned at birth.

envisioning concrete, realistic strategies to implement this broader political vision would be essential for moving forward.

We then proposed a deeper engagement with the points of disconnect between Sakhi's existing approach and one grounded in a transformative approach. Our interest in working in the space of conflict was to allow us to first build a transparent analysis and shared values that could move into possibilities for criminal legal system alternatives. We wanted this deeper engagement with the disconnections to explicitly map the current work that Sakhi was doing, in terms of how it relies on the assumptions of the mainstream anti-violence approach, where Sakhi already departs from this approach, where and how Sakhi engages with community, and what more might be needed to move away from criminal legal solutions and towards community-based ones. To do this, we implemented a series of discussions that integrated both political education and organizational development goals. In these conversations, we aimed to build a deeper understanding of transformative justice and the context through which it emerged as a current strategy, to create a space for Sakhi to solidify its political values and vision, and to develop explicit, implementable strategies for moving the organization towards a transformative vision.

A key strategy here was building upon Sakhi's existing work to forge a path towards a transformative vision, while also recognizing the complicated ways that Sakhi's work is currently entangled with the legal system. This required an understanding that a shift away from this approach might need to occur at a gradual pace. While political commitments inform and guide our efforts, we understood that this work occurs in a broader context of an anti-violence movement that has effectively instilled criminalization as the dominant strategy for responding to intimate violence. As a non-profit organization that provides supportive services to survivors of violence, Sakhi's work is not fully determined by this broader context, but it is located within it and constrained by the structural relationships between the criminalization of domestic violence and social services/resources that are facilitated by an engagement with the criminal legal system. How to draw the lines of where to shift away from this engagement, and where to remain engaged for the sake of the resources it facilitates, is an important question. As such, we wanted to interrupt the potentially unproductive dichotomy of criminal legal models and transformative justice models as mutually exclusive, even as we understand the underlying political values and vision of these two models as fundamentally incompatible because of their differing understanding of the role of the state (as a site of protection or as a site of violence). We hoped to develop a long-term vision of transformation that still accommodates the current realities of the criminal legal system's role in creating access to systemic services

for survivors of violence. By doing this, we hoped to create short-term strategies for Sakhi to implement that begin to disentangle the work from a reliance on the legal system, through the slow building of community capacity to address violence without engaging the state. Our work is heavily influenced by the efforts of Dr. Mimi Kim and Creative Interventions, a resource center to create and promote community-based interventions to interpersonal violence.¹¹ The framework of community-based interventions is critical to Sakhi's process, because it contextualizes the concrete practices Sakhi wants to develop and implement within a political analysis about the limits of criminal legal solutions.

III. ENGAGING CONTRADICTIONS THROUGH POLITICAL EDUCATION

We were able to distill three areas of conflict between the culturally-specific advocacy model that Sakhi has cultivated over the past twenty-five years and the community-based intervention strategies that work outside of state responses. Our work, then, became an exploration of these tensions and holding space for actively engaging with these contradictions. These explorations centered on finding values and practices that: 1) challenge the dominance of criminalization as a strategy to respond to violence by building and supporting community-based solutions that work beyond the state; 2) challenge the individualization of violence by situating survivors within communities; and 3) challenge gender (and other) binaries that produce heterosexist and other dominant ideas about violence and relationships. Additional principles we addressed here included holding multiple truths at the same time, the impact of trauma, taking risks, assessing the role that confidentiality plays in our work, and thinking intentionally about safety. We held three political education sessions to take a deeper look at each of these areas of conflict. Although each session had a distinct focus, the discussion and emergent questions were overlapping and interconnected.

Our first session focused on the historical trajectory of the criminalization of domestic violence and the impacts of the dominance of these responses.¹² We looked specifically at Sakhi's work to ask: Where

¹¹ Creative Interventions, *Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence* (July 2012), available at <http://www.creative-interventions.org/wp-content/uploads/2012/06/CI-Toolkit-Complete-Pre-Release-Version-06.2012-.pdf> (The toolkit is a model for violence intervention, and offers information, worksheets, and case studies of community-based interventions.)

¹² See generally *supra* note 5.

does Sakhi's work challenge the values and use of the criminal legal system already? Where does Sakhi rely on the criminal legal system? Where are the possibilities/openings that would occur if we move away from these strategies? What are the challenges in moving away from these strategies? Moving forward from the challenges, we asked, how could Sakhi start not to use these strategies in the short-term? How else could Sakhi fulfill these needs? We used this series of questions in all three sessions to help identify short-term steps that Sakhi could take to build from its existing work towards growing greater community capacity to respond to violence.

The discussion that came out of the first session underscored that Sakhi experiences contradiction in its daily work. Staff reflected how engaging with the criminal justice system consistently complicates the lives of survivors, such that they feel as though they are punished instead of the person who committed harm. Direct services staff members noted how their work is about preparing survivors to offer their lives as proof towards evidentiary requirements, because this is one of few pathways to accessing numerous public benefits. Sakhi staff named a strong commitment to the idea of resource creation: what they wanted to move towards is creating more options for survivors, but they were also nervous about moving away from a criminal justice approach if this would remove one option for addressing survivors' needs.

In this discussion, a question emerged about how to define the concept of resourcing. For example, given the hostile climate for immigration, the criminalization of domestic violence offers some opportunity for survivors to recast themselves, legally speaking, from undocumented immigrant (who has perpetrated an illegal act) to a survivor of violence (who is the victim of a crime). In our current environment in which immigration is criminalized, this recasting, through tools such as the U visa, becomes one of few means to access to documents for undocumented survivors. The criminalization of domestic violence may be offering a pathway to more secure immigration status, but criminalization (of immigrants) is what curtails access in the first place, and criminalization (of domestic violence) only re-grants partial access on the basis of merit; this is not a resource, so much as a gatekeeping device.¹³

¹³ Rupaleem Bhuyan, *Disciplining Through the Promise of "Freedom": The Production of the Battered Immigrant Woman In Public Policy and Domestic Violence Advocacy* (Jan. 1, 2006) (unpublished Ph.D dissertation, University of Washington (on file with author)); Susan Berger, *(Un)Worthy: Latina battered immigrants under VAWA and the construction of neoliberal subjects*, 13 CITIZENSHIP STUDIES 201 (2009); Lee Ann S. Wang, *Ethnographies of Inclusion: Protection, Punishment, and Legal Fictions of*

The second session focused on the individualization of anti-violence interventions, as contrasted with community-based approaches to violence. Here we asked: if we understand domestic violence to be a social problem, why do most of our responses treat violence as an individual problem? We first traced the history of neoliberal transitions in social welfare that have emphasized personal responsibility and individualism, and the growth of professionalized social services through non-profit organizations that utilized measures of eligibility of survivors in order to distribute resources.¹⁴

We also looked more carefully at Sakhi's work to explore how the organization has related to the idea of "community."¹⁵ On the one hand, Sakhi is a community-based organization, founded by and for South Asian women, but, on the other hand, the founding of the organization was premised upon the idea that "community," more broadly, is unsupportive of South Asian women facing violence in their relationships. Meanwhile, South Asian women are heterogeneous and internal power dynamics of class, religion, caste nationality, and sexuality, and other social positions also reveal the uneasy terms upon which we aim to build community. Furthermore, Sakhi itself as a community is not monolithic; survivors, staff, volunteers, Board members, and funders all exist in differentiated roles from each other; these roles have evolved as consequences of professionalization, protectionism, and other mechanisms that configure relationships.

Historically, Sakhi's relationship to community included a great deal of tension. When Sakhi was founded, the scope of its work was broad to address all forms of gender-based violence that occur within the domestic sphere, including intimate partner violence and abuse faced by domestic workers. In Sakhi's earlier years, the organization utilized different strategies to address violence, including direct actions to protest the abusive actions of community members. Public shaming, which was primarily deployed to address situations of labor exploitation, was a tactic that engaged community members to take a stand and bring visibility to issues that are otherwise silenced. Over time, Sakhi was unable to hold the diversity of strategies it employed and its internal

Asian Immigrant Women (2012) (unpublished Ph.D. dissertation, University of Michigan (on file with University of Michigan)).

¹⁴ INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *THE REVOLUTION WILL NOT BE FUNDED* (2007); KRISTIN BUMILLER, *IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE* (2008).

¹⁵ In this discussion, even though we use the singular "community" we always mean the heterogeneous, plural South Asian diasporic communities in the New York metropolitan area, and understand that these communities extend beyond Sakhi's constituency.

political conflict resulted in a commitment to a narrow focus on intimate partner violence; another organization, Workers' Awaaz, was founded to take on the issue of domestic workers' rights.¹⁶ This decision was an important fork in the road, at which Sakhi chose an anti-violence response that aligned with the mainstream anti-violence movement in the strategies it employed, and in how it understood the state as a site of resources. What remained, however, was an approach that saw the community as a potential site of harm, and distilling the ally potential of the broader community is still an ongoing negotiation.

Sakhi has also repeatedly challenged the stigma and prejudice that survivors of violence face at the hands of their community through publicly speaking in support of women's rights and about violence, often a taboo topic. When Sakhi was first permitted to walk during the India Day Parade, it held the duality of taking an unpopular stance vis-à-vis its community by bringing the specter of domestic violence to the public eye, and, at the same time, having tacit community support through its public presence in a community event. Across a span of two and a half decades, this relationship has grown to gain some trust from the community for Sakhi as a service provider, but Sakhi's trust of community is limited; while Sakhi seeks to engage with community in challenging violence, the role it has asked for from community is one of referral and not necessarily a deeper trust to be able to do much more.

As of now, Sakhi seeks to leverage twenty five years of community service and the respect it has gained in the South Asian community and the larger domestic violence community for its work. Sakhi seeks to implement creative approaches for engaging community in ways that genuinely reflect the complexity and nuance surrounding the issue of intimate violence and the role of "community." Sakhi's history with South Asian diasporic communities reflects an understanding that has developed through both challenges with community as well as collaborations, producing a need to engage intentionally with community.

¹⁶ See generally MONISH DAS GUPTA, *UNRULY IMMIGRANTS: RIGHTS ACTIVISM, AND TRANSNATIONAL SOUTH ASIAN POLITICS IN THE UNITED STATES* (Duke University Press 2006) (discussing this time at Sakhi in more detail); see also Linta Varghese, *Sites of Neoliberal Articulation: Subjectivity, Community Organizations, and South Asian New York City* (Dec. 2007) (unpublished Ph.D. dissertation, University of Texas at Austin) (on file with author) (offering a critical analysis of the conflict in part based on the first-hand accounts written by Anannya Bhattacharjee); ANANNYA BHATTACHARJEE ET AL., *FEMINIST GENELOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES* 308–327 (M. Jacqui Alexander & Chandra Talpade Mohanty eds., Routledge 1997); MARGARET ABRAHAM, *SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AGAINST SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES* (Rutgers University Press 2000).

In shifting towards a model of community engagement that seeks to build the capacity of community members to address violence, the question of the anti-violence movement's assumptions of confidentiality emerges. In this exploration, we understood that there are circumstances that dictate the need for confidentiality as a safety measure; the question was about why we operate from an assumption that this is always the case. For example, Sakhi's offices are in a confidential location, which restricts who can access the office, including people who may want to offer support to their loved ones and community members at-large who may want to support Sakhi's work. Confidentiality as a pre-requisite strengthens the idea that violence is an individualized issue by offering an illusion of information security between the survivor and the advocate. The reality, however, is that in order to access services, information about the survivor's situation is shared between agencies and systems through police reports, immigration applications, affidavits, medical records, restraining orders, and more. Above all else, confidentiality maintains boundaries between professional experts and non-professional community members. What would look like to move from a survivor-centered approach to a community-centered approach? What do we gain and what do we lose if we move into an understanding of intimate violence as a collective problem?

In this discussion, Sakhi staff commented that individualization occurs both on the level of isolation from community, but also from a larger sense of not connecting with the universality of experiences of violence and oppression. As an organization working with survivors, Sakhi has an opportunity to connect survivors with information for getting their needs met, and also to contextualize the issues survivors are facing by raising survivors' awareness about larger political/social/economic systems. Making connections between one's individual story and the larger forces that produce the conditions within which one's story takes place can be a healing process. Political education can be a tool to counteract the structural ways in which domestic violence is cast as an individual issue.

Our last session looked specifically at how gender binaries operate in anti-violence work, and in Sakhi's work more specifically. Here, we were interested in the heterosexism and genderism that assumes a violent relationship to be made up of an abusive man and a victimized woman, and also ascribes certain characteristics and qualities to masculinity and femininity. We want to maintain a feminist analysis of intimate violence as gender-based violence, but we also want to expand our gender frameworks to allow for the multiplicity of gender expression and gender identity in our communities. This expansion requires a more complex engagement with gender and violence to allow for both the ways in

which women are violent, and in which men are harmed by violence. We need to recognize the ways we perceive violence/aggression to be rooted in expressions of gender; and then also be identified with that gender. Gender-roles in community are cast as binaries with specific tasks, so we are also challenging that through this discussion. For community-based interventions to effectively transform the dynamics of violence, a holistic engagement with the members of the community (including the person who caused harm, bystanders, and others) is ideal; a demarcation based on gender is in tension with such an engagement.¹⁷

We asked staff: how does Sakhi's work challenge the gender binary? Staff reflected that it only does so minimally, primarily as a strategy for expanding resources (such as in its economic empowerment work, to build the capacity of women to earn outside of the home). In the context of relationships, Sakhi staff remarked that state interventions demand an understanding of survivors wholly as victims, as a means to accessing resources. This also upholds a binary on what behavior defines a good victim versus a bad victim—women who react outside of what defines a good victim (with violence of their own, etc.) are bad victims, and are resigned to less success in accessing resources via a state solutions approach.

This discussion also engages the issue of building community within the organization itself, as well as with welcoming greater community responses—in order to actually hold space for all South Asian women, who may, in relationship with each other, have a range of power dynamics in play. In other words, building a fuller understanding of community disrupts essentialist assumptions about the universal experience of women, and better holds the complexity of multiple layers of difference (i.e., class, caste, religion, ethnic background, national origin, sexual orientation, role, experience, and yes, gender identity) within Sakhi's constituency.

IV. TAKING SOME FIRST STEPS TOWARDS ALTERNATIVES

Through these three political education sessions, we developed tangible next steps that came directly out of the existing work that Sakhi already does. The goal was to make small but foundational moves towards a transformative approach, collect information from these interventions, and evaluate their impacts for further growth in this direction. One set of short-term strategies, for example, was to focus on

¹⁷ Gita Mehrotra & Soniya Munshi, *Shifting the Frame: Addressing Domestic Violence in Lesbian, Gay, Bisexual, Transgender, and Queer South Asian Communities*, MANAVI OCCASIONAL PAPER, No. 7 (2011).

obtaining more information from survivors and community members about how and where communities are already providing support to survivors. The longer-term strategy that this serves is to build community capacity to respond to violence by both deindividualizing violence and de-centering Sakhi's role as a primary responder to a facilitator of community-based interventions. This is the shift from community education that informs the community of Sakhi as a resource to one that informs (and in fact, expects) the community to be active in supporting survivors of violence directly.

Other examples of these concrete and foundational steps include:

- Make adjustments to the intake form to ask survivors who contact Sakhi about ways that they have accessed (or could access) community for support. When communicating with survivors, encourage them to identify individuals within their communities who can support them—and create space for these supporters to be part of resourcing process that Sakhi holds.
- Strengthen the building of social/community networks within support group spaces by serving as a facilitator for these connections.
- Incorporate more political education conversations in support group spaces to de-individualize violence by building connections at the structural level, and by making political structures visible.
- Hold focus groups in community spaces to reflect on how individuals approach communities for support around intimate partner violence, and in order to identify effective strategies that communities may already be using to address violence without involving the state.
- Train community members who are already involved in supporting survivors in their communities, and integrate political education about the larger context of anti-violence work (including policies) in the United States. A starting point here could be with those people who call Sakhi on behalf of survivors who are experiencing violence.

Sakhi is beginning to implement some of these strategies and will see where they lead; it is our hope that engaging with these short-term steps will illuminate other steps in a path forward in line with a transformative vision.

V. CONCLUSION

Sakhi's engagement with a transformative justice approach is an ongoing process, with long-term outcomes that will eventually look very different from their current approach. Arriving at a model that holds less contradiction and more fully embodies the values of transformative

justice will be a long-term process. We are reminded of the work of Generation FIVE, which “seeks to end childhood sexual abuse in five generations, through survivor leadership, community engagement, and public action.”¹⁸ Generation FIVE’s work prioritizes a transformative justice approach in their movement building, and the long-term envisioning acknowledges that profound change takes significant time, and that taking steps at the current moment is a part of this process.

Some of the crucial milestones in the building of a transformative justice approach include the identification and building of community capacity to serve as a resource in addressing instances of violence, and disentangling the relationship between social welfare and the criminal legal system. This relationship will present an ongoing challenge as long as Sakhi is facilitating resources and social services for survivors of violence. Regardless of Sakhi’s organizational analysis and experience of these connections, the continued structural links that position survivors seeking assistance as vulnerable to the power of the criminal legal system will be a barrier to a transformative vision. This is an issue beyond individual groups or communities but one for the anti-violence movement to collectively engage and change, and one that is also tied to interrupting the funder-driven pressures and restrictions on non-profit organizations.

Sakhi is also beginning to work on the identification of community-based resources. Engaging with this process will continually lead to further conflicts, albeit productive ones, especially as the organization starts to use strategies that begin to show active contradiction with its current programming. It is an open question as to how this process will evolve towards a firm and consistent grounding in the values of transformative justice. In this work, Sakhi seeks connections with others who are challenged by similar contradictions, other efforts that offer direct support to survivors of violence who are also seeking to grow options that are located beyond the state.

¹⁸ GENERATION FIVE, <http://www.generationfive.org/about-us/> (last visited Sept. 7, 2014).

Finding the Middle Ground: Reimagining Responses to Women's Use of Force

Lisa Young Larance & Susan L. Miller*

Changing the hearts and minds of the criminal legal system (CLS) to recognize violence against women as a significant social problem has been the rallying cry of the battered women's movement. In the past several decades, these unsung heroines and heroes have had multiple victories including the establishment of battered women's shelters and shared shelter networks; vibrant state coalitions; successful intervention and treatment programs for men who batter their partners; as well as Violence Against Women legislation. Once the most private of crimes, the public focus has anchored violence against women as a major social problem recognized by politicians, legal system representatives, anti-violence practitioners, and researchers. One of the central critiques against the CLS has been its trivialization of violence against women. The movement has been influential in shifting police response from inaction to criminalization of physical violence against an intimate, who is statistically more likely to be female.¹ Mandatory arrest policies have been at the center of this rallying cry. Through their implementation, violence against women has been criminalized, batterers have been held accountable, and victims/survivors protected. This shift has been transformative for a range of community-partners in their understanding and response to those who use violence in intimate relationships.

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¹ See CALLIE MARIE RENNISON, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003); see also PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000).

Following empirical research findings that reveal arrest to be more effective than mediation or separation—or looking the other way—most jurisdictions as well as states enacted pro-arrest/mandatory arrest policies as a more efficacious response to existing practices.² Mandatory arrest policies were quickly followed by “no-drop” prosecutorial policies in an effort to take the onus of prosecution (that could result in retaliation) off victims.³ Unfortunately, however, by re-envisioning how the state could increase battered women’s safety, and by relying on police and prosecutorial efforts to challenge offenders’ behaviors, inadvertently, the arm of state control has been extended in a way that has been helpful to some victims but exceedingly harmful to others. Our essay addresses one issue spawned by the overzealous push to criminalize the use of force in intimate relationships—that of female victims/survivors who are arrested on ‘domestic violence’ charges and subsequently punished, treated, and labeled as ‘offenders.’

Research and practice have identified the unintended consequences of such policies.⁴ Despite the successes of the anti-violence against women movement, especially with elevating the issue to mainstream scrutiny and action, progress comes slowly. Often this means that laudable goals and practices collide with an expansion of state power because many advocates, practitioners, and researchers now tend to rely more on criminalizing behavior as an intervention strategy and point of reference. Who is hurt by this?

- This trend disproportionately affects the least powerful such as economically disadvantaged women, citizens of color, and/or those from LGBTQ communities.

- It has fractured or prevented productive working relationships and established trust that existed between some CLS professionals and advocates.

² See Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Violence*, 49 AM. SOCIOLOGICAL REV. 261 (1984); LAWRENCE W. SHERMAN, *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* (1992).

³ See David A. Ford, *Coercing Victim Participation in Domestic Violence Prosecutions*, 18 J. INTERPERSONAL VIOLENCE 669 (2003).

⁴ See Susan L. Miller, *The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond*, 7 VIOLENCE AGAINST WOMEN 1339 (2001); see generally SUSAN L. MILLER, *VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN’S USE OF VIOLENCE IN RELATIONSHIPS* (2005); Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When she fights back*, 20 YALE J.L. & FEMINISM 75 (2008); Lisa Y. Larance, *Serving Women Who Use Force in their Intimate Heterosexual Relationships*, 12 VIOLENCE AGAINST WOMEN 622 (2006); Lisa Y. Larance, *When She Hits Him: Why the Institutional Response Deserve Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSLETTER 10 (2005).

- Practitioners who work with arrested women are often vilified by community partners as being too punitive or criticized by members of the CLS as being “too soft on women.”

- By leaving intervention to a system focused on punitive measures, those well tooled to address gendered assumptions (and other class/race/sexuality based strategies of intervention) of power inequalities are often left out of solution seeking interventions.

- Survivors are set up for failure by being portrayed as “good” for not responding with violence or “bad” for utilizing force as a survival strategy. This paradigm has had a ripple effect through all aspects of the CLS and advocacy organizations.

- Mandatory and/or pro-arrest policies focus on the use of force or aggression independent of context, which, in turn, reinforces gender neutrality, leaving out both a gendered power analysis and essential understanding of coercive control.

- The collateral damage to arrested women with survivorship histories, in terms of damaging or eradicating their social networks, job opportunities, housing support, and child custody, has been immeasurable.

We believe the dearth of contextual knowledge regarding women’s use of force is the elephant in the room. Gone unaddressed, it will continue to prevent effective coordinated community collaboration and will promote unintended collateral consequences for the most marginalized. It must be recognized and talked about—with opportunities to safely disagree while having this conversation—regardless of the resistance toward or unpopularity of any one position. Disagreement can and does create change and innovation. For some women, in some circumstances, police action has been crucial to their safety. For other women, police action has had devastating long-term consequences. We refuse to collude with an unexamined expansion of state power to criminalize and label women as abusers and penalize their defensive actions. We articulate our specific concerns next. Our positions are grounded in our own experiences engaging with women who use force (Miller has completed a series of participant-observation and interview studies with women arrested for their use of force against their partners/ex-partners; Larance has provided intervention and support to women arrested on domestic violence charges for more than a decade).

Women navigate survivorship of intimate partner violence (“IPV”) in various ways. Though we acknowledge that women can be violent in relationships, our work and others’ reveals the distinctive differences in women’s motivations, intent, and impact for their use of force. Use of force refers to physically, verbally, and emotionally detrimental behaviors used toward an intimate partner to gain *short-term* control of

chaotic, abusive and/or battering situations.⁵ Battering, in contrast, signifies a pattern of coercive control, intimidation, and oppression effectively used to instill fear and *maintain long term* relationship domination.⁶ The challenge with having this conversation and utilizing effective language is that the role and goal of the individual utilizing the language must be clearly understood. For example a probation agent and an advocate may have a difficult time speaking with one another about a battered woman who has been charged with domestic violence. By understanding that “perpetrator” means something very different to each individual, the conversation is informed but, often, nonetheless challenging to have.

On a micro-level this conversation is challenged by the misunderstanding and misuse of a widely available intervention tool. Many intervention providers, for instance, use the Power and Control Wheel,⁷ a heuristic tool developed by battered women to identify the tactics used against them by their intimate male partners. This internationally respected tool is a useful visual when detailing the power and control dynamics of men’s violence against women. It illustrates what women have survived when men utilize tactics of power and control against women. The problem is, however, when the Power and Control Wheel is misunderstood and misused in intervention settings. Such misuse has a range of consequences. For example, a young woman, who had beaten her husband with a metal pole, was shown the Power and Control Wheel and told that by engaging in the actions listed on the Power and Control Wheel the woman was a “batterer” and would be treated as such. The intervention provider focused on the woman’s isolated incident of violence and wrongly assumed that “one size fits all”

⁵ Shamita D. Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1378 (2002); Erin H. House, DOMESTIC VIOLENCE PROJECT/PROJECT SAFE, *When Women Use Force: An Advocacy Guide to Understanding This Issue and Conducting An Assessment with Individuals Who Have Used Force to Determine Their Eligibility for Services from a Domestic Violence Agency* (2001); Lisa Y. Larance, *Serving Women Who Use Force in their Intimate Heterosexual Relationships*, 12 VIOLENCE AGAINST WOMEN 622, 625 (2006); Miller, *supra* note 4; Sue Osthoff, *But Gertrude, I Beg to Differ, A Hit is Not a Hit, is Not a Hit*, 8 VIOLENCE AGAINST WOMEN 1521 (2002).

⁶ Osthoff, *supra* note 5, at 1522; Ellen Pence & Shamita D. Dasgupta, *Re-Examining ‘Battering’: Are All Acts of Violence Against Intimate Partners the Same?*, Praxis International (2006), <http://www.praxisinternational.org/files/praxis/files/ReexaminingBattering.pdf>; Susan Schechter, *THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* (Boston Press, 1992); *see generally* Evan Stark, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* (Oxford University Press, 2007).

⁷ Ellen Pence, *Battered Women’s Movement Leader*, YOUTUBE (Dec. 7, 2009), <https://www.youtube.com/watch?v=r9dZOgr78eE>.

when responding to that violence.⁸ The provider did not ask about the couple's eight year marriage or the course of events during that marriage. If she had she would have learned that, prior to this incident, the young woman's husband had drug her by a car, beaten her with a bat, and a range of other actions to maintain his dominance over the relationship's duration. When the young woman "fought back" she was trying to assert her autonomy by surviving his dominance. Furthermore, her fighting back meant that his violence against her escalated.⁹ Unfortunately this woman began to see and identify herself as a "batterer" without any acknowledgement of her survivorship history. Intervention can be an ideal opportunity for healing and change. There is anecdotal evidence that intervention can also reduce recidivism.¹⁰ But, in cases involving women who have used force, decontextualized intervention can be an experience of revictimization. Such an experience may lead to reoffending because women leave the intervention setting without the skills and support they desperately need.

Similarly, here are two examples from probation officers that illustrate cases criminalized by the incident-driven CLS when their guiding focus is on use of force;¹¹ they reveal the consequence of police officers' uniform responses to IPV when they fail to differentiate between the motivations and consequences of such acts:

Beth cut her husband's throat so badly that he had to be medevaced to the hospital; he almost died. He was constantly abusing her throughout their 6-year marriage and at the time of the stabbing, she said he was beating the crap out of her and she grabbed a knife—it was the first thing that was near her . . . That's what she felt she had to do to get out of the situation.

Jenny was sexually abused by her brothers and violently assaulted by her first husband continuously, and now, with her second husband, more continuous assault. Basically, what she did was after a particularly vicious assault she took his clothes out in the living room and set them on fire. She was charged with arson. But the police records document a number of times that she has been the victim of battering.

⁸ See generally Susan L. Miller et al., *One Size Fits All? A Gender-Neutral Approach to a Gender-Specific Problem: Contrasting Batterer Treatment Programs for Male and Female Offenders*, 16 CRIM. JUST. POL'Y REV. 336 (2005).

⁹ See Daniel G. Saunders, *When Battered Women Use Violence: Husband-Abuse or Self-Defense?*, 1 VICTIM & VIOLENCE 47, 57 (1986); TJADEN, *supra* note 1.

¹⁰ Lisa Young Larance & Ashley Rousson, *Facilitating Change: A Process of Renewal for Women Who Have Used Force in their Intimate Heterosexual Relationships*, VIOLENCE AGAINST WOMEN (forthcoming).

¹¹ Miller, *supra* note 4, at 1339.

Despite attention to these issues in the scholarly literature and by advocacy groups, arrests continue to proliferate and most states have developed gender-neutral intervention/treatment programs to respond to the influx of cases involving arrested women, regardless if they used defensive action.¹² This has placed community partners in a catch-22 situation deluged with multiple questions, including: How can communities responsibly address women's use of force, acknowledge their survivorship histories, but also hold them "accountable" for using force? What is the role of shelter personnel and advocates? The courts? Police? Is the bench's consideration for the gendered-dynamics of power and control justice or is it favoritism? Some communities are gradually figuring this out.¹³ It is not easy but it is necessary. It requires trust and time as well as a commitment to engaging in difficult conversations while re-thinking intervention strategies used with diverse populations using violence.

Clearly, our work is cut out for us. Based on the limitations of the Power and Control Wheel and guided by evidence-based research regarding women's response to IPV and coercive control, we are creating a visual tool which will depict women's experiences navigating their relationships. At the CONVERGE!¹⁴ conference, we introduced conceptual categories of a diverse sample of more than 200 women arrested and/or court-ordered to intervention groups for using force. Utilizing our own work and participant feedback, our visual tool will be responsive to women's strategic navigation of coercive control through their physical actions. This work will inform theory and practice as well as contribute to the growing knowledge base of contextually and thoughtfully intervening in the lives of survivors of domestic violence who have used force.

We end this essay with a renewed commitment to acknowledge the "elephant in the room" as a human rights issue. This issue, women's use

¹² See Shamita Das Dasgupta, *A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364 (2002); Lisa Y. Larance, *When She Hits Him: Why the Institutional Response Deserves Reconsideration*, 5 VIOLENCE AGAINST WOMEN NEWSLETTER 10 (2005); see generally Susan L. Miller, *VICTIMS AS OFFENDERS: THE PARADOX OF WOMEN'S USE OF VIOLENCE IN RELATIONSHIPS* (Rutgers Univ. Press 2005); MICHAEL P. JOHNSON, *A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE* (2008). EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* (2007).

¹³ Larance & Rousson, *supra* note 10.

¹⁴ For more information regarding CONVERGE! Reimagining the Movement to End Gender Violence, please visit <http://www.law.miami.edu/academics/converge/>. To explore full issue of articles and transcripts of panels on CONVERGE! please visit <http://race-and-social-justice-review.law.miami.edu>.

of force, must be addressed in more transformative, justice-seeking ways of achieving safety for survivors of violence as well as increasing efforts to promote dignity for victims regardless of their social location. Our collective work must amplify women's authentic narratives and lived experiences as this work concurrently sustains the voice, commitment and energy of the grassroots anti-violence against women movement. While forging partnerships and collaborating with the CLS is necessary, it should never be at the expense of survivors. These issues are far more complex and nuanced than they appear, especially as we recognize that the CLS and the movement must be accountable but also critiqued. With this recognition we are not only reimagining our collective responses to women's use of force, we are finding a necessary, nuanced middle ground for the movement's vital future.

TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on Sex Trafficking

UNIVERSITY OF MIAMI SCHOOL OF LAW

*Cyra Choudhury (moderator)**

Aziza Ahmed

Sienna Baskin

Sandy Skelaney

CHOUDHURY: My name is Cyra Choudhury. I teach at Florida International University and it is a pleasure to be here at Miami Law at this incredibly important conference on violence, specifically gender violence. Our panel is on sex trafficking and our speakers will run the gamut with regards to approaches to sex trafficking both globally and locally, with children as well as adults. We have a nice mix of speakers both from practice and from academia and so I think it will be a very fruitful conversation.

SKELANEY: My name is Sandy Skelaney. I am currently a Social Venture Consultant working on the issue of program development and human trafficking. I was formerly the Program Manager and Founder of

^o This transcript has been edited from its original transcription for clarity.

^{*} Cyra Choudhury is an Associate Professor of Law at Florida International University. Aziza Ahmed is an Associate Professor of Law at Northeastern University School of Law where she focuses on the areas of health law, human rights, property law, and development. Sienna Baskin is the Co-Director of the Sex Workers Project of the Urban Justice Center where she directs legal services and policy advocacy. Sandy Skelaney has dedicated her career to eradicating the sex trafficking of children and helping survivors find a path to healing. As a result of Skelaney's vision and expertise, Kristi House led the charge to create specialized programming, a safe house, and changed legislation in Florida.

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Project Gold at Kristi House.¹ We were the first program in the State of Florida to work specifically with children who were being sexually trafficked. In Kristi House I worked directly with over 300 girls, some of the girls were foreign born but most were domestic, who had been sexually trafficked between the ages of eleven and eighteen years old. We provided comprehensive case management, therapy services, across the board advocacy in all areas, and we also did street outreach. We also wrote Florida's Safe Harbor Act,² advocated over three years to get it passed into law, and opened a safe house, which is now a drop-in center. I want to tell you about the universal thinking that connects all trafficking victims, even if you are talking about labor, adult, child, or sex trafficking. That universal thinking is the issue of vulnerability. Some of the issues that people have when I go out and do presentations are whether sex work is a choice or not. That question was what kept that legislation from being passed for three years. The root issue, though, when you are dealing with trafficking victims is vulnerability. So, there is a continuum of choice that we are looking at. On the one hand, I have worked with girls who were literally kidnapped off the street, handcuffed to a radiator, and forced to have sex with men for money that was given to somebody else. On the other hand, I have also worked with teenage girls who told me that they were curious about it so they went to the strip club with their friend and tried it out. Many times even if that is how it started, they ended up falling into the hands of pimps who then were abusive towards them. So, the issue of vulnerability is really important to understand because it informs choice.

So what makes somebody vulnerable to being sexually trafficked? We are all living in this world in which we are sexually objectified, this is especially true for women and children growing up in abusive situations. About 80% of the girls that I have worked with had experienced past sexual abuse. That makes them much more likely to be sexually trafficked than their non-abused peers. We also have a lot of unaddressed mental health issues in this population. Vulnerability to trafficking is not just a poverty issue, but it can be a poverty issue, as well. We have kids that are running away from home, often times because of abuse or neglect or some kind of dysfunction in the home. So, a lot of what happens with this continuum of choice is happening in the middle where there is this coercive/abusive gray area and that is not what you hear about when you are getting articles sent to you on FACEBOOK

¹ KRISTI HOUSE, *Gold Project: Girls Owning Their Lives & Dreams*, <http://www.kristihouse.org/project-gold/> (last visited May 22, 2015).

² Florida Safe Harbor Act, ch. 2012-105, 2012 Fla. Laws 1199.

and things like that. You are seeing the picture of the little twelve-year-old girl, crying, in a fetal position, in handcuffs. But most of what we are seeing with trafficking happens in this kind of middle, coercive, gray area where you have a lot of vulnerability as a backdrop. When you are growing up with a history of sexual abuse, you are identifying this feeling of love with sex, attention, and abuse, and so you are not really mentally prepared to make good, healthy decisions for your life at sixteen years old. If you are running away from a house and you are going out to the store or to the park just to get away from whatever is going on in your house, and then somebody approaches you—likely an older person, likely a male but also sometimes female, or sometimes your friends—they are offering you different solutions and that is appealing. A lot of times we think that there is such a huge difference between international and domestic trafficking. I like to blur that line a little bit because just like we say foreign born trafficking victims get false promises for a better life, so do domestic trafficking victims. These sixteen year olds are getting promised spots in videos, they are getting promised a boyfriend that is going to take care of them, they are getting promised a better life, or they are getting promised to be taken away from their abusive stepfather. That vulnerability leads them to take these steps, make these decisions, which are actually, ways that they find they can cope. They are adaptive choices. They are trying to make better choices, but without all the information, and so they end up in these situations that escalate with the violence that occurs. For example, a lot of girls that I have worked with have gotten involved with traffickers, who they think are very benign or maybe their boyfriend, and then he offers them a place to stay, a get away from their family, whatever. Then, he starts demanding things of them, telling them, “You’re going to strip in the club for a little while.” if she complains, he says, “Well, who’s going to pay the rent? I have been spending all this money on you, getting your hair and nails done.” So then it escalates to the point that if she is forcefully saying “no” or trying to defy him, there are going to be repercussions, and it becomes a cycle of violence. So, you are going to see a lot of the same kind of dynamics that you see in domestic violence, with the honeymoon cycle and the explosion. Now, I would say not every single kid that I have worked with has had a pimp, but probably about 90% of the girls that I have worked with have had a pimp at one point.

If I am going to impress anything upon you, it is to encourage you to individualize how you are seeing survivors of trafficking. I see a lot of media, a lot of propaganda, depicting every single trafficking victim as a girl (a child), and every victim is being held against her will. This image misses a lot of nuance in the circumstances. The way that we can help

trafficked victims is to understand the *individual* situations. We also need to understand teenagers, in general, and help them become more empowered to make better choices for themselves. Because, let us face it, if the adults in their life were reliable, they would not be in this position. So, we are trying to become a more reliable support system for them, by being advocates that are consistent and caring. What we see is trafficked teens coming in and out of foster homes, in and out of programs, and if they run away and are gone for more than a week, they get dropped from a program. And they are repeatedly interviewed about really sensitive things. I mean, honestly, at fifteen years old would you really want to be interviewed extensively about all the sexual things that you have ever done? No. But this happens with every single person they deal with in the system. So they learn to adapt to that situation, which is why it is challenging to work with them. What they need is consistent, supportive people in their lives; they need advocates. They need people who are going to stay with them from day one, from the point of identification, and help them through the system until they are eighteen or nineteen years old.

We have to remove their vulnerability. It is not enough to remove the “John” or the trafficker, because they are just going to get replaced. We should not remove the kids. This occurs in system; we remove the kids to a location that is three hours from home, away from their supports. This occurred in our program. We would form very strong relationships with these kids, and then the system would take them away from Miami and move them to Tampa. Instead of removing the child and focusing on removing the “John” and the trafficker, we have to remove the vulnerability. That occurs when we are being supportive, looking at them as individuals, identifying what their needs are as individuals, what their situation is, and what their vulnerabilities are as individuals.

BASKIN: I am an attorney and Co-Director of the Sex Workers Project at the Urban Justice Center in New York.³ We were founded in 2001. We provide legal and social services to anyone who has been involved in commercial sex or the sex trade. We operate from a human rights and harm reduction perspective. This means we come to the work with the assumption that everyone has rights no matter what they have done or have experienced, and that we should be meeting people where they are at—letting them identify the harms that they are experiencing in their lives and trying to reduce those harms. We work with all sex workers, including people that have done prostitution, or traded sexual

³ SEX WORKERS PROJECT OF THE URBAN JUSTICE CENTER OF NEW YORK, <http://sexworkersproject.org/> (last visited May 22, 2015).

conduct for a fee or something of value, and people that have worked in exotic dancing, fetish, or porn. We work with people of all ages and genders. Our clients engage in sex work for a variety of reasons. We look at that as a spectrum of choice, circumstance, and coercion. So, we work with people who choose to do sex work, we work with people who did not really have any other options—their circumstances were such that sex work was the only way they could make ends meet—and we work with people who were coerced or forced into commercial sex. Many of our clients have been at various points on that spectrum at different times in their lives.

We work with survivors of trafficking into commercial sex. I like to use this term instead of “sex trafficking,” because sexual violence is common in trafficking that occurs with other forms of labor, so I think that the term “sex trafficking” is confusing. The definition of trafficking into commercial sex under federal law is different if you are an adult or a child. If you are an adult, you are trafficked if you are forced, coerced or defrauded (tricked) into engaging in a commercial sex act. If you are a minor, then you are trafficked if you are induced into engaging into a commercial sex act. What I have come to realize through doing this work and working with this definition, is that trafficking is both a very real phenomenon, and it is also a construct. It is a real form of abuse that people suffer. I carry a lot of those stories with me after doing this work for seven years. But it is also a construct that we have created. We have put certain things inside the definition, we have left certain things out, and we have made some political decisions in doing that. I just want you to keep that in mind as we talk further about trafficking.

When we work with survivors of trafficking, we pursue the legal remedies that are available to them. If you are an immigrant survivor of trafficking, and you do not have immigration status, that might mean pursuing a T visa. A T Visa is a special visa for victims of trafficking which requires that you cooperate with reasonable requests from law enforcement in the investigation of your trafficker. So, it is actually part of the structures around violence against women that we have been talking about today; it is a law enforcement tool but it also gives someone something they desperately need—immigration status. We also work with survivors on the collateral consequences of their own criminalization, their own criminal records of being arrested and prosecuted—mostly for prostitution, but sometimes for a lot of other things as well.

In our work with sex workers, we work on a range of legal issues. Sex work comes up in many areas of law, not just criminal law. Sex workers are just generally excluded from everything. Sex workers come to us and say, “You know, I’m actually doing a legal form of work. I’m

working at a strip club, but I have no labor rights as an employee. How do I pursue those?" Or they say "I don't know how to pay my taxes," or "I don't know how to respond to the fact that I've been victimized and I want to get help from the system but I know that I will then be arrested." So, we work on all of these ways in which people who have engaged in commercial sex are excluded from rights that others have. We also provide social services; clinical therapy and case management. Our clients can receive free therapy and talk about whatever they want to talk about.

I wanted to talk about the topic of sex work and human trafficking in the context of this conference. We have been talking about all the traps we have fallen into in pursuing remedies for gender violence. And the traps in the area of human trafficking are deep and wide. Partly, that is the case because we see the sex trafficking survivor as this most victimized victim. Just hearing their stories creates an emotional response, especially for women, and this desire for some kind of swift justice, and a need to find some enemy upon which to exact punishment. Justice is important. We need a rule of law around human trafficking, and my work would be impossible without some rule of law including consequences for traffickers and remedies for victims, however, I have also seen that the desire to punish traffickers has led to a lot of bad policy. So much so that we probably spend as much time responding to bad anti-trafficking policy as we do responding to trafficking.

I want to give some examples of policies that I think have been really harmful, even if the supporters were well-meaning. The first kind of policy is based on the idea that if we can just eliminate prostitution, then we can eliminate trafficking. There is this idea that we just need to arrest everyone involved in sex work, and then trafficking and abuse that happens within sex work will go away, too. For example, every time there is a Super Bowl or another large sporting event around the world, there is a lot of talk about it being a magnet for sex trafficking—that people are going to be forced and coerced and physically brought to this location to service all of these sports fans.⁴ I have read the research, and this is just not true. There is human trafficking going on all the time in a lot of different places. There is also sex work going on all the time in a lot of different places.⁵ But the research has not borne out a huge increase

⁴ See, e.g., Eleanor Goldberg, *Super Bowl Is Single Largest Human Trafficking Incident in U.S.: Attorney General*, THE HUFFINGTON POST (Feb. 3, 2013, 9:04 AM), http://www.huffingtonpost.com/2013/02/03/super-bowl-sex-trafficking_n_2607871.html.

⁵ See POLARIS PROJECT, *Human Trafficking is a Problem 365 Days a Year*, <http://www.polarisproject.org/take-action/365-days> (last visited February 6, 2015); GIRLS EDUCATIONAL & MENTORING SERVICES (GEMS), *365: How the Focus on the Super Bowl*

in sex trafficking around this particular thing—the Super Bowl. This year, in New Jersey, the media attention led to a huge increase in prostitution arrests that were framed as “cracking down on trafficking.”⁶ There are normally around 300 arrests in a whole year for prostitution in Manhattan; in Manhattan in January, there were 100.⁷ It might seem very obvious that we do not want to arrest sex workers or people that may possibly even be victims of trafficking in an effort to crack down on or prevent trafficking, but that is exactly what happens.

Another problem is policies that promote efforts to “rescue” trafficking victims that are very harmful to both trafficking victims and sex workers. The “raid and rescue” model is in operation in the United States but it is also a model that the United States promotes around the world. It is basically a law enforcement operation that combines the law enforcement tactic of a “raid” or a surprise attack on a location to find criminals, with a goal of “rescuing” the victims of crime. Law enforcement already does raids to find undocumented immigrants in homes or workplaces, and raids of brothels to arrest sex workers. But they also do raids to find trafficking victims and rescue them. In our research we have found that these operations cause so much trauma to the survivors, that in some cases they find the raids more traumatic than the trafficking itself.⁸ Unfortunately, law enforcement is not necessarily well equipped to handle these situations in a way that is sensitive, let alone, leading to some kind of empowerment or healing.

A third kind of policy that is really problematic is more complicated to describe. I think that the desire to end trafficking, which is genuine and important, has led to a de-investment in sex workers rights. It is very sad because in every other industry there is a general understanding that improving the working conditions and human rights status of everyone in that industry is going to help people that are being the most abused. But for some reason this has not been applied to sex work. The struggle for sex workers’ rights is so important for trafficking survivors. I know, for example, that many of my clients who were survivors of trafficking were helped out of their trafficking situations by sex workers. Sex workers

Hurts Trafficking Victims (Jan. 21, 2014, 12:04 PM), <http://www.gems-girls.org/shifting-perspective/365-how-the-focus-on-the-super-bowl-hurts-trafficking-victims>.

⁶ Marina Lopes, *45 Arrested, 16 Juveniles Rescued in Super Bowl Prostitution Bust*, REUTERS (Feb. 4, 2014, 2:19 PM), <http://www.reuters.com/article/2014/02/04/us-nfl-superbowl-prostitution-idUSBREA131BB20140204>.

⁷ Kate Mogulescu, *The Super Bowl and Sex Trafficking*, N.Y. TIMES, Feb. 1, 2014, at A23, available at http://www.nytimes.com/2014/02/01/opinion/the-super-bowl-of-sex-trafficking.html?_r=0.

⁸ See SEX WORKERS PROJECT, *THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS* (2009), available at <http://sexworkersproject.org/publications/reports/raids-and-trafficking/>.

who are working by choice, or who have more agency are well placed to find people who are in really bad situations and help them, but this is true only if sex workers are supported and have access to rights themselves. Unfortunately, there is little understanding of the linkage between the rights of sex workers and the rights of trafficking survivors.

The final policy which I wanted to raise is the growing focus on and heightened criminalization of men who purchase sex. These campaigns often go under the rubric of “End Demand” and rely on the idea that (a) only men pay for sex and only women or girls sell sex; and (b) men who pay for sex are fundamentally deviant and are probably pedophiles or rapists. The basic premise behind these ideas is that to end human trafficking, we must make sex work itself unthinkable. The reason that is that is so problematic is because the stigma against sex workers is often what keeps trafficking survivors in trafficking situations. Traffickers use that stigma against their victims. I was just reading an affidavit by one of my clients and she quoted her trafficker saying, “Once a ho, always a ho.” The stigma against sex work allows traffickers to say, “You can never get out; you can never be whole; you’re broken and you’re ruined.” So while the goal of increasing the stigma against sex work may be to keep people out of the sex industry, it can also keep people in bad situations because the stigma suggests that you cannot go from being a sex worker or survivor to being anything else.

I want to propose some other premises we can be working from, instead of these premises that have been harmful. In one of our most recent reports, we looked at people who are trafficked into commercial sex from Mexico, which is a large portion of our clients. We asked them in our interviews, “What would have made the difference for you? What would have helped prevent you from getting into this situation in the first place?” We were curious what they thought about that question, because there has been a lot of money spent to try to find prevention techniques. All those who answered the question said the same thing: “As a child I needed more knowledge about the world, and more education about sex. I needed to know more about sex and about violence and about drugs and about how the world operates. I was very naïve.”⁹ Obviously there are other factors that made these people vulnerable to trafficking, but that is the one they identified. This is very different from the idea that we need to stigmatize sex work so that no one will do it. Survivors said they actually needed to know more about it so that they were prepared for these potential abusive people that were coming into their lives.

⁹ See SEX WORKERS PROJECT, *THE ROAD NORTH: THE ROLE OF GENDER, POVERTY AND VIOLENCE IN TRAFFICKING FROM MEXICO TO THE U.S.* (2012), available at <http://sexworkersproject.org/publications/reports/the-road-north/>.

To end human trafficking we need to stop looking for these nice, quick, easy solutions that we wish were there. It is these more complicated, less sexy, more long term solutions that will get us there. It is about understanding how human trafficking is intertwined with poverty; with the stigma and degradation of LGBT people, women, young people, and people of color; about the relationship between human trafficking and other forms of violence; and about the relationship between human trafficking and the lack of any other immigration option for people who are trying to leave their home country. We need to talk about these ideas. We also need to create a safe space for sex workers. I hope that this is what we have done with our organization. Anyone involved in commercial sex for any reason is welcome and I think this is why we have been able to do the work that we do.

AHMED: I am going to speak today about how anti-trafficking efforts are undermining HIV best practices. I hope to explore a series of questions: Why has the anti-trafficking movement become so counterproductive for sex workers? Finally, how do debates on trafficking travel and impact women in countries heavily impacted by HIV?

I thought I would begin by giving a little bit of history and context on the issue of feminism, sex work, and HIV. When HIV was first discovered in the 1980s, the initial response was almost universally coercive and stigmatizing towards the communities that were at high risk for contracting HIV. In the United States HIV conservative politics and perspectives silenced an effective HIV response.

Sex workers were a group impacted by the HIV epidemic and were seen to be a “vector” population in the context of HIV. Building off of earlier activism, sex workers organized in response to this characterization. One of these early efforts included the founding of COYOTE¹⁰ (Call Off Your Old Tired Ethics) in the 1970s in San Francisco. As HIV increasingly impacted sex workers, activists began to ask “How can we make sex work safer?” This drew on philosophies from “harm-reduction” which did not seek to eradicate the risky behavior (i.e., drug use or sex work) but instead work to minimize its harm.

Global Network of Sex Worker Projects¹¹ (NSWP) was founded in 1990. NSWP advocated for sex workers rights in various international institutions including the United Nations. They actively sought to reframe sex workers as victims of, as opposed to vectors, the HIV

¹⁰ See, Aziza Ahmed, “Rugged Vaginas” and “Vulnerable Rectums”: *The Sexual Identity, Epidemiology, and Law of the Global HIV Epidemic*, 26 Colum. J. Gender & L. 1 (2013).

¹¹ *Id.*

epidemic. Further, they sought to acknowledge the important role that sex workers played in curbing the HIV epidemic, through acting as peer educators and building collectives of sex workers.

For example, the Brazilian government had a very successful response to the HIV epidemic in part because they supported sex worker organizations. Because of HIV prevention funding, many sex worker led groups were able to coalesce and come together and really work to develop a more powerful sex worker movement. You see this in India with organizations like Durbar Mahila Samanwaya Committee (DMSC)¹² in Calcutta and Sangram in Sangli.¹³

While individual feminists were engaged in the HIV response, feminist ideas were not shaping the response in a large way at the start of the epidemic. It was seen as a gay man's illness and, in turn, it was not a movement issue for feminism until the 1990s. In fact, in the early part of the HIV epidemic it was believed that women could not contract HIV at all. This is perhaps exemplified in a Discover magazine article from 1985 that described women's vaginal walls as "rugged" and resistant to contracting HIV, while men's rectums and urethras were described as vulnerable and fragile respectively.¹⁴

This changed, however, when women began presenting with HIV. Feminists began to engage more—both trying to get services for women who had HIV, and attempting to understand the increasing "feminization" of the HIV epidemic. The precursor to the feminist response to HIV was the feminist women's health movement.

But the question of sex work was a much more complicated question for feminists. At the risk of oversimplifying what is a long and contentious debate in feminism, I will try and describe the contours of this feminist engagement.

Dominance feminists view sexuality as the crux of women's subordination to men. This means the sex industry is a manifestation of women's oppression to men. *All* sex workers are understood to be "trafficked" or "prostituted" women. In turn, these dominance feminists, also called abolitionist feminists in the trafficking context, pushed for decriminalizing only the selling of sex and penalizing the purchase of sex.

This "abolitionist" position was opposed to the pro-sex feminist position that supported sex workers (and included sex workers). This position looked towards labor rights. In other words, sex workers were

¹² DURBAR MAHILA SAMANWAYA COMMITTEE (DMSC), <http://durbar.org/> (last visited May 22, 2015).

¹³ SANGRAM: SAMPADA GRAMIN MAHILA SANSTHA, <http://www.sangram.org/> (last visited May 22, 2015).

¹⁴ Ahmed, *supra* note 10.

workers and they should have worker's rights. Most importantly with regard to the feminist debates, pro-sex feminists felt that there was the potential for agency in these diverse forms of sexual expression and labor. Thus, the legal prescriptions differed. Those legal prescriptions are not only to decriminalize selling sex but often to decriminalize buying sex as well.

The anti-trafficking movement has many supporters which includes celebrities, the Christian right, and abolitionist feminists. This strong coalition supports carceral interventions. Many of these interventions use the language of "raid, rescue, and rehabilitate." The raid, rescue, and rehabilitate models undermine programs that seek to empower sex workers and change the balance of power between police and sex workers.

The abolitionist position was crystalized in the response to HIV with the 2003 President's Emergency Plan for AIDS Relief¹⁵ (PEPFAR). The Bush administration passed PEPFAR in 2003. The act conflates sex work and trafficking and reflects the abolitionist position on sex work. PEPFAR contains what is known as the "anti-prostitution loyalty oath" (APLO) which required that organizations getting funding through PEPFAR have a policy explicitly opposing prostitution and do not promote or advocate the legalization or practice of prostitution or sex trafficking.

In the litigation leading up to the Supreme Court case challenging APLO, feminist organizations filed briefs on both sides. For example, Coalition Against Trafficking in Women and Equality Now filed briefs advocating for the anti-prostitution loyalty oath. Other organizations filed briefs arguing against the APLO including the Center for Health and Gender Equity, Planned Parenthood, the Center for Reproductive Rights, and the ACLU Women's Rights Projects. In 2013, the Supreme Court found that the pledge requirement was unconstitutional for United States based organizations.¹⁶

These battles replicate themselves in international institutions grappling with issues of trafficking and sex work time and again. We have seen anti-trafficking organizations push back on Amnesty International for suggesting that they may support the decriminalization of sex work and against major international HIV institutions as they

¹⁵ United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Pub. L. No. 108-25, 117 Stat. 711 (2003).

¹⁶ *Agency for Int'l Development, et al. v. Alliance for Open Society International, Inc., et al.*, 133 S.Ct. 2321 (2013) (holding that a federal requirement that organizations receiving funding under U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act expressly oppose prostitution violated the First Amendment rights of organizations affected).

advocate for decriminalization on harm-reduction grounds. These debates pit feminist organizations against HIV best practices. It is time that feminist organizations that oppose the decriminalization of sex work begin to consider the detrimental impact they are having on HIV programs, on marginalized women, as well as the activists and health educators working on their behalf.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on the Violence of the Legal System

UNIVERSITY OF MIAMI SCHOOL OF LAW

James Ptacek (moderator)^{*†}

Angela Diaz-Vidaillet

Alesha Durfee[†]

Joan Meier

Wayne Thomas

THOMAS: I am going to briefly discuss a few of the issues that I have seen in my practice of over eight years within a grass-roots organization that focuses on serving GLBTQ domestic violence survivors. GLBT refers to those who identify as gay, lesbian, bisexual, and transgender. The “Q” refers to queer or gender queer individuals. The paradigm of men as perpetrators of violence and women as victims or survivors harms those who fall outside that paradigm. In terms of accessing police, one of the things that is pretty common in my case load is mutual arrests of same sex couples. Generally, the police have been

[°] This transcript has been edited from its original transcription for clarity.

^{*} James Ptacek is a Professor of Sociology at Suffolk University in Boston and Director of the Master’s Program in Crime and Justice Studies. Angela Diaz-Vidaillet is the Chief Executive Officer of Victim Response, Inc. in Miami and the Chair of the Florida Coalition Against Domestic Violence. Alesha Durfee is an Associate Professor in Women and Gender Studies at Arizona State University. Joan Meier is the Founder and Executive Director of the Domestic Violence Legal Empowerment and Appeals Project and Professor of Clinical Law at George Washington University Law School. Wayne Thomas is a staff attorney with the Massachusetts Department of Transportation.

[†] Original remarks from the CONVERGE! conference omitted. Alesha Durfee’s remarks were redacted as she contributed to the following essay: Alesha Durfee, “Usually it’s Something in the Writing”: *Reconsidering the Narrative Requirement for Protection Order Petitions*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 469 (2015).

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trained through decades of advocacy by the movement to take some kind of response to a physical domestic violence incident—and mostly that action is to make an arrest. Sometimes they arrest the wrong person. My experience with heterosexual couples is that generally, it is the man who is arrested. When police come across a same sex relationship, that is where they say, “I don’t know how to analyze the situation,” and they make a dual arrest. Or they may decide they are going to do nothing at all. Even when there are injuries sustained by one or both of the parties, they do not arrest. Maybe they are looking at the individuals in terms of their size, their behavior, and they say “We can’t decide who did what here, so we’re just going to leave them alone”, or “We’re going to arrest them both and let the court system figure this out.”

Another problem with lack of arrests is underestimating the threats posed by lesbian perpetrators of violence. Here is an example. I had a client who had a female abuser. This individual came to my client’s house one day, she was on drugs, and she took a syringe and stabbed my client in the head with a syringe. The police arrested the perpetrator. Then the district attorney had an opportunity to try to hold her without bail and have a dangerousness hearing, but the prosecutor chose not to. The prosecutors decided that they did not see a threat in the situation. Later, after my client got a restraining order, the same perpetrator came to her house; she came many times. The police generally did nothing about it. The perpetrator finally overdosed on the floor in my client’s apartment. The EMTs were called and the police came and they never even wrote up a police report about this violation of the restraining order because they continued not to perceive this person, who had stabbed my client with a syringe in the head, as a threat to my client.

My clients who are transgender sex workers have had problems accessing police protection. Because of a lot of the discrimination they face, transgender individuals (especially transgender women), turn to sex work. They have a distinct relationship with police who might have arrested them in the past. When they turn to the police for assistance with abuse, they have largely been ignored because they are seen by the police as a criminal—a sex worker—who therefore is bringing on whatever kind of abuse they have encountered.

I want to talk about courts. There is clearly an issue of gender stereotyping in courts that, I think, benefits heterosexual women. I completely acknowledge that there are a lot of victims or survivors in the system that are screwed over by the court system—women who deserve restraining orders, deserve criminal prosecutions, and who are not getting that. But I think there is an even higher burden for GLBT survivors and this affects heterosexual men, as well. One example that will always stand out to me is a case involving an immigrant man. Both he and his

wife are from an Asian country. Neither of them spoke English. They have three adult children. He tried to get a restraining order against his wife for chasing him around the kitchen and the house with a knife. All three children (he filed a police report) came in and testified on his behalf in the restraining order hearing, but the judge was not convinced. She was not going to give the restraining order as long as the wife was denying that she had done this. The wife started to cry. Before the hearing the children told me, “she’s going to pass out at some point because she’s just acting.” The wife did pass out. She got a little bit of medical care and we resumed the hearing. It was not until the wife claimed that her husband was not working and was a deadbeat, that the judge changed her mind. The husband pulled out his tax returns. He was able to show that he made \$12,000 the year before. That was the clincher for us. We finally did get the restraining order, but the burden on him to show that the wife was lying was so much higher than I had ever seen for my other clients—especially higher than for some of the heterosexual women that I have represented in my work.

So, on the flipside of that case, I worked with an immigrant woman from Africa. Her boyfriend was an immigrant from Russia. Both sides were represented by counsel. It was basically her word against his. She never got a police report and had no evidence of abuse. He denied the charges. They were both pretty credible witnesses. I did not expect us to prevail in this protection order hearing because the burden of proof was on her as the moving party. The judge granted the order and the opposing counsel said, “Your Honor, why are you granting the order?” My client was crying and the judge said “Well, look at her. She’s scared. She’s scared of something, so that’s why I am granting the order.” So while I think it was the right thing for my client, I am concerned about the double standard that is sometimes present in court cases.

I also want to talk about the way the movement has had an effect on the court system. While the court system still is failing heterosexual women, the courts ignore discrimination against men in the provision of domestic violence and sexual assault services. In Massachusetts, all the organizations that provide services that are funded by the state receive state money and they are told you cannot discriminate. Despite this, I believe that roughly 70% of the programs still refuse to serve men in all of their services, or at least in some of their services. Most programs are not going to shelter men. Some services are going to turn men away or they might put up some obstacles for lesbians or transgender individuals getting into the service. I have had a number of clients over the years who have been questioned at length about their gender identity and what kind of sex organs they have at the time. So, there are a lot of obstacles.

Generally speaking, the Boston area is pretty revolutionary compared to the rest of the country in the fact that we now have twelve mainstream programs that focus on serving women who are now also serving men—who are sheltering men. Still, those programs are in the minority and, on the state level. There is nothing being done about this discrimination. I am currently litigating a case on behalf of a gay, male survivor of domestic violence who was physically assaulted to the point where he had broken bones in his face and needed reconstructive facial surgery. His advocate at a mainstream domestic violence program—he was the first male survivor they ever sheltered there—turned to an organization that holds half a million dollars of free surgery services for battering victims. But the organization refused to assist her client because they do not serve men. So, this is not in a shelter situation, or a support group situation, where someone might argue that women who are victims of violence need their own space. This was not a space issue, either. This was a program that said we only want to serve *women* who have been disfigured by violence. That is a case we are currently litigating in Massachusetts to see if the court is going to essentially allow a denial of healthcare services to continue or if the court is going to make a statement that survivors, regardless of their sexual orientation, gender identity, or their sex, should have access to the services.

A lot of shelters in Massachusetts not only are discriminating against male-identified individuals and transgender individuals who are accessing services, but they are also denying access to women who are trying to get into a shelter with teenage boys. They are concerned about the impact that teenage boys will have on the shelter and whether they are going to become violent. The messaging that this policy has on those teenage boys and even on their mothers concerns me. I think the battered women's movement risks losing support from men when it turns on teenage boys who may have never perpetrated any violence against anyone. This exclusion also ends up causing more violence through a kind of a re-traumatization of their mothers who are trying to access services and happen to have a son. Thank you.

MEIER: Hi everybody. I am delighted to be here and it is great to be a part of this really interesting panel. I have been teaching law students and working with survivors for over twenty years at a law school and also outside the law school. I am perhaps a troglodyte at this conference because I believe in the legal system. I have seen it as a place to seek justice and I have seen getting justice as one of the most powerful ways we have to heal survivors and rectify the harm of abuse. But, I must also acknowledge that my belief in the legal system, or at least an *ideal* of the legal system, has been sorely tested in my work in the courts and in particular in my work with parents, usually mothers, who are trying to

protect their children from the other parent in the context of custody litigation. What I want to talk about today builds a bit on the discussion of how trauma impacts survivors—but I want to expand the lens to how trauma impacts *us* as advocates, lawyers, and helpers—people who are actually *taking action alongside our clients* in the system. This is really about multiple layers of trauma, and how the system re-victimizes us along with our clients.

To start from the beginning, we know that one of the things that is so hard about domestic violence is how trauma affects survivors and impairs their ability to tell their story—to tell it in a way that will be heard by a judge. They also deal with having to tell their story more than once, and just being in the courtroom environment can be traumatic. We see this refracted throughout the system in all kinds of cases. Slowly, the legal profession, which has never been very skilled at talking about feelings or acknowledging that there are feelings that matter has started (long after the psychological professions) to recognize that trauma actually impacts us as professionals, as well. Thus there has been a growing recognition among lawyers of vicarious trauma.

The idea of vicarious trauma is that when we are working with trauma survivors their trauma rubs off on us, even though we were not directly victimized. This is and particularly true if we repeatedly work with people who have experienced trauma. As a result, we can start to share some of the symptoms of trauma—but it is considered *vicarious* because it is all secondhand from our clients' direct experience of trauma. There is a growing literature now in the legal world about vicarious trauma, how it affects us as lawyers and advocates, what we should do about it, how to take care of ourselves with respect to that, etc. And this is really important—not just because every individual is important as a human being—but also because if we really want to help survivors and try to change the abuse that is going on and improve the system, our effectiveness is undermined by vicarious trauma. This can become a perfect parallel to the ways our clients' effectiveness is often undermined by their trauma. So—like our clients we become more reactive, we become less judicious and wise about our choices, and we become less capable of being our most effective selves in all kinds of ways. I think that is very relevant to the critiques of judges in domestic violence cases: A lot of the problematic behaviors we see in judges are probably a function of vicarious trauma as well. Vicarious trauma really matters and we need to know about it, and I teach my students about it and everybody is really, really grateful to learn about it.

Vicarious trauma was invented by psychologists, Pearlman and Saakvitne,¹ based on their work with survivors. It was vicarious, not because they were directly being traumatized, but because they were talking to people who had been traumatized. That idea of “vicarious” is very removed from the system because psychologists typically are very removed from the system.

But what lawyers and advocates and those of us who go to court with our clients do is not so removed from the system—and in that way I think it is very different from vicarious trauma.

I will tell you the story that started me thinking about this. This was a case over ten years ago that I was working on with a law student. It was a very difficult case, with a horrific history of violence. Our client was a mother with three kids by three different men and the older one was in custody contention with the abusive father. We had been litigating a contempt case for violations of a protection order, but the trial could not be completed until after the summer. So we were back in court to discuss the abuser’s visitation rights with the parties’ young son. On behalf of the client, I started to recite the ways this boy, who was about seven or eight, had behaved after spending time with his father. When he came home from a visit, he would kick the walls, he would be verbally abusive to all women, and he would say he wanted to die. I recited this litany of destructive behaviors that appeared to be a consequence of visitation with the abusive father. The judge looked at me and said, with enormous venom, “Where did you get this from? The *mother*?” The mother was, of course, standing right next to me. Within five minutes she gave up custody of this boy to the abuser.

We could do a whole conference about this case in terms of its impact on the survivor herself, but I am going to limit myself here to its impact on me and my student because I think that the way it impacted us is impacting lawyers and advocates all the time in similar situations.

First, my student who is a phenomenal lawyer now—and always has been—stepped up and agreed to walk the child over to his father for the hand-off so that the mother did not have to do it. She was beside herself having to do this. (The silver lining is that the father was very loving as he received the son which made us feel a little better—at least in that moment.) But after what felt like judicial abuse of me in the courtroom, I went home and—I will be honest—sat in a dark closet for some time. I could not stand *being*. I think that this is a little experience of what direct

¹ LAURIE ANNE PEARLMAN & KAREN W. SAAKVITNE, TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS (1995).

abuse is like. I imagine that when you are directly physically or sexually abused, there is a sense of wanting to utterly disappear—and that was how I felt. I had a sense of despair, hopelessness, helplessness, and shame for having this happen on my watch. I am supposed to be the good, strong advocate who protects people, and this is not what I became a lawyer for. This is not why I went into domestic violence work. Why would I be doing something like this? It could not be more contrary to my reasons for being a lawyer and doing what I do. So, ultimately, not right away, but ultimately, I got out of direct service. This case sort of put me over the line—and there had been other abusive experiences in court that had contributed to that. For instance, I had seen my students become so demoralized by working in this setting that they were coming away hostile to domestic violence work. Reality is one thing, but it is not helpful when you are just learning the profession, to start there. You have got to have a foundation of principles, beliefs, and probably idealism, before you can incorporate or integrate the bad news, I think. So, as a teacher doing this did not make a lot of sense to me.

I got out of it, and since then I have done very different things, including appellate work, trainings for system professionals, and policy advocacy. It has been very rewarding. This work is not always successful. I still deal with vicarious trauma, but what came out of this experience and others was the realization that the trauma that lawyers and advocates suffer in these settings, in these abusive court settings, is not vicarious, *it is direct*. But it is not direct in the sense of physical or sexual abuse. It is something in between “trauma” and “vicarious trauma.”

I am still working on names for this concept—and I welcome your input. Here is what I have come up with so far. It could not be “litigation trauma” because litigation abuse and litigation trauma is something our clients experience too. This needs to be specific to the experiences of professionals being disempowered, demoralized, and abused by system players because we are allied with the survivor. It is something specific to our identity as lawyers or advocates. I thought maybe “professional trauma” captures it because I am sure this applies to social workers who go to court and testify. And it applies to advocates who speak or play an active role in the system. What I have landed on is “advocacy trauma” because I think the point is that it is our very active advocacy on behalf of a survivor that subjects us to abuse by the system.

Let me close by saying a couple of things. First of all, I am hoping to write this up and I am hoping to write it up with a psychologist because I want to get some expert input into the psychological framework within which to place this. I am hoping that getting it out to the world will help more of us become aware and thinking about it. But obviously what is

even more important is for us to figure out what to do about it and what the solutions might be. One solution, in some ways a big part of this conference, is to take the position “to hell with the legal system. It is a disaster, and it is just replicating the abuse we are trying to end.” There is certainly truth to that. But I am not the person to take that position for a lot of reasons. First, I do not think we have a replacement yet for the legal system. I have not figured out how we can do some kind of justice that does not depend on a legal system. And we are always going to have human beings implementing whatever system we design, and it is the people behaving abusively for all kinds of reasons—one of them is vicarious trauma—that is the problem. It is the people as much or more than the “system.” I could be wrong about, that but that is sort of where I start. I do not want to walk away from the legal system.

One other thought I have had for many years, I would like to see us build a network across the country, and possibly globally, of those of us who work in a professional capacity with survivors and who are struggling with what that is like. To create our own support network—which is an important antidote for vicarious trauma and for trauma—you need to plug back into a community that holds you, supports you, recognizes you, and validates your experience. I think we need that as professionals, too. We find it in our small places like in our places of work or among colleagues at conferences like this, but I think we need a more systematic, recognized venue for that kind of mutual support.

Ultimately, of course, the larger challenge is working with the system to improve the way people in the system are doing their jobs. That is a huge, huge challenge, but if we had to choose one area of focus or priority, I would say focus on trauma and vicarious trauma: I think that most people in the system do not want to hurt people. Some people may hate women and may not care about children, but I do not think that is the majority. I think the majority wants to do right, but they get carried along by the system and various cultural aspects of the system, and their own trauma, and not knowing what to do. It is hard to face trauma so they (and we) do the easy thing, which is to deny it and just call it a crazy or malevolent woman’s claims. If we can find ways to support the system players to be honest about what is hard and to be in touch with what is painful and to be humane through all of that, we might be able to improve the justice that is being delivered. It is a tall order, but I think we have to do it, and I think it can be done.

DIAZ-VIDAILLET: Hi. My name is Angela Diaz-Vidaillet and I run a domestic violence shelter, The Lodge, right here in Miami. What I want to do today is tell you a story about Mary. Mary is real and obviously, I am not very creative with names. The staff at the shelter may have called her Lady Gaga, but I am going to call her Mary. It is

October 2013 and Mary is a twenty-four year old African-American female who was approximately three months pregnant when she came to The Lodge. She came with her two minor children—a three year old and a nine month old. Mary had been in a relationship where she had been abused for the last four years. We are going to call her abuser Joe. Joe is the father of the nine month old baby. In August 2013, prior to entering the shelter, Mary had filed an injunction for protection. The hearing was in September; the injunction was dismissed because, according to Mary, the judge did not think that there was enough evidence to grant a permanent injunction. If you review the paperwork, it says it was a voluntary dismissal. But nevertheless, it was dismissed. Mary did not have legal representation at the hearing. She was never advised by the clerk of courts that there were resources in the area that could assist her when she went to court for that hearing. She also disclosed that recently, on October 5th, prior to entering the shelter, she and Joe had been arguing over the nine month old, and he punched her in the face several times. Mary called law enforcement, but by the time they arrived at her house, Joe had fled. So Joe was never arrested. By the way, Joe had eight arrests for possession of marijuana, possession of cocaine, robbery and other violent crimes prior to these last two incidents of violence.

During Mary's shelter stay, she remained very focused and determined that she wanted to obtain employment, which she did, and housing. The Lodge assisted with that. We have a transitional housing program. Mary was ready to go into that program as soon as she got a lease and we were able to negotiate the payment terms with the landlord. On November 2013, while she was visiting the WIC (Women, Infants, and Children) office to get assistance, Joe found her and tried to take the nine month old baby away from her. In the process, he battered her again. She called law enforcement, they found him, and two days later they finally arrested him. She went to a pre-file conference. Here, even in misdemeanor arrests, there is a pre-file conference. (He was charged with misdemeanor battery, even though she told law enforcement that she was three months pregnant, which would have made the crime a felony assault.) We hear state attorneys complain a lot about battered women not showing up to pre-file conferences, but she went.

Still, what happened with Joe is that he got released within sixty days. We do not know what happened, but in the meantime, dependency court got involved. Why? Because maybe Mary was failing to protect her child or her children. Never mind that she was in shelter, she tried to get an injunction, she called law enforcement twice, and the guy was in jail. Well, the judge decided he was going to court order her into shelter, but we did not find this out. I want you to hear the wording of that court order. It says, "The cause came before the court on such day after

hearing from those present and it is hereby ordered and adjudged that Mary and her children should not be removed from The Lodge absent further order of the court. Any violation of this order shall be contempt.” So now Mary is a couch, she is a mirror, right? She is an object. She cannot be removed. We never were served with the order. But the judge finds out that Joe is out of jail when Mary went to court. So now he has been released. She was told by an automated system on the day that he was released. The judge was irate because Mary had exited The Lodge. Mary was living with family. Mary was waiting for her new apartment. So, the judge decided that he wanted the CEO of The Lodge there then to testify. Well, I still have not met him. You know, because one of the things that I have learned with the system is I will not bow to just anybody for any reason—especially advocating for battered women. So, my message was no, you do not want me there. So, the guy finally showed up to court a few days later.

I am going to tell you a little bit about what has happened since then. Joe broke into Mary’s new boyfriend’s home. The boyfriend stabbed him. Joe was taken to the hospital; the boyfriend was taken to jail. Joe gets released from the hospital. He goes back into the neighborhood looking for Mary, but like street justice will have it, I guess he runs into a gang that stabs him, he is in critical condition, but now the judge, in his wisdom, has given Mary permission to leave the state. This is a real case; this is not something I made up.

I am going to tell you what the good news is for Mary. She does not identify with any of the words of the alphabet LGBTQ. She has got that on her side because that would have been another layer that she would have had to deal with. She does not have a problem with her immigration status. That would have been another layer. So what I am pointing out to you is this: as bad as a case as this is, it could have been much worse. She has not been arrested—yet. *Yet*. Her children have not been removed—*yet*. And as of the last time I checked, she is still alive and Joe is in critical condition in the hospital, not in jail or prison, which is not necessarily good for Mary because his family is threatening her with death. That is why she was given permission to leave the state. But here is a woman who did everything that she could have done to be safe and to keep her children safe, and it did not work. The dependency court system did not work, the criminal justice system did not work, and our injunction system did not work.

I have been in this field now for thirty years. My first seventeen years were working with men who batter. After that, for three years, I assisted in the development of a training program for domestic violence and sexual assault in Miami-Dade County. And for the last ten years, which has been the biggest challenge of my life, I have been running The

Lodge—the domestic violence center. Through these years I have seen an incredible backlash. The more powerful the shelter movement gets (at least in Florida), the more backlash we get. I have seen abused women being ordered to batterer's intervention programs (BIP). Where there is no certification in Florida anymore because that went away a year ago. Why is this occurring? Because the shelter advocates do not report on battered women because we their communication is privileged in this state. But the BIP (Battered Intervention Program) does report. We are seeing a lot of that. The more power we get, the more it gets taken away.

I want to talk a little bit about what Wayne said. Here I sit, a woman of color, a lesbian, and I am older. I say, "Embrace the battered women's movement." It is not the movement that is causing doors to be shut down on gays and lesbians; it is the mainstream society, which is white, male, and heterosexual. We need to unite and not compete for resources, and understand that the gay male who is a victim of domestic violence is being treated no different by the system than Mary. The difference is the gender, the difference may be the race, but he is no different. Society does not hold abusers accountable, no matter what their gender or their race. It is a social issue and we need to address it that way and together—not fighting over it. Thank you so much.

“Usually It’s Something in the Writing”:
Reconsidering the Narrative Requirement
for Protection Order Petitions

Alesha Durfee*

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I. INTRODUCTION

With the people that I’ve taken, if they get denied [a protection order] . . . usually it’s just something in the writing. If you didn’t express enough, there wasn’t enough of a description of why you’re in danger or why you—it just wasn’t clear. It’s usually how they write it.¹

Domestic violence civil protection orders (“POs”) (also called protective orders, restraining orders, protection from abuse orders, and relief from abuse orders) are intended to increase victim safety by

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¹ Advocate interview 4/18/2013 for Alesha Durfee & Jill Theresa Messing, LEGAL MOBILIZATION AND INTIMATE PARTNER VICTIMIZATION, NATIONAL SCIENCE FOUNDATION (Grant No. 1154098).

prohibiting contact between a victim and abuser.² Should an abuser violate the terms of the PO, the abuser can be arrested and prosecuted for that violation. Unlike criminal no-contact orders or criminal charges (where the victim is not a party to the case), POs are civil orders—thus victims initiating the PO process can request differing levels of protection depending on their specific needs and can ask to have an order dismissed at any time. Furthermore, victims filing for POs need not cooperate with law enforcement, pursue the arrest of their batterers, or assist with a criminal prosecution in order to qualify for an order, which are requirements of the U visa program.³ Finally, and perhaps most importantly, victims cannot violate a PO when they are the protected party. This means that even if they initiate contact with the abuser, they cannot be arrested or prosecuted for violating that order. This component is often misunderstood by victims and abusers frequently take advantage of that confusion, threatening to contact the police and have the victim arrested for violating the PO if they do not comply with the abuser's demands.⁴ Only the respondent (the “abuser” or “defendant”) can be arrested for violating the order.

For a PO to be issued, a “preponderance of the evidence” must show that the respondent has committed an act of violence against the petitioner (“victim,” “plaintiff,” or “protected party”) that meets the legal definition of domestic violence in that jurisdiction.⁵ There are many reasons why meeting this burden is difficult for victims.⁶ As acts of domestic violence often occur in private, there may be no witnesses to

² For more information about civil protection orders, see NAT'L CTR. ON PROT. ORDERS & FULL FAITH & CREDIT, BATTERED WOMEN'S JUSTICE PROJECT, INCREASING YOUR SAFETY: FULL FAITH AND CREDIT FOR PROTECTION ORDERS (2011), available at http://www.bwjp.org/files/bwjp/files/IncreasingSafety_031411_Web.pdf.

³ See 8 U.S.C. § 1101(a)(15)(U)(III) (2012) (provision within the Victims of Trafficking and Violence Prevention Act of 2000, providing lawful status to noncitizen crime victims—including victims of domestic violence—who are assisting or are willing to assist the authorities in investigating crimes).

⁴ See CAROLYN HAM, BATTERED WOMEN'S JUSTICE PROJECT, INJUSTICE DEFINED: WHY BATTERED WOMEN CANNOT AND SHOULD NOT BE CHARGED WITH VIOLATING CIVIL PROTECTION ORDERS THAT WERE ISSUED AT THEIR REQUEST (2003), available at http://www.bwjp.org/files/bwjp/articles/Injustice_Defined.pdf.

⁵ See AM. BAR ASS'N COMM'N ON DOMESTIC & SEXUAL VIOLENCE, STANDARDS OF PROOF FOR DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOs) BY STATE (2009), available at http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards_of_Proof_by_State.authcheckdam.pdf (provides information on the standards of proof each state requires in protection order cases).

⁶ See Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7 (2009); JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES (1999); Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “The Truly National and The Truly Local,”* 42 B.C. L. REV. 1081 (2001).

corroborate the victim's allegations. Additionally, victims may not report the violence or seek treatment from a health care provider and thus not have any external documentation.⁷ Finally, victims must navigate a bureaucracy that uses specialized language and specific procedures—for example, they must know the definitions of “petitioners,” “respondents,” and “service”—all at a time where they are traumatized, sleep deprived, and have more basic needs to meet such as shelter, food, clothing, and safe transportation to work, school, and/or court. All this occurs in a system where access to legal representation for civil cases is not guaranteed (though the defendant may have legal representation in a concurrent criminal case), the cost of a family court lawyer is prohibitive, and civil legal assistance programs are severely underfunded and cannot represent all victims seeking orders.⁸

In response to these problems, there have been a number of significant changes made to the PO process, including the ability of petitioners to file for an order *pro se*⁹ and a lower evidentiary requirement for POs than in criminal cases (most states that specify a burden of proof in their legal statutes use a “preponderance of the evidence” as the threshold).¹⁰ Perhaps most importantly, in almost every state petitioners are “allowed” (but also *required*) to write a “narrative of abuse”—a section where victims, often in their own words, describe the abuse they have experienced and why they feel they need a PO.¹¹ A

⁷ See Jacqueline C. Campbell & Linda A. Lewandowski, *Mental and Physical Health Effects of Intimate Partner Violence on Women and Children*, 20 PSYCHIATRIC CLINICS N. AM. 353 (1997).

⁸ See generally LEGAL SERVICES CORP., LEGAL SERVICES CORPORATION: 2012 ANNUAL REPORT 2, 18 (2012), available at <http://www.lsc.gov/about/annual-report> (“In 2012, the number of Americans eligible for LSC-funded legal assistance reached an all-time high, more than 61 million, while LSC’s congressional appropriations fell to \$348 million, an all-time low in inflation-adjusted dollars.”) (reporting that family law cases represented about one-third of the cases closed by Legal Services Corporation each year and highlighting legal services provided to victims of domestic violence).

⁹ See, e.g., *Pro se*, BLACK’S LAW DICTIONARY (9th ed. 2009) (defining *pro se* as “[o]ne who represents oneself in a court proceeding without the assistance of a lawyer”).

¹⁰ See AM. BAR ASS’N COMM’N ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 5; see also Helen Eigenberg et al., *Protective Order Legislation: Trends in State Statutes*, 31 J. CRIM. JUST. 411 (2003).

¹¹ Alesha Durfee, *Equal Access to Protection? Variations in State Protection Order Forms* 15 (Apr. 2015) (unpublished manuscript) (on file with author). A 2014 review of forty-nine state protection forms available online indicated that only two state forms did not include a section for a narrative of abuse on the protection order petition (Vermont and South Dakota). Seventeen states (35%) allowed petitioners to check a box indicating the type of abuse experienced, but also required a narrative description of the abuse. Thirty states (61%) required a narrative, but did not have boxes available for petitioners to check. The space on the forms allocated for these narratives ranged from less than one

judge can then grant an order based on this narrative. From an outsider's perspective, this part of the form is deceptively simple in that a victim describes what happened, the judge reads the form, and if the person is found to be a "real" victim an order is issued. Through these and other "victim-friendly" adaptations, POs are now considered to be "accessible" to all domestic violence victims.

Yet previous research indicates that the PO process continues to reproduce broader social inequalities, even when "victim-friendly" procedures and policies are implemented.¹² One of the reasons for this is that these "victim-friendly" policies, procedures, and adaptations are based on a series of unstated and often invalid assumptions about victims of domestic violence. The assumptions concern legal status, language ability, education level, attributions for abuse, beliefs about which forms of violence are the most severe, "appropriate" victim responses to abuse, safety priorities, and whether the victim wants to terminate the relationship. While these assumptions are true of some victims, they are not true of all victims, and thus the current process has led to differential outcomes for some groups of victims, including an increased likelihood that the judge will deny various components of the PO request or dismiss the PO altogether.¹³

One of the points in the process where disparate outcomes emerge is in the creation of the narrative of abuse. It is difficult, at first, to see what could be problematic about asking a petitioner to describe why they need an order and then adjudicating the case based on that answer—in fact, it may appear that this is the most "victim-friendly" approach in cases of domestic violence where petitioners do not have legal representation. But this approach relies on a series of assumptions about domestic violence victims that are not true of all petitioners who have experienced domestic violence or in all protection order filings. For example, assumptions that domestic violence victims want to testify in a public setting about the abuse they have experienced, that they are able to vocalize/write what they have experienced, that they have enough distance from those events that they can fully discuss them, that what is most traumatizing to them is also what is legally relevant to a protection order filing, that they have specific information like dates, times, case numbers, etc., that the reason for seeking a PO is the most severe act of abuse a petitioner has experienced. As these assumptions about petitioners are implicit, rather than explicit, any failures of petitioners to successfully obtain protection

line (South Carolina) to a full page or more. State forms for New Jersey and Wyoming were not available for review at the time of data collection.

¹² See Durfee, *supra* note 6.

¹³ *Id.*

orders are attributed to the merits of the individual case instead of a systemic problem in the protection order process itself.

If the narrative of abuse element of the PO petition is not the best way for all petitioners to provide testimony to the courts, what other options might states consider? I argue that in cases where the petitioner has external documentation of abuse, such as police reports or medical records, the narrative requirement should be waived. Instead, petitioners should be allowed to submit their external documentation to prove the allegations of domestic violence by a preponderance of the evidence in order for a PO to be granted. In cases where the petitioner does not have external documentation of the abuse, they should be allowed to check boxes to indicate the form of victimization they have experienced and then provide external documentation that the abuse occurred with the PO petition at the time of the initial filing. By eliminating the narrative requirement, the courts would facilitate access to POs for all domestic violence victims, not just those who meet the assumptions described above.

In this essay, I first give a brief overview of domestic violence civil POs. I then discuss the significance of narratives to the PO process and PO hearing outcomes, the mismatch between the priorities and goals of domestic violence victims as compared to those of the legal system, and the assumption that the construction of narratives is empowering for victims. Finally, I propose an alternative to the current narrative requirement for PO petitions.

II. DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS

Although every jurisdiction in the United States has made some sort of civil protective order available to victims of domestic violence, the official term for and provisions of protective orders can vary dramatically by jurisdiction. Navigating each jurisdiction's PO process can be confusing and frustrating for victims and their families, many of whom cross state lines in an attempt to hide from their abusers. These jurisdictional differences have also led to problems with the enforcement of orders, as police officers have to first determine what type of protective order was violated before they can make an arrest, which can be difficult if the order was violated in a different jurisdiction than the one that issued it. For example, in Connecticut a protection order is issued by a criminal court prohibiting contact between a victim and abuser in an active criminal case,¹⁴ while in Arizona a PO is a civil order

¹⁴ CONNECTICUT JUDICIAL BRANCH LAW LIBRARIES, DOMESTIC VIOLENCE IN CONNECTICUT: A GUIDE TO RESOURCES IN THE LAW LIBRARY (Catherine Hogan Mozur ed., 2013), available at <http://www.jud.ct.gov/lawlib/Notebooks/Pathfinders/DomesticVi>

prohibiting contact that is separate from any criminal proceedings.¹⁵ A victim who reports a violation in Arizona of a PO issued in Connecticut is likely to get a different response from police officers in Arizona than from officers in Connecticut, simply because of the differences in names and definitions between the two states. Compounding the problem of differing terminology among states is that the substantive provisions of POs also differ by state: in addition to prohibiting contact between the victim and the abuser, in some states POs can be used to evict the abuser from a shared residence; to set temporary custody, visitation, or spousal support; and/or allow the police to seize any weapons the abuser possesses.¹⁶ Enforcing POs from other states has been highly problematic and was one of the catalysts for Project Passport (an effort to standardize orders across the United States).¹⁷

Once an order is issued, the respondent must be legally served with or notified of the PO in order for it to be valid (and thus enforceable).¹⁸ After the PO has been served, under the “full faith and credit” provision in the Violence Against Women Act (VAWA) it is enforceable in any jurisdiction in the United States.¹⁹ Full faith and credit applies to all POs, even if the victim would not qualify for an order in the jurisdiction where the order is violated. For example, an order obtained by a victim of abuse by a same-sex partner is enforceable even in jurisdictions where violence within same-sex partnerships is explicitly excluded by statute from the legal definition of domestic violence.²⁰ Orders can also vary in length

olence/DomesticViolence.pdf (explaining the difference between restraining orders and protective orders under Connecticut law).

¹⁵ ARIZ. REV. STAT. § 13-3602 (2013) (providing the grounds and procedure for granting an order of protection in order to restrain a person from committing an act including domestic violence).

¹⁶ See Eigenberg et al., *supra* note 10.

¹⁷ See NAT’L CTR. ON PROT. ORDERS & FULL FAITH & CREDIT, BATTERED WOMEN’S JUSTICE PROJECT, PROTECTING VICTIMS OF DOMESTIC VIOLENCE: A LAW ENFORCEMENT OFFICER’S GUIDE TO ENFORCING PROTECTION ORDERS NATIONWIDE (2011), available at http://www.bwjp.org/files/bwjp/files/LawEnforcement_031411_Web.pdf.

¹⁸ *Id.*

¹⁹ See 18 U.S.C. § 2265 (2012) (ensuring that a valid protection order—as defined in subsection (b) of this same provision—“shall be accorded *full faith and credit* by the court of another State, Indian tribe or territory . . . and enforced by the court and law enforcement personnel . . . as if it were the order of the enforcing State or tribe”) (emphasis added); see also NAT’L CTR. ON PROT. ORDERS & FULL FAITH & CREDIT, BATTERED WOMEN’S JUSTICE PROJECT, FULL FAITH AND CREDIT FOR PROTECTION ORDERS: ASSISTING SURVIVORS WITH ENFORCEMENT ACROSS JURISDICTIONAL LINES (2011), available at http://www.bwjp.org/files/bwjp/files/New_Advocate_031411_Web.pdf [hereinafter ASSISTING SURVIVORS].

²⁰ ASSISTING SURVIVORS, *supra* note 19, at 5.

from one day (for a temporary order) to a lifetime order; nearly all states allow victims to renew their orders prior to the PO's expiration date.²¹

The number of PO filings has dramatically increased over time, and they now constitute a significant proportion of the domestic relations caseloads in several states.²² For example, in Arizona alone, fifteen percent of all civil court filings in 2013 were requests for some sort of protective order.²³ Nationally, a recent study estimated that most metropolitan courts each process approximately 3,000 to 4,000 POs every year.²⁴ While this increase in PO filings and issuances has led to increased expenditures, Logan, Walker, and Hoyt estimate that in 2007, Kentucky saved approximately \$85.5 million in one year by issuing 11,212 POs (\$30.75 for every \$1 spent).²⁵

Even though the total number of PO filings has increased, only a small proportion of victims file for orders. Tjaden and Thoennes²⁶ found that only 17% of adult female intimate partner violence (IPV) victims in the United States filed for and received POs. One would expect that victims accessing services would have higher rates of PO use (if they are seeking one type of formal support they may be more likely to seek other formal support), but in one study only 12% of victims who had contacted police obtained a PO in the next year,²⁷ and in a separate study only 16% of victims residing in domestic violence shelters currently had a PO.²⁸ Women with children are more likely to contact the police after

²¹ *Id.*; see also Eigenberg et al., *supra* note 10.

²² See R. LAFONTAIN ET AL., EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2010 STATE COURT CASELOADS 17 (National Center for State Courts 2012), available at http://www.courtstatistics.org/other-pages/~media/Microsites/Files/CSP/DATA%20PDF/CSP_DEC.ashx (of note, civil protection orders constituted 41% of the domestic relations caseload in Missouri, 36% in New Hampshire, and 28% in North Carolina and Nebraska).

²³ *Id.*

²⁴ BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS 59 (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/216072.pdf>.

²⁵ T.K. Logan et al., *The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protective Orders*, 27 J. INTERPERSONAL VIOLENCE 1137, 1147 (2012).

²⁶ PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 52 (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

²⁷ Victoria Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 J. AM. MED. ASS'N 589, 589–594 (2002).

²⁸ Alesha Durfee & Jill Theresa Messing, *The Decision to Obtain a Protection Order Among Victims of Intimate Partner Violence: An Application of Legal Mobilization Theory*, 18 VIOLENCE AGAINST WOMEN 701, 701–10 (2012).

experiencing violence²⁹ and to obtain a PO if they have left the relationship,³⁰ most likely because women often report leaving violent relationships to protect their children.³¹ Victims with higher income and education levels are more likely to have POs,³² and white female IPV victims are more likely to engage in legal help-seeking than other women.³³ Finally, immigrant women are less likely to use legal resources and are less likely to file for a protection order because of concerns about their and their abusers' immigration status.³⁴

III. THE SIGNIFICANCE OF NARRATIVES

The narrative requirement should be a central focus of reform efforts because of the significance of narratives on PO hearing outcomes. One of the key differences between the PO process and all other legal interventions for domestic violence is the direct impact of the language of petitioners and respondents on case outcomes.³⁵ As stated previously, many victims do not have external documentation (medical records, copies of police reports, etc.) of their victimization; others are seeking PO on an emergency basis and do not have access to their records/files. In these cases, the only evidence supporting the claim that a PO is warranted may be the narrative of abuse written by the petitioner—who may be in a state of trauma, have no knowledge of the legal requirements for a PO, and who may not have access to any form of legal assistance.

To contest the PO, the respondent then files an affidavit disputing the petitioner's claims—an affidavit that, like the initial filing, is written without any legal assistance and without knowledge of the legal requirements for the entry of an order. In police reports and criminal cases legal actors paraphrase statements made by the victim and abuser and select specific quotes that best illustrate and support their claims. In PO filings, the entire document is directly constructed by the petitioner

²⁹ Amy E. Bonomi et al., *Severity of Intimate Partner Violence and Occurrence and Frequency of Police Calls*, 21 J. INTERPERSONAL VIOLENCE 1354, 1354–1364 (2006).

³⁰ Durfee & Messing, *supra* note 28.

³¹ Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

³² Durfee & Messing, *supra* note 28.

³³ Rebecca J. Macy et al., *Battered Women's Profiles Associated with Service Help-Seeking Efforts: Illuminating Opportunities for Intervention*, 29 SOCIAL WORK RES. 137 (2005).

³⁴ MARY ANN DUTTON ET AL., *USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN* (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218255.pdf>; Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, 16 GENDER & SOC'Y 898 (2002); Merry Morash et al., *Risk Factors for Abusive Relationships: A Study of Vietnamese American Immigrant Women*, 13 VIOLENCE AGAINST WOMEN 653 (2007).

³⁵ Durfee, *supra* note 6.

and respondent. And in many cases, the ability to construct a narrative determines the case outcome.

As PO filings are civil cases, legal representation and legal assistance are not guaranteed, and many petitioners and respondents navigate the process on their own. In order to make POs accessible to victims without legal representation, many states have created "victim-friendly" forms and instructions that use "everyday" language to help victims understand which forms to file, how to complete and where to file the forms, and what to expect during the PO process. These forms are available in multiple languages in order to provide access to victims with limited English proficiency.³⁶ Yet, embedded in these adaptations are three core assumptions about victims and narratives: (1) that victims share the same priorities, definitions of abuse, and goals as the legal system; (2) that given instructions, victims can write narratives within institutional constraints; and (3) that victims not only *want* to, but are *empowered* by writing their narratives. If these assumptions are not met, the petitioner may not be able to complete the PO process and/or receive a PO. Until these assumptions are critically examined and addressed, the narrative requirement will continue to be a structural barrier preventing victims who cannot construct a "legitimate" narrative for filing for and/or obtaining POs.

IV. THE MISMATCH BETWEEN PRIORITIES OF VICTIMS AND THE LEGAL SYSTEM

Yesterday was the last straw when he verbally abused me all the way home from his mother's house on mother's day . . . He did this all in front of our daughter. He told me I was a bitch, he only used me for money and sex, I'm pathetic because I have no friends, he's sorry I'm the mother of his child, and a bunch of other things I can't even bring myself to write on paper. Two weeks ago P & I got into a verbal altercation because of another girl & because of the way he speaks to me & he punched me in the back of the head twice with a closed fist.³⁷

The quote above comes from the beginning of a relatively lengthy narrative of abuse included with a PO petition, and is an example of the mismatch between the priorities, definitions of abuse, and goals of domestic violence victims and those that are assumed by the legal system and legal actors. From a legal perspective, only the physical violence

³⁶ For a more detailed discussion, see UEKERT ET AL., *supra* note 24.

³⁷ Durfee, *supra* note 6, at 19.

described by the petitioner can be classified as domestic violence (“he punched me”). In fact, if this narrative were written by a lawyer, it is likely that the physical violence would be the central focus of the narrative of abuse. The narrative would contain the date, time, and location of the action; the names and contact information of any witnesses; and what happened as a result of the “punch” (if she called police, received medical treatment, etc.). The verbal and symbolic abuse (what was said, when it was said, and the fact that it was said in front of her daughter) may be indicative of a poor relationship, but the state does not consider this to be as important as the physical violence. According to state statutes, this verbal and symbolic abuse is not domestic violence and this event would not be sufficient to merit a PO.

As this narrative was written by the victim, without legal assistance, the structure and emphasis of the narrative is very different than what would be submitted by a lawyer. According to Ewick & Silbey,³⁸ the structure of a narrative—including the selective inclusion and exclusion of events and persons and the order in which they are discussed—reveal their significance and meaning to the narrator. In this case, the petitioner first describes verbal violence (calling her a “bitch” and “pathetic”; stating he’s using her “for money and sex”) and symbolic violence (doing it on Mother’s Day in front of her daughter) and spends a greater proportion of the narrative on the description of these events. From the narrative, it appears that the verbal and symbolic violence is more traumatic than the physical violence described later in the petition and that it was the verbal and symbolic violence, not the physical violence, which caused her to file for a PO. This disjuncture between the narrative a lawyer would write and the narrative a victim would write is only one of a series of “mismatches” between the priorities, goals, and definitions of violence between the legal system and the victims that it is supposed to serve.

Furthermore, the focus of the narrative on verbal and symbolic violence (instead of physical violence) also violates social stereotypes about what “real” victims are like and how they should respond to violence.³⁹ A “real” victim would leave her abuser after experiencing an act of physical violence as severe as “punching” or “slapping”; but according to her narrative, this victim remained in the relationship for at least two weeks after being “punched.” From a legal perspective, this makes no sense—why would a “real” victim leave after being called a bitch, but not after being punched?

³⁸ See Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Towards a Sociology of Narrative*, 29 LAW & SOC’Y REV. 197 (1995).

³⁹ Durfee, *supra* note 6.

The idea that verbal and psychological abuse is more harmful than physical abuse appears frequently in narratives of abuse filed by petitioners. In a separate case, a different petitioner wrote:

I HAVE APPROXIMATELY 1 YEARS WORTH OF DATED, DOCUMENTED journal of DAILY PSYCOLOGICAL ABUSE PERSONALLY I WOULD RATHER HAVE A BLACK EYE, THAT WAY PEOPLE & OFFICIALS WOULD REALIZE THIS FORM OF ABUSE IS FAR MORE detrimental to the CHILDREN IN QUESTION.⁴⁰

As a researcher and former domestic violence advocate, I have heard victims make similar statements over and over again—that verbal, psychological, and symbolic violence is more hurtful and detrimental than physical abuse, most often because it is not viewed as “real” abuse by others (including legal actors such as police and judges). In PO filings, the allegations of a petitioner who writes that she would want to experience physical abuse severe enough to cause a “black eye” instead of “psychological” abuse are less likely to be believed because a “real” victim of domestic violence would not want to be physically assaulted. In that case, the judge denied the victim’s request for a PO. In both of these PO cases, the narrative of abuse proved more damaging than helpful, and both victims would have been better served by relying on external documentation of their abuse.

Finally, to receive a PO in Arizona (as in most states), a petitioner must have either experienced an act of domestic violence (often within a specific time frame) or have a “reasonable” fear that an act of domestic violence will occur.⁴¹ While it is “victims” who merit POs, many petitioners do not want to be perceived as victims; as Martha Mahoney notes, “women often emphasize that they do not fit their own stereotypes of the battered woman” and have a “fear” that they will be identified as a “battered woman.”⁴² Men who experience intimate partner victimization are even less likely to identify as a domestic violence victim than are women⁴³ because of what it means to be a “man” in American society.⁴⁴ I

⁴⁰ Durfee, *supra* note 6, at 20 (note that statement is exactly as written in petition).

⁴¹ ARIZ. REV. STAT. ANN. §13-3602 (2013).

⁴² Mahoney, *supra* note 31, at 9.

⁴³ Alesha Durfee, “I’m Not a Victim, She’s an Abuser”: Masculinity, Victimization, and Protection Orders, 25 GENDER & SOC’Y 316 (2011).

⁴⁴ Mimi Schippers, *Recovering the Feminine Other: Masculinity, Femininity, and Gender Hegemony*, 36 THEORY & SOC’Y 85, 94 (2007) (Hegemonic masculinity “is the [set of] qualities defined as manly that establish and legitimate a hierarchical and complementary relationship to femininity that, by doing so, guarantee the dominant

argue elsewhere that men are more likely than women to have their PO requests denied because their descriptions of themselves, their female partners, and the events described in their narratives of abuse do not conform to stereotypes about domestic violence victimization, “victims,” and “abusers.”⁴⁵ By requiring petitioners to write a narrative of abuse, the state disadvantages those petitioners who do not share the same priorities, definitions of abuse, and goals as those of stereotypical victims.

V. WRITING NARRATIVES WITHIN INSTITUTIONAL CONSTRAINTS

Because of this gap between the definitions of abuse, priorities, and goals of victims and those of the legal system, narratives filed by petitioners without legal representation are significantly less likely to result in a PO than are those filed with legal representation. PO narratives that focus on acts of violence that meet the legal definition of domestic violence, are temporally ordered, and provide specific details such as the time, date, location, and consequences of the action (the need for medical care, whether there was an arrest made or charges filed, etc.) are more likely to result in a PO than are other narratives, especially in those cases where the respondent has a lawyer.⁴⁶

Part of the mismatch between the narratives preferred by legal actors and those written by *pro se* litigants may ironically be attributable to the “victim-friendly” adaptations that have been made to the PO petition and instructions. On the PO form in Arizona, the narrative element of the petition begins with the prompt “I need a Court Order because”⁴⁷ The unstated assumption is that the reason the victim is seeking an order is the same one that the state would consider to be legally relevant to the case. However, in the petition above, the petitioner is seeking the order because of the incidents on Mother’s Day—not the events that are legally defined as domestic violence. Thus, asking the petitioner to write why she is seeking an order, but adjudicating that response according to legal standards that are not communicated to the petitioner, is not a “victim-friendly” adaptation. Instead, it provides the foundation for a system where victims are blamed for their own inability to obtain a PO.

position of men and the subordination of women.”). For discussions of masculinities, see Durfee, *supra* note 43, at 328–332; Kristin L. Anderson & Debra Umberson, *Gendering Violence: Masculinity and Power in Men’s Accounts of Domestic Violence*, 15 GENDER & SOC’Y 358 (2001); R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829 (2005).

⁴⁵ Durfee, *supra* note 43, at 328–332.

⁴⁶ Durfee, *supra* note 6.

⁴⁷ AZ. JUD. BRANCH, ADMIN. DIRECTIVE NOS. 2013–03, 2006–01, PROTECTIVE ORDER FORMS APPROVED FOR USE BEGINNING ON JANUARY 1, 2007 (2013).

A second prompt used to assist victims in constructing their narratives of abuse is the request for the petitioner to describe the "most recent incident or threat of violence and date."⁴⁸ Again, there are unstated and often invalid assumptions that justify this as a "victim-friendly" adaptation. First, the courts are assuming that violent relationships have a linear trajectory; that is, the violence gets worse over time, so the last event would be the most severe event. While this may be true of some violent relationships, research has shown that there is a wide variation in trajectories of violent relationships⁴⁹—and if the last event is not the most violent event, the judge may not have the information needed to make an accurate assessment of the respondent's dangerousness. Second, this instruction implies that victims leave their abusers in response to what the legal system considers to be the most "severe" act of physical or sexual violence,⁵⁰ as well as the reasons victims give for leaving or remaining in violent relationships.⁵¹ In the case described above, the last act of violence would not qualify for a PO, and the judge would deny an order when one is merited. Thus even though the use of "victim-friendly" language helps victims more easily understand and complete the PO forms, the legal basis for an order (the legal definition of domestic violence and the legal requirements for a PO to be issued) remains unchanged, making it even more difficult for victims to obtain an order.

VI. ARE NARRATIVES EMPOWERING?

When they're doing the paperwork, some are very disconnected, and then some are very emotional, where it's just like writing it down scares the crap out of them. It's very hard, and they're crying, and we have to do some breathing techniques, just through the talking, on that portion . . . you gotta tell your whole story in . . . about ten sentences.⁵²

⁴⁸ PATTERN FORMS COMM. AND THE ADMIN. OFFICE OF THE COURTS, STATE OF WASH., WPF DV 1.015, PETITION FOR ORDER OF PROTECTION (2014).

⁴⁹ Mary Ann Dutton et al., *Patterns of Intimate Partner Violence: Correlates and Outcomes*, 20 VIOLENCE & VICTIMS 483, 483–97 (2005).

⁵⁰ Deborah K. Anderson & Daniel G. Saunders, *Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being*, 4 TRAUMA, VIOLENCE, & ABUSE 163 (2003) (listing a comprehensive discussion of theories of victimization and the ability to leave violent relationships).

⁵¹ Margaret E. Bell et al., *The Dynamics of Staying and Leaving: Implications for Battered Women's Emotional Well-Being and Experiences of Violence at the End of a Year*, 22 J. FAMILY VIOLENCE 413 (2007).

⁵² Advocate interview 10/14/2013 for Alesha Durfee and Jill Theresa Messing, LEGAL MOBILIZATION AND INTIMATE PARTNER VICTIMIZATION, NATIONAL SCIENCE FOUNDATION (Grant No. 1154098).

Another implicit assumption about victims that has been incorporated into the current PO process is that victims are empowered by telling their stories in the courtroom. For some victims, writing the narrative of abuse and testifying in court is the first time they have confronted their abuser or shared their experiences. In these cases, the receipt of a PO may affirm, validate, and empower the petitioner. The idea that telling one's story is empowering for a victim has led feminists, activists, and advocates to describe a PO as "a symbol of her [the victim's] own internalized strength . . . a turning point for change . . . a vision of a better life in the future."⁵³ With the right support and in the right environment, victims will want to tell their stories and will be empowered and validated through that retelling. Thus it would make sense to push for the further education of judges and other legal actors about domestic violence and to prioritize the creation of "space" to allow victims to tell their stories in the courts.

However, the adversarial nature of the legal system, in combination with complex and confusing bureaucratic procedures and untrained court staff, may make the PO process an incredibly traumatizing experience—even with the "right" support and in the "right" environment. As Judith Herman observes, "If one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law."⁵⁴ Even with "victim-friendly" changes and staff/judicial education and training, for many petitioners the physical act of writing a narrative of abuse will remain a traumatic and revictimizing experience. In order to write the narrative of abuse, a victim must relive acts of victimization and recall specific details about events that they have repressed simply in order to survive. I interviewed a domestic violence advocate in 2013 who spoke of victims in shelters writing a single paragraph each day for their U visa application—even with a supportive advocate and a non-threatening environment, the victims felt too traumatized to write any more than the one paragraph. As the advocate said, "they're trying to forget what happened and here I am, asking them to write down, with as many details as they can, what they went through."⁵⁵

Finally, by adjudicating cases based on personal narratives of abuse, the courts unintentionally adjudicate victims themselves. A petitioner who is denied a PO may feel that they were not believed—that their

⁵³ Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQUENCY 414, 424 (1995).

⁵⁴ Judith Lewis Herman, *Justice from the Victim's Perspective*, 11 VIOLENCE AGAINST WOMEN 571, 574 (2005).

⁵⁵ Advocate interview, *supra* note 52.

stories do not count and their words do not matter—and, like when they experience a dual arrest or criminal prosecution, “the victim probably will not try the system for further protection.”⁵⁶ Yet the research described in this paper suggests that in some cases, it was not the petitioner’s experiences that were adjudicated—it was their ability to describe those experiences that dictated whether they were able to obtain an order.

VII. RECONSIDERING THE NARRATIVE REQUIREMENT ALTERNATIVES

The civil court system, through the provision of POs, can be an important part of a “safety net that protects victims and holds perpetrators accountable for their actions.”⁵⁷ However, it is important to critically examine not only the explicit institutional practices associated with the PO process, but also the implicit assumptions that underlie those institutional practices. The narrative of abuse requirement is seen as a “victim-friendly” adaptation to the PO process so that victims could use their own testimony as grounds for a PO. However, the requirement that *all* petitioners submit a narrative of abuse with their PO petition has had unintended negative consequences for some groups of victims. Victims who do not share the same priorities, definitions of abuse, and goals as the legal system; who cannot write narratives within institutional constraints that are consistent with stereotypes about domestic violence and victimization; and who are not empowered by writing their narratives or telling their stories are less likely to receive a PO—even if they are able to complete the PO process. Because this requirement was meant to facilitate access to a greater number of victims, it should be removed in order to achieve that goal.

In order to protect the rights of respondents, however, petitioners need to submit some sort of evidence to support their claims of victimization (or imminent victimization). To balance the rights of respondents with the needs of petitioners, petitioners who have external documentation of their victimization (such as medical records or police reports) should be allowed to submit copies of that documentation in place of the narrative of abuse. In order to facilitate case processing, courts could add a section to the PO form that asks petitioners to check a box indicating which form of victimization they have experienced. Some states, such as Louisiana, have already made adjustments to their PO

⁵⁶ Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 421, 427 (1991).

⁵⁷ Ruth E. Fleury-Steiner et al., *Contextual Factors Impacting Battered Women’s Intentions to Reuse the Criminal Legal System*, 34 J. COMMUNITY PSYCHOL. 327, 340 (2006).

forms by providing petitioners with a list where victims can indicate the form of abuse they have experienced by making a checkmark⁵⁸—but the petitioner is still required to submit a narrative of abuse.⁵⁹ In cases where the petitioner has a police report or medical records documenting the particular form of abuse indicated by the petitioner on the form, the narrative requirement should be waived. The respondent can then access the records submitted with the PO petition to determine the exact nature of the allegations made by the petitioner, thereby allowing the respondent to contest those allegations in the PO hearing or in a subsequent hearing. This change would balance the rights of respondents to know the allegations that have been made by petitioners with the needs of petitioners to be able to communicate information about their victimization in way that is less traumatizing than the current system and provides equal access to orders to victims who do not meet the unstated assumptions of the current system.

Deborah Epstein, Margaret Bell, and Lisa Goodman argue that “effective advocacy” for victims “requires more than mere accompaniment in the courtroom or a conversation about how to navigate the court system.”⁶⁰ Meaningful access to legal protections against domestic violence can be achieved through a critical assessment of the PO process in conjunction with the institutional policies and procedures associated with that process and the assumptions about victims that underlie that process. Certainly this proposal is not a solution to the problems created by the narrative of abuse requirement—access to external documentation is not available to all victims and the ability to obtain external documentation differs by legal status, sexuality, race, ethnicity, etc. But a discussion of the shortcomings of the current “victim friendly” system, especially the requirement of the narrative of abuse, is long overdue. My hope is that this essay can lead to a dialogue about assumptions that have prevented victims from accessing legal protections against domestic violence.

⁵⁸ *La. Protective Order Registry*, JUD. ADMR’S OFFICE LA. SUP. CT., http://www.lasc.org/court_managed_prog/lpor.asp (follow “legal forms” hyperlink; then follow “Download full set of forms” hyperlink; ¶ 8, § A).

⁵⁹ *Id.* at ¶ 8, § B.

⁶⁰ Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL’Y & L. 465, 488 (2003).

Part III: Reimagining Mobilization, Action, and Pedagogy

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TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Plenary 4—Mobilization

UNIVERSITY OF MIAMI SCHOOL OF LAW

Quanita Toffee (moderator)^{†}*

Caroline Bettinger-López

Terra Slavin

Nan Stoops

Cindy Wiesner

STOOPS: I am the Executive Director of a statewide, nonprofit coalition of domestic violence and sexual assault programs in Washington State. We have seventy-three member programs, forty-three of which are state-contracted shelter programs. We have ten tribal member programs and several community-based programs that do their

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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work in a by/for/with kind of way in marginalized communities. You can see that basically I am a bureaucrat in the nonprofit domestic violence and sexual assault industrial complex. I do not say that lightly. It really is an industry and in some ways I am surprised to find myself on a panel about mobilization because I do not often think about the radical mobilizing happening among my constituency.

I am honored to be here and humbled by the learning that is so abundant in spaces like this. I have worked in the mainstream center of the sexual violence and domestic violence field for a long time and my vision and tools have always been honed in the margins. When I say that I mean that my work is deeply informed by folks like yourselves: the farmworker women organizing in central and southeastern Washington, the mothership of INCITE!, and the thirteen-year-old girl who was raped in 1977, who grabbed my heart and kept it. Those are the people that are at the root of everything I do as a domestic violence bureaucrat. Some of my best friends are academics and activists and I long for the day when the path between their work and mine is shorter, more direct, and full of liberation and joy.

The workspace that I occupy is squarely in the crosshairs of many of the critiques that are being discussed at this event, and understandably so. I assure you that I agree with the critiques, I have contributed to some of them, and I use them often in my work. When people ask me, "Why do you stay?" my answer is that it is the best place for me to do what I do best. And here is why: There are over 3,000 domestic violence and sexual assault victim services organizations in this country. There are coalitions in every state and United States territory. There are numerous national organizations, and so we are in every sense of the term an industrial complex. We are a billion-dollar machine with infrastructure. We have staff, we have facilities and offices, and we have technology; we have a communications networks and political power.

The field has capacity and readiness for both mobilizing and being mobilized. State coalitions such as ours play a critical role and are an important site for mobilization. Perhaps the best example of this is the work on reauthorization of the Violence Against Women Act (VAWA) just one year ago. Let me be clear: VAWA, as we call it, remains flawed. It is inherently limited because it is a criminal justice measure. It will never revolutionize the sectors that implement it. I am not calling out the legislation itself, I am calling out the way in which it finally got the votes that were required to pass it.

We had gone 500 hundred days without VAWA because we could not and would not compromise on language that added new protections for Native American, LGBT, and immigrant survivors. We stood on the

side of tribal sovereignty and we refused to help some at the expense of others. To every call for action, the field responded. A national policy team developed analysis, strategy, and talking points that were rolled out to the field with speed and efficiency. State coalitions activated their member programs and Congress was bombarded with emails and phone calls. The math is simple. Three thousand organizations with an average of 1,000 contacts (staff, volunteers families, friends, donors, survivors, allies) equals a base of three million strong, plus the additional support that joins us via social media. Our ability to mobilize has two primary sources: relationships characterized by trust and specific and manageable tasks. When those two things are in place the results are immediate. We are in an important time right now. Several folks said this yesterday and I agree.

I see an opening in the mainstream field for broad transformation. There was a resurgence of political will in the reauthorization of VAWA. There is frustration and fatigue in service delivery and a growing realization that the solutions we created forty years ago are doing little to end gender-based violence. The conversations here must be taken to the mainstream sexual assault and domestic violence field because they offer a philosophical foundation for deconstructing and reconstructing our work. New funding requirements that attempt to promote better, more inclusive services must be accompanied by authentic dialogue about the structures in which those services exist. If we answer Beth Richie's call for prison abolition,¹ we must question our investment in the Prison Rape Elimination Act and DNA collection and rape kit backlogs. If we know that shelter fails so many people, we must question our investment in facilities that divert money from advocacy and community action to long-term leases and maintenance obligations.

I do believe that there are serious conversations to be had about the fundamental structure and work of the mainstream field. I believe there is a hunger for new ways of thinking and different, perhaps even radical, practice. I am committed to rethinking our work on gender-based violence.

I want to close by talking about joints. Not the kind of joints that we are recently legalized in Washington State but the kind of joints where two elements of a skeletal structure, and all of the surrounding parts, come together at the intersections. I also want to talk about joint pain, because I am almost fifty-five and I occasionally wake up with joint

¹ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

pain. Joint pain is caused by chronic wear and tear, by too much weight or pressure, or by sudden motion in an unexpected direction. If we think about our intersectional work we must take care of ourselves and our joints. The treatment for joint pain is RICE: rest, ice, compression, and elevation. We must rest, we must be chill, we must try to contain ourselves and not spin wildly in many directions, and we must have lofty goals. Our movement will be so much stronger and more enduring if we meet often and if we meet well in the intersections. So that is my hope for times like this and for times going forward: that we meet often and well in the intersections. We take our work home to the other skeletal elements that we occupy and then we come back together to take care of our joints. Thank you.

SLAVIN: So I am going to talk about muscles now. I do not really know how I am going to follow-up on that. Hi everyone my name is Terra Slavin. I am the lead Staff Attorney at the LA Gay and Lesbian Center. I also serve on the Governance Committee of the National Coalition of Antiviolence Programs. I was on the Steering Committee of the National Task Force to End Sexual and Domestic Violence and co-chaired the LGBT VAWA reauthorization sub-committee. For the last eight years I have been managing a program providing holistic legal services to lesbian, gay, bisexual, trans-gender, and queer survivors of domestic violence, sexual assault, and stalking as well as other gender-based violence including hate crimes. In that time I have served more than 1,300 survivors.

I was also a little surprised to be on the mobilization panel, but I have been asked to talk about mobilization through the example our efforts to include non-discrimination provisions in the Violence Against Women Act specific to the LGBTQ community. I want to take a moment to say that I am honored and humbled to be in a room with so many incredible and amazing activists and academics. In the conversation yesterday we talked a lot about framing, who is framed as sympathetic and deserving and who is not. Too often that frame is of white, more wealthy, cisgender heterosexual clients, but violence is heavily interconnected and impacted by oppression. So many of the people that we are working with in our community are LGBTQ immigrants, survivors of color, sex workers, trans-gender people and gender non-conforming individuals whose experience with violence has literally been invisible, delegitimized, and often framed as deserved. It is from that frame that we enter the work on the Violence Against Women Act reauthorization and the explicit need to bring visibility to these lives and stories.

Why is this background important? Because these campaigns are efforts which may have formally started in 2008 but really built on decades of on the ground experience of direct service providers and survivors. That experience was one of lack of access and lack of protections that was clearly impacted by intersectionality, as well as a movement that has been rooted in a deep hetero-patriarchy. The systems of assistance were literally based on relationship status, but what about when the relationship does not count? We are not just talking about a lack of access to criminal justice systems, which we all acknowledge there are huge problems with we are talking about a lack of access to life sustaining social services that many people in this room provide. Given the over-criminalization of transgender gender non-conforming, and LGBTQ communities of color, the primary point of contact with the criminal justice system for most of us is responding to the criminalization of our clients. So from a mobilization perspective, our advocacy was built on a feeling that there was not a seat at the table in the violence against women movement. In part, we were fundamentally challenging a gender paradigm, representing women abused by women, men abused by men, and numerous other circumstances. It is important to acknowledge that there have been many lesbian, bisexuals, transgender, and queer women who have been involved in the movement to end violence against women, but they were primarily working with women abused by men. In fact, a refrain I have constantly heard was, “Why do we need specific representation on behalf of LGBTQ communities when so many of the participants in the work are lesbian?” But they were not in a place of advocating specific to the LGBTQ community. One of the first steps in this mobilization effort was literally getting a seat at the table of the National Task Force to End Sexual and Domestic Violence that was working exclusively on federal legislation on gender based violence issues.

Based on the experience of those in the community, we had three main requests. One was inclusion in VAWA’s “underserved” definition, one was inclusion in where most of the money goes, and the third was a non-discrimination provision on the basis of sexual orientation and gender identity. Of the three, the non-discrimination provision was definitely the hardest politically and we were told that there is no way this will ever happen.

Why is this important? I am going to give one case example. In this process I reached out and asked people across the country for stories from survivors and I have a survivor contact name. She was a Black transwoman from the South. She had a shotgun held to her head by her abuser. The police came; they said we will not help you get out. She

ended up in a hospital, the hospital tried to get her into a domestic violence shelter, but the shelter asked her about her genital status and she was told she was not allowed in the shelter. She eventually ended up in a homeless shelter where they forced her to sleep on the concrete. She told me, "I want you to tell my story; this needs to be known that these barriers still exist."

So the second issue with mobilization I wanted to say is that within the LGBT community, this platform for advocacy was really challenging. This is still a taboo topic. As we all know, we campaigned for marriage. I am happily married; it is a fabulous right, but there are other issues that require attention including homeless youth, and other less popular topics. We were constantly struggling to get a voice within our community structures right for advocacy on violence. A turning moment in trying to reach the community was when we got this topic as one of three main lobbying points at the major national LGBTQ conference. It was in coordination with a lobbying day with the Senate. So this was one of the first times on a very broad level, people actually had the moment to think about this violence that was happening within our communities and to voice their experience as survivors. Many of the Senators had never talked to a transperson before, much less a transgender survivor of intimate partner violence. I really saw this as a point where we created space for the voices of survivors and also supported community power.

We created a strong alliance with what has been seen as traditional mainstream service providers. We understand the need to work in coalition. None of the successes gained in the Violence Against Women Act would have been possible if there was not a strong commitment to stand in alliance. As Nan pointed out, and as I am sure many people in this room know, throughout this process of lobbying for VAWA passage, tribal communities, immigrant communities, communities of color, and LGBTQ communities were targeted and told that *they* were the ones holding up the process. There were attempts by many in political power to pit these groups against each other. I was thinking of a statement in Beth Richie's Keynote about fighting over small slices of the pie. There was a conscious effort in this moment to focus on the whole pie. I believe that one of the reasons that we were successful was because of the strength of the coalition and the unity of fighting across topic areas. Ultimately, it was a success. We achieved the first non-discrimination provisions in federal law on the basis of both sexual orientation and sexual identity. It was really important that this success from a LGBTQ community stand point came in the context of this gender-based violence

effort. It was the allies, the strong coalition, and the resonance of survivor's voices that made it ultimately successful.

I want to also note that VAWA is not everything. I am surely one to acknowledge a deep need for critique and know that there are questions. But I do think the conversation has fundamentally shifted. You see this when you hear people use the term "gender-based" violence. I think we brought a national visibility so that LGBT survivors in the Midwest, survivors in Texas where I grew up, are more likely to y know that they are not alone. So I think that in that way it was a success. But I also agree that we need to continue to critique and work to change laws and systems in ways that best meet the needs of *all* of our survivors. Thank you.

BETTINGER-LÓPEZ: I will be focusing on the use of the human rights framework. The case study I will be discussing is one that focuses on domestic violence. I propose that we transform our understanding of domestic violence from something that has traditionally been thought of as a private matter, an interpersonal matter that does not necessarily have anything to do with government. A human rights framework allows us to transform our understanding of domestic violence as a private matter into the recognition of domestic violence as a societal epidemic that demands governmental accountability.

I want to talk about the case of Jessica Lenahan (née Jessica Gonzales) versus United States.² I will briefly go over the facts of the case and then talk about some of the mobilizing that has happened as a result of the case. It is a tragic case. In 1999, Jessica Lenahan, who lived in Castle Rock, Colorado, got a restraining order against her estranged husband, Simon Gonzales. The restraining order prohibited Simon from having any contact with their children or with Jessica, and required him to stay 100 yards from Jessica's home. One night, Simon Gonzales violated the restraining order by abducting their three daughters from Jessica's yard. Jessica called the police repeatedly over the course of approximately ten hours and, after receiving no assistance, she eventually went to the police station. The police continually told her to wait and to call back later if the children were still missing. At one point, the police told her something along the lines of, "it is ridiculous that you are freaking out, just calm down. After all, the children are with their father." That night, instead of looking for Jessica's children, the police took a two-hour dinner break, looked for a lost dog, and responded to a fire lane violation. It was not a particularly busy night in the town of Castle Rock. Tragically, at 3:30 in the morning, Simon Gonzales parked

² Lenahan (Gonzales) v. United States of America, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (2011).

his truck across the street from the police station—this was the truck that Jessica had been describing to the police for nearly ten hours. He waited for approximately fifteen minutes and then began shooting at the police station. The police returned fire. Simon was killed and the police found the dead bodies of the three girls in his truck. There was never an investigation done into the cause, time, or place of the girls' deaths. It is not known to this day how the girls died. We know that Simon purchased a gun earlier that evening and that both the truck and the children's bodies were riddled with bullets, but no investigation was done to determine whether they were killed by police fire or by their father. Jessica and her family sued the police for their failure to enforce her protection order.

A newspaper headline about the deaths read, "Man dies in shootout. Daughters found dead. 'Family was troubled,' friends say." Nothing in the headline points to the role of the police and their failure to respond to Jessica. The headline focuses solely on the family's interpersonal dynamic. The Chief of Police said, "What safer place could children be than with one of their parents?" Troublesome stereotypes, assumptions, and misunderstandings of family violence are laden in this comment.

The case made its way up to the United States Supreme Court, where Jessica argued that she had a constitutionally protected property interest in the enforcement of the terms of her restraining order under the Fourteenth Amendment's Due Process Clause.³ The Supreme Court rejected Jessica's due process claim.⁴ First, the Court reiterated its historic rejection of the notion of a substantive due process claim in the context of private acts of violence, holding that the Due Process Clause does not "requir[e] the State to protect the life, liberty and property of its citizens against invasion by private actors."⁵ Second, the Court rejected Jessica's procedural due process claim. The Supreme Court held that despite Colorado's mandatory arrest law, Jessica had no personal entitlement to police enforcement of the restraining order.⁶

I want to contrast the text of Jessica's restraining order with the actual language of the United States Supreme Court's decision in her

³ Town of Castle Rock, Colorado v. Gonzales, 545 U.S. 748 (2005).

⁴ *Id.*

⁵ *Id.* at 748 (citing *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 195 (1989)).

⁶ *Id.* at 768. The majority also stated that even if the statute could be said to make enforcement "mandatory," it was not clear that an individual entitlement to enforcement of a restraining order would constitute a "property" interest for due process purposes as it would arise out of a function that government actors have always performed—making arrests for probable cause. *Id.* at 749.

case. Jessica's restraining order, which echoes the language of the Colorado statutory provision mandating enforcement of protection orders, contained a "mandatory arrest" clause directing police to arrest if they found probable cause of any violation of the order. The order states, "The police shall arrest or if an arrest is impractical seek a warrant for the arrest of the restrained person." Let me emphasize that language: "*shall* arrest." Despite this mandatory language, Justice Scalia's opinion says that "shall" does not mean "must," but rather, "shall" means something more like "may." Scalia reasoned that the police must have discretion, and therefore the protection order enforcement language "shall" was not actually mandatory. The Court's interpretation absolved the police of any constitutional liability for the death of the three girls. We were outraged, of course, when the decision came down. We felt it sent a message to police officers that they do not have to enforce restraining orders, and it fostered a culture of impunity for officers who did not want to respond.

The case also deprived Jessica of her day in court. It went up to the Supreme Court on an appeal of a "Motion to Dismiss," so Jessica was never granted a trial. There was never any evidentiary discovery conducted in her case, and Jessica never found out any of the truths about how her children died. Jessica and her mother insisted that the Supreme Court could not be the end of the line, so we began to look at alternative remedies outside of the United States judicial system. In Jessica's words, there must be "a higher authority." Several of us put our heads together and thought about going to an international human rights body and arguing that the United States government, by failing to provide Jessica a remedy, was responsible for a human rights violation.

I want to contrast the United States constitutional framework with an international human rights law framework. Under United States law there is generally no governmental duty to protect individuals from private acts of violence, according to the very famous Supreme Court case *DeShaney v. Winnebago County*.⁷ International law offers a completely different framework. The Inter-American Court of Human Rights has found that a state can be responsible for a human rights violation "not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American Convention on Human Rights]."⁸ We think the police will respond when we call 911, but we know from Jessica's case and from many other cases that the police do

⁷ *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989).

⁸ *Velásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶ 172 (July 29, 1988).

not always respond, even when there is a risk to an identified person. In Jessica's case, the domestic violence court identified the risk to Jessica when it granted her a restraining order. The government then assumed responsibility for protecting Jessica and her children, but subsequently refused to live up to its promise of protection.

Whether police cross the line in an overly aggressive way, or whether police turn a blind eye to violence, as was true in Jessica's case, we are dealing with the same results—a failure to serve and protect. We must focus on governmental accountability for preventing and protecting, on reparations for individuals harmed, and on structural and policy changes that can transform the state's approach to domestic violence.

In 2005, we took Jessica's case to the Inter-American Commission on Human Rights (IACHR). The IACHR is an organ of the Organization of American States (OAS) that sits in Washington, D.C., and is responsible for monitoring human rights in the Americas. The United States State Department funds the IACHR and its parent organization, the OAS, because it is concerned about human rights violations in other areas of the world. When the State Department appears on the other side of the table as a respondent State, it has a very different perspective than when it is focused on the state of human rights in other countries.

Here is a video clip of Jessica testifying before the IACHR. Remember, this is the first time that Jessica got her "day in court" to testify about what happened when the Castle Rock police refused to assist her and her children were killed.

I filed the case with the Inter-American Commission on Human Rights because my human rights were violated by Castle Rock, Colorado, for not enforcing the restraining order to protect my children and myself. And my human rights were also violated within the court system for not providing a remedy. I deserve answers and I deserve to know the truth.

I want to know why the police ignored my calls for help. I have been asking these questions for nine years, nine long years. How long will it take you to help me discover the truth? I know it cannot bring my children back from that night. The emptiness I feel when I remember my daughters and the great lives they might have lived—nothing can bring them back, nothing. What I can do, however, is to be a voice for the voiceless and

women promised protection in America and then denied it the moment they are in danger.⁹

We got an amazing decision from the IACHR in 2011. The decision found the United States responsible for violations of human rights including the right to life, the right to non-discrimination and equal protection, the rights to special protections for girl-children, and the right to judicial protection.¹⁰

The IACHR'S decision said that, in cases of violence against women, governments are required to act with "due diligence to prevent, investigate, sanction and offer remedies." The Commission noted that Jessica may have been treated differently because she is a minority woman, of Native-American and Latin-American descent. Therefore, her status as a member of a marginalized and disadvantaged group must be scrutinized.¹¹ The Commission emphasized that the government must eliminate prejudice and stereotypes in its response to cases of domestic violence.

The *Lenahan* decision is a strong decision in favor of a United States obligation to protect victims of domestic violence. But you may wonder if international human rights efforts are really worth the effort. Why should we bother with human rights campaigns that have no immediate enforcement mechanisms in the United States? I offer here several different possibilities for the use of a human rights framework.

One way in which a human rights framework has been useful is in the enactment of local domestic human rights resolutions. We now have resolutions in cities and counties across the United States that declare that freedom from domestic violence is a human right.¹² These resolutions cite the *Lenahan* case as well as international human rights principles. We are looking at ideas for implementation of these ordinances. For example, lawyers are examining the possibility that these

⁹ *Public Hearing on the 153rd Session of the Inter-American Commission on Human Rights, USA: Case Jessica Lenahan*, YOUTUBE, <https://www.youtube.com/watch?v=j4I9d72v3kw> (last visited May 15, 2015).

¹⁰ *Lenahan (Gonzales) v. United States of America*, *supra* note 2.

¹¹ *Jessica Gonzalez v. United States: Hearing before the Inter-American Comm'n on Human Rights*, 127th Ordinary Period of Sessions (March 2, 2007).

¹² See Columbia Law School & Miami Law Human Rights Clinic, *Recognizing Freedom from Domestic Violence and Violence Against Women as a Fundamental Human Right*, available at <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf>.

ordinances may be useful in supporting housing and child custody rights.¹³

The second way in which we have seen actual change that comports with human rights principles is in recent civil rights investigations by the the Department of Justice into police response to gender violence. Past DOJ civil rights investigations have focused on corruption, police brutality, and police use of excessive force. In 2011, the Department of Justice investigated the police departments of Puerto Rico and New Orleans¹⁴ for practices of discriminatory and unconstitutional policing, including gender biased policing, in their response to domestic and sexual violence. In 2012, the Department of Justice filed a lawsuit against the Maricopa County, Arizona police department for unconstitutional and unlawful actions.¹⁵ Right now some of us are working on discussions with the Department of Justice to convince them to incorporate these human rights principles into federal guidance on gender base policing for law enforcement officers.¹⁶

¹³ See generally Elizabeth M. Schneider et al., *Implementing the Inter-American Commission on Human Rights' Domestic Violence Ruling*, 46 CLEARINGHOUSE R.J. POVERTY L. & POL'Y, 113 (2012). In May 2014, Miami-Dade County's Public Housing and Community Development's FY 2014-15 Public Housing Agency Plan, Admissions and Continued Occupancy Policy, and Section 8 Administrative Plan incorporated suggestions provided by the University of Miami Human Rights Clinic that recommended these policies expand protections for victims of domestic violence and cited to Miami-Dade County's Local Resolution 121380 declaring freedom from domestic violence to be a fundamental human right, available at <http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2014/140736.pdf>. *Projects: Gender Justice: Housing and Domestic Violence*, UNIVERSITY OF MIAMI HUMAN RIGHTS CLINIC, available at <http://www.law.miami.edu/human-rights-clinic/projects.php?op=6> (last visited May 25, 2015).

¹⁴ See *Investigation of the Puerto Rico Police Dep't*, U.S. DOJ (Sept. 5, 2011), available at http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; *Investigation of the New Orleans Police Dep't*, U.S. DOJ (Mar. 16, 2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf.

¹⁵ See *Department of Justice Files Lawsuit in Arizona Against Maricopa County, Maricopa County Sheriff's Office, and Sheriff Joseph Arpaio*, U.S. DOJ (May 10, 2012), available at <http://www.justice.gov/opa/pr/departament-justice-files-lawsuit-arizona-against-maricopa-county-maricopa-county-sheriff-s>.

¹⁶ See *Justice Department Announces Missoula Police Department Has Fully Implemented Agreement to Improve Response to Reports of Sexual Assault*, U.S. DOJ (May 10, 2012), available at <http://www.justice.gov/opa/pr/justice-department-announces-missoula-police-department-has-fully-implemented-agreement> ("The purpose of the agreement between the department and the Missoula Police Department was to better protect and vindicate the rights of sexual assault victims by transforming the Missoula Police Department's response to allegations of sexual assault. To do this, the agreement required significant changes to the police department's policies, practices and supervision. These changes promote more reliable sexual assault investigations, and

Case study number three is the Marissa Alexander case, which you heard about earlier.¹⁷ We are working with the FREE MARISSA NOW! coalition,¹⁸ the Dream Defenders, and others to use the human rights framework in Marissa's case, to take this case to the United Nations and the Inter-American Commission on Human Rights to claim human rights violations on behalf of Marissa Alexander.¹⁹

I want to cite to one more place, in a very different part of the world, where the *Lenahan* decision has made a difference. In Kenya, eleven girls filed a cause of action alleging systemic failure by the police to protect them from defilement, which means rape.²⁰ The judge, citing the *Lenahan* case, found that the Kenyan government is responsible for failing to act with due diligence to prevent, investigate, and sanction these terrible acts, and ordered them to develop systems to provide a meaningful response to this serious problem.

effective, nondiscriminatory law enforcement and community support for victims, the police department and its officers.”).

¹⁷ See Richie, *supra* note 1, at 116-17.

¹⁸ See FREE MARISSA NOW, <http://www.freemarissanow.org/> (last visited Jan. 31, 2015) (providing more information regarding activism around Marissa Alexander's case). Several of the conference attendees were active on Marissa's behalf including CONVERGE! co-chair, Marcia Olivo; Alisa Bierria; Aleta Alston-Touré; and Carrie Bettinger-López. At the time of the conference, Alexander had won her appeal and was facing a new trial. She was subsequently granted a plea deal for time served (three years), but which included probation requiring her to wear an ankle bracelet for two years. She was released on January 27, 2014.

¹⁹ Documents were subsequently filed. See Ahmad Abuznaid et al., “*Stand Your Ground*” Laws” *International Human Rights Law Implications*, 68 U. MIAMI L. REV. 1129, n. 1 (2014) (Three documents were submitted to the United Nations Human rights Committee (UNHRC) and the Inter-American Commission on Human Rights (IACHR). These documents include: (1) *Written Statement on Stand Your Ground Laws, Submitted by Dream Defenders, Community Justice Project of Florida Legal Services, Inc. and the National Association for the Advancement of Colored People* (Sept. 2013), available at https://cjp-miami.squarespace.com/s/SYG_Shadow_Report_ICCPR.pdf; (2) *Written Statement on Domestic Violence, Gun Violence, and “Stand Your Ground” Laws, Submitted by The Advocates for Human Rights, University of Miami School of Law Human Rights Clinic, Legal Momentum, and Women Enabled* (Sept. 2013), available at <http://www.law.miami.edu/human-rights-clinic/pdf/2013/ICCPR-Shadow-Report-Domestic-Violence.pdf>; and (3) briefing paper submitted to the IACHR for a thematic hearing on Stand Your Ground laws on March 25, 2014. The video of the thematic hearing is available at <https://www.youtube.com/watch?v=X0EV8Rbpg2s&feature=youtu.be> (last visited May 28, 2015)).

²⁰ Fiona Sampson & Sasha Hart, “160 Girls” *Making Legal History: Overview of the Development and Implementation of a Strategic Equality Initiative to Achieve Legal Protection from Defilement for All Girls in Kenya*, KENYA LAW, http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/160_Girls_Making_Legal_History_-_Sampson__Hart.pdf.

We are at a real crossroads right now in Jessica's case. We have seen interesting developments in Washington, D.C., but we are hitting a roadblock in seeking justice for Jessica on the individual level. That is where I think our mobilizing has fallen short in many ways and where we need creative ideas and energy from folks, especially non-lawyers who can help us think more expansively.²¹ We need this creativity to help us think more about the ways in which we can use human rights principles to mobilize communities. We want to expand the networks and coalitions we work with in order to do that. I look forward to continuing the conversation.

WIESNER: I want to begin with my appreciation for a lot of trail blazers that are in this room. A lot of you have been there from the radical roots of this movement doing this work in our communities, for example, early feminists who built the shelters that were absolutely needed. I also want to thank a lot of sisters and compañeras from INCITE! who have shaped a lot of the work we do. The INCITE! politics is hegemonic in this space! That is great because the INCITE! work came out of a lot of struggle that happened over the last decade. I also want to thank the other sister alliances that we get to work with including the National Domestic Workers Alliance, the Caring Across Generations Campaign, and Mujeres Unidas y Activas, Human Rights Network, BOLD, Generative Somatics, and a special shout out to the folks here in Miami. Organizing work in Miami is hard—every reactionary thing from voting, to Trayvon Martin,²² to Marissa Alexander,²³ happens in Florida. Those Miami organizations include Miami Workers Center, Sisterhood of Survivors, Power U, Florida New Majority, FANM, Miami Clinic Defenders, FLIC, Iraqi's Against the War, and Mi Lola.

I looked up mobilization in the dictionary and one definition I found was “preparing for war or an emergency.” A second definition was

²¹ See Lenora M. Lapidus, *Justice for Jessica: Holding the U.S. Accountable for Protecting Domestic Violence Survivors*, ACLU SPEAK FREELY BLOG (Oct. 27, 2014, 8:11 PM), <https://www.aclu.org/blog/justice-jessica-holding-us-accountable-protecting-domestic-violence-survivors> (arguing for a call to action for the federal government to properly respond to the Inter-American Commission on Human Rights' decision finding that the United States violated Jessica's human rights).

²² See Channing Joseph & Ravi Somaiya, *Demonstrations Across the County Commemorate Trayvon Martin*, N.Y. TIMES (July 20, 2013), <http://www.nytimes.com/2013/07/21/us/demonstrations-across-the-country-commemorate-trayvon-martin.html?ref=topics> (summarizing reactions to Trayvon Martin's death and George Zimmerman's acquittal during a commemoration event over a year later).

²³ See Jamil Smith, *Marissa Alexander gets 20-year sentence*, MSNBC (May 11, 2012, 11:18 A.M.), <http://www.msnbc.com/melissa-harris-perry/marissa-alexander-gets-20-year-sentence>.

“coordinate for a purpose, be mobile or capable of a movement.” Ultimately, we are trying to build one movement for change. I believe that everyday folks make change. Taking action is how history gets made. Our movements, at different points, ebb and flow. In the moments of preparation, we are experimenting and developing tactics and strategies. We are waiting for that right moment when there is a psychic break and when qualitative leaps can happen. I think that is when we see major shifts in history.

I want to share with you the story of Grassroots Global Justice Alliance²⁴ because I think there are a lot of parallels between our struggles and those of other movements. I think we have a lot to learn and I am inspired by the spirit of self-reflection at this conference. Our alliance was born out of the World Social Forum (“WSF”) process in 2003. The Forum brings together certain sectors, different protagonists of the movement and divergent ideas, to ask what do we want to see together out of all that difference? We see movements around the world that are ahead of us on some of these questions. Regular folks, students, feminists, farmers, cultural workers, and housing activists come together for the Forum process. It is not this “you are the academic, you are the lawyer,” but rather we are in this movement together and we understand our different roles. Despite great repression, the people at the WSF have a level of militancy. They are clear about what was at stake for people and the planet. One of the things that came out of that work is that we saw that there is a crisis. There is a global crisis in what we call the three E’s: Economy, Ecology, and Empire. In our last membership assembly we adopted a framework that is encapsulated by a slogan: “No War! No Warming! Build an Economy for the People and the Planet!”

The Grassroots Global Justice Alliance organizes people who are impacted by neoliberalism. These folks are at the crosshairs of both oppression and exploitation. They are impacted by capitalism, white supremacy, male supremacy, and heterosexism. As we are getting ready for our next membership assembly in Detroit, we are humbly trying to figure out answers to a number of questions. What is our vision of an alternative to a capitalist, white supremacist, heteronormative system? What is our vision of system change? What are the principles of what we are calling for a just transition—a transition from here to the world that we want? What are the things that must happen on the interpersonal level, community level, structural level and systemic level? How do we move beyond isolated resistance to coherence and a more holistic

²⁴ See *About GGJ*, GRASSROOTS GLOBAL JUSTICE, <http://ggjalliance.org/about> (last visited Apr. 26, 2015).

movement of movements? How do we be more coherent together? How do our day-to-day campaigns get more connected to our vision of different world?

Part of the answer is found in a transformational organizing model. I think part of the core values and the key components that we have is the importance of base building, where you work, where you live, where you play. We have to build our power bases in order to make change. The other part is around building multi-racial, multi-national, multi-gender unity beyond borders. I think this is very critical to understanding the United States context and to developing our strategy. It is a strategic question. How are we going to build beyond difference? Consciousness raising is important, so that people impacted are ready to be a part of change. Folks who are not used to being in these spaces need political preparation, training, and the investment from organizations, and movements so that they are prepared. There is attention to political and popular education for folks who do not speak English, folks who have lower literacy rate. We must have a commitment to do that. We are shifting who are the experts, as well.

Conditions are so dramatically different here in Miami compared to what happens in New Mexico, to what happens in Harlem, to what happens in Bolivia, to what happens in Egypt. What is it that we can bring as a collective vision that holds us together? What is the thread and the yarn that holds us together? Ultimately, we cannot see people as one dimensional. Ultimately, what is missing in our movement is a bigger movement meta strategy and agenda. I think we suffer because often organizations come up with their own strategies and their own visions, but ultimately we need to be talking about that across movements. Part of what we have been struggling with is how do we go from a solidarity framework to a joint struggle framework and practice? We have common enemies and we have common targets. Why does it matter for us to mobilize around the Trayvon Martin case? Why does it matter for us to organize around the undocumented young students and their parents risking arrest? Why does the feminist movement need to step out and take positions on those issues? It is because ultimately, that is what solidarity in the twenty-first century looks like.

At Grassroots Global Justice Alliance we are taking seriously what we are calling “grassroots international feminism,” and we need to tie together the projects of working class women of color on the job, in the community, the realms of our home, and our social relationships. With organizing work, women or gender-queer folks are the folks on the ground, and on the frontlines. One of our responsibilities is to work within our organizations and within our alliance if we want a world of no

war, no global warming and an economy for the people on the planet. We must include a gender justice and feminist framework.

One of the people that I am inspired by is this compañera, Sandra Morán, a Guatemalan organizer from the World March of Women and Sector de Mujeres. One of the things she talked about is: “We cannot afford to believe the lie that feminism belongs to those who are distant from social movement. We are feminists shaped within the social movement, within the National Liberation movement, within community organizing, and against austerity. Feminism is ours and we are taking this grassroots movement, this grassroots feminism, with us on the road to changing the world.”

Going back to this point of mobilization, we are in a period of getting ready. These moments are coming faster and faster. The crisis is climbing economically, ecologically and there is a crisis of democracy, as well. So how are we getting ready? How are we acknowledging the experiments that are taking place? How is it that we are reimagining our movements to be able to take advantage of those moments when history makes opens its doors for us? I will end with World March of Women slogan:

*Continuaremos marchando hasta que todas seamos
libres!*

We will keep marching until we all are free!

We need to keep working sisters: I am excited to be here in the conversation. Thank you.

TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Organizing Campaigns

UNIVERSITY OF MIAMI SCHOOL OF LAW

Kelly Miller (moderator)^{†}*

Cathy Albisa

Ted Bunch

Jodeen Olguín-Tayler

Lumarie Orozco

OROZCO: Good morning. My name is Lumarie Orozco and I work for Casa de Esperanza. I work for the National Latino Network for Healthy Families and Communities. I have been with Casa de Esperanza for about ten years now. I worked as a youth practitioner for many years and for a couple of years I oversaw our community engagement work. I am here to talk a little bit about having survivors at the table, where this community is at. I am a practitioner at heart and an academic second. So, today what I want to talk about are the community engagement approaches that we utilize at Casa de Esperanza. With this approach, we mobilize the Latino and Latina community members to end domestic violence and gender based violence in our community. What I want to do today is to take a step back and bring it back down to what is really

^o This transcript has been edited from its original transcription for clarity.

^{*} Kelly Miller is the Executive Director of the Idaho Coalition Against Sexual & Domestic Violence. Cathy Albisa is a constitutional and human rights lawyer with a background in the right to health. Albisa co-founded National Economic & Social Rights Initiative. Ted Bunch is the co-founder and co-director of A CALL TO MEN. Jodeen Olguín-Tayler is the Director of Organizing for Caring Across Generations. Lumarie Orozco is a community psychologist, youth practitioner, and trainer who previously managed Casa de Esperanza's community engagement initiatives including *Fuerza Unida* and Youth Initiatives.

[†] Original remarks from the CONVERGE! conference omitted.

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important, the people we are doing the work with, and those who we are doing the work for. At the end of the day, it is about the community and enhancing the leadership skills of the community members so that they are able to mobilize themselves to take action on gender based violence or other issues that they feel are important to them and the community.

Casa de Esperanza has been around for about thirty years. We are based out of St. Paul, Minnesota and we originally started as a shelter program. Fast forward thirty years later, and we are still a shelter program. We are also the National Latina Resource Center on Domestic Violence. We are one of the only resource centers that still provide direct services. And so our organization is grounded in community and community realities that inform our practice. So, everything that we learn and do on a local level is what informs our national work, our training and technical assistance work, our research work, and our policy work.

We started this movement about thirty years ago because Latinas in Minneapolis and in St. Paul said that they were experiencing domestic violence, but they did not have anywhere to go because service providers were not providing culturally appropriate and relevant services. Thus, seven Latinas decided to come together and build a shelter and start providing services that are culturally relevant and appropriate to Latinas in Minneapolis and St. Paul. Our work has become about engaging Latinas in this work. It is about sitting down and having conversations with Latinas, asking Latinas what they want; we strive to listen to what they are telling us and then put those things into action.

What I am going to talk a little bit about today is an overview of our Fuerza Unida work. Fuerza Unida means "strength united." It is a community engagement approach that we utilize to help inform the work that we do. We do not develop new programs, we do not develop new tools, we do not develop new campaigns without first having conversations with our community members first, and without engaging community members in the process of developing programs. We do not have the right to define how this work should happen.

Another component of our community engagement work is not only to engage communities in these conversations, but it is also about providing opportunities for them to develop and enhance their own leadership skills. If provided with the appropriate tools, communities will find their own solutions to the problems that they are facing. What we have found over the years is that using this community engagement approach not only creates this sense of belonging for community members, it also increases connectedness, and it helps to build social support networks. Part of this listening engagement process is about being willing to take action on what the community is telling you to do. About two years ago, we had conversations with 120 Latinas from across

the Twin Cities, and the metropolitan/suburb areas. We found that women were looking for opportunities to develop their leadership. And so we expanded some of the work that we were currently doing with women to help them so that the program reflected what it was that they wanted from us. They were looking for access to education, they were looking for opportunities for informal and formal education, and they wanted us to start doing work with men. We heard that they also wanted us to work with their husbands and with sons. So, we began doing that through our youth/peer education initiative where we work. We have young men as peer educators to educate other young men about healthy relationships, gender roles, and other issues important to young men—education, all of those things. We provide information resources so that these communities become first responders, agents of change to lead the work we are doing in community. One of the recent projects with men in the community is under the leadership of Juan Carlos Arean, the Director of the National Latino Network, we brought together a group of about ten to fifteen men from the community and held listening sessions with them to figure out how men want to be involved in this work and how they would engage other men in this work. We had these conversations with men and what came out of that was that men want to be engaged and they want to be engaged in ways that make sense to the Latino community. So, they did not want for us to send them flyers and do things for them, they wanted to be able to do those things themselves. So, what came out of this was this PSA that I am going to share with you; the men in this PSA are the ones who said they wanted to be engaged in that way. We wanted to create this PSA so that we can invite men to start having this conversation.

This video is part of our “Invito” Campaign. This campaign targets Latino men and invites them to have conversations with other men about gender based violence and other issues that community members are facing. The beauty of this video is that this was unscripted. We just had conversations with men, they told us what they wanted to do, they came up with the idea of the video, and they came up with their own messages.

ALBISA: I am with the National Economic and Social Rights Initiative, a movement support organization working with grassroots partners to advance the human rights to decent work, healthcare, housing and education. The big theme or question being posed here at this conference is how we could all work intersectionally. That is a big word and a complicated concept—most people have never used or heard that word. But for decades, many of us have been using that word and talking about that word in part because we get really frustrated about the way identity politics can play out. So, if you consider yourself part of the women’s movement and care about poverty, racism, and economic

violence, and those issues never quite makes it onto the women's movement agenda because they do not affect all women, you look for a way to address that. But when we think about that word—intersectionality—in isolation, rather than getting us to a more inclusive, more connected space, it has actually created narrower political corridors over the years. That is partly why it can be a very limiting framework. I think it is a really important political and moral concept and principal. This panel is to talk about frameworks.

We need to think about frameworks that actually connect us and can be used to move intersectional work, which is different than using intersectionality as your primary framework or your messaging tool. So, what is a framework? At minimum, I think a framework should help us understand the world and the problems we are all outraged about and point us to some useful strategies and orient us towards solutions. We have been using a human rights framework.

A human rights framework is far from a magic bullet. It is not as if when you walk into a room and tell a policymaker, "hey, you know, when you violate the right to housing, you violate human rights," they say "oh, my God, I've got to stop doing that." That obviously does not happen. But, the human rights framework matters to people who are impacted and communities that are impacted. It resonates with people. It resonates as a message, not because of the legal dimensions, the treaties, or the UN processes. Those may or may not be useful and effective tool depending on the context. But it is really the ethical and moral implications of human rights that resonate. And because it resonates with people, it is something that brings them together so that they can work on under a collective vision. It is a powerful platform for some of the campaigns that we have been supporting. But why? Why does a human rights framework appeal to people? It seems to appeal to people because it is a claim on society. You are not talking about needs or charity. You are talking about something you have a claim to, a claim to be recognized as human; a claim to have your humanity recognized and valued. It is straightforward and simple, but also very profound. In some ways I feel like we should all be in North Carolina where 100,000 people are gathering in support of Moral Mondays instead of here. Right now there are growing voices all over the country for returning to some basic morality, and not the way the far right talks about it—but a morality that recognizes all people as human beings entitled to dignity, equal in rights. That framework brings people together in a large way. And it brings people together in very specific campaigns, and that is what I am going to be talking about.

The question we have to ask ourselves is: how do we frame human rights? You can look at the symptoms of a problem—gender based

violence being one of them. We are often used to looking at human rights that way—in a violations framework. I have kids who are twelve and fourteen, and they like these Percy Jackson movies. Inevitably, there is a multi-headed monster that the teenage demigod Percy has to slay. Because the entire theater has read the book, they are saying, “No Percy, don’t cut his head off!” You know you do not cut its head off because three more heads grow, right? Therefore, Percy being a demigod, I guess superior to the rest of us, figures out pretty quickly that he has to get at the heart of the monster. I think we have to think about our work that way. We have to get at the heart of the monster, not just keep cutting off heads. Otherwise we are just going to fight until we are exhausted, and we are going to fight until we lose. Human rights can help us get at the heart of the monster as well. It can help us do what Dr. King challenged us to do: question the whole of society, not the piece that is particularly under your skin.

I am also an admirer of Dr. Paul Farmer’s work. He talks about structural violence. Structural violence is not just specific incidents of physical or sexual violence. It is an analysis recognizing that we have designed society around inequality. The symptoms of inequality include the gender-based violence that you see amongst many other heads of the monster. But we are never going to kill or get rid of those heads, that is eliminate those violations and symptoms that are out to attack us if we do not get to the structure, to the heart of the monster.

Human rights are universal, that means basically for everyone. Human rights are not just about the symptoms of inequality, but recognizing what underlines them. It will recognize inequalities between two white men if one is subordinate to the other. It will also recognize inequalities faced by women of color that are pursued by a punitive state or abused by a partner. So while we know there are huge differences and spend a lot of time talking about them, it is a framework that we use to link the various struggles people face in their lives and in their political work. The case study I want to discuss today is a compelling one. Nelly Rodriguez is a farm worker and she is a member of the Coalition of Immokalee Workers. One of the times I saw her in action was at International Women’s Day. The Coalition of Immokalee Workers went on an eight day fast in front of Publix to protest that corporation’s refusal to enter into a Fair Food Agreement to increase wages and impose a code of conduct in the tomato fields to protect workers’ rights. She spoke that day about the violence she felt when she had to rip her infant from her arms at 4:00 in the morning to go work in the fields before she was fed or even awake. She had to rip her infant from herself and hand her over to somebody in a trailer every day at 4:00 in the morning to go work in the fields. She experienced that as violence. As a parent, I felt that story as

violence when I heard it. I particularly found it violent when I knew that they picked up the workers at 4:45 in the morning just to make sure that they had enough workers. They had them sit there until the crops dried and did not start work until 9:30. By the way, they did not get paid for that waiting time, which was for the growers' convenience to make sure they had enough slots filled up. So that was a reflection of the structural violence in one of the most abusive industries in our country and in the world.

Before the Coalition of Immokalee Workers won a big victory in 2009 with 90% of the tomato industry entering into a human rights agreement,¹ with them, a lot of other things happened in the fields as well. A lot of the ugly heads of the monster were there, and one of them was slavery. More than 1200 workers have been freed with federal government prosecutions. It is real slavery involving guns, chains, physical violence, and wages stolen. I am going to focus on sexual harassment because I think it is an example of how this organization that views human rights as their main message and frame has worked so well intersectionally.

The Coalition of Immokalee Worker's Fair Food Campaign has always been a human rights campaign. It is a human rights campaign in its framework, messaging, and in its DNA—in their deep, deep beliefs. They believe that what happens to agricultural workers is just the extreme end of what happens to all workers in this country. The Coalition uses this broad frame because they do not want to distinguish themselves as migrant workers. They see themselves as connected to all working people in the country. They know that before there were migrant workers, there were sharecroppers, child slavery, and a long history of abusing people of color. They go even further than that—if there were no people of color, they would find somebody else to abuse. It is a system and a structure. People of color get hit on the bottom because the system itself is structured in a way that is abusive and enables structural racism.

The Coalition looked at the agricultural system and went after the top of the supply chain—the big buyers who have power. A few buyers control most of the market. They have enormous power to put downward pressure on wages. The growers cannot cut seeds or tractors, so they cut labor, which is how you end up with coerced forced labor and slavery because sometimes they could not find people who would work under the conditions they had. The campaign, through all of these agreements, had a number of enormous victories. They now have, I believe, twelve

¹ See *Historic Breakthrough in Florida's Tomato Fields*, COALITION OF IMMOKALEE WORKERS, (Nov. 16, 2010), available at http://ciw-online.org/blog/2010/11/ftge_ciw_jo_int_release/.

agreements with major corporations, including Walmart. The corporations agreed to increase wages and implement a code of conduct that would eliminate a wide range of abuses through monitoring, auditing, a complaint system, and worker-to-worker education. On the farm and on the clock, workers come and do the “Know Your Rights” talk to other workers.

The agreements also created a whole new set of relationships. Farm workers were not actually employees of growers; they were employees of subcontractors, so the grower could wash their hands of responsibility. Now they are employees in the tomato fields of growers. There was also a dialogue set up whenever there was an issue between growers, subcontractors, and workers. It is really hard to not see someone as a human being if you have to be in dialogue and have empowered workers to talk about problems, propose solutions, and offer critique. Through this shift in power dynamics, we have had a cultural shift in the fields.

Sexual harassment turned out to be a huge issue. I do not even think the Coalition realized how big it was until they started implementing their victory. It became one of the main areas of complaints. Previously, it was so normalized that when the women participated in the worker to worker education, they would say, “Whoa, wait, you mean that’s not supposed to happen?” Some did not know it was illegal, but they also did not know it was not supposed to happen. Now the worker-to-worker education even includes peer-to-peer sexual harassment awareness-raising, even though it is not in the Code of Conduct. During sessions a trainer may give an example of a case and say, “Well, how would you feel if this happened to your mother or to your sister?” Then they point to the few women in the field and say, “These are your mothers and your sisters when you are out here in the field,” and it has had an impact on the culture. The other important piece of the puzzle is the leaders. When you have a leader like Nelly working with other farm workers, they have a huge impact on each other. That kind of modeling tends to start shifting things. You have to understand farm work is 80 to 90% male. However, the Coalition says that while sexual harassment only happens to 10 to 20% of the workers, it happens almost all of the time to those workers. So, here you have this organization that is 80 to 90% male workers who have made sexual harassment a priority. It is one of their four major pillars in all their marches and campaigns. It is one of the main areas of investigation in complaint resolution. No one could have gone in there and just gone after sexual harassment because until you change the rotting structure, you cannot really deal with anything else. You would never hear the word intersectionality in Immokalee. They are working about as intersectionally as you could. The interesting contradiction is they work intersectionally because they believe in universal rights.

OLGUÍN-TAYLER:² My name is Jodeen Olgún-Tayler. I am the Organizing Director with Caring Across Generations and before I came to work with Caring Across Generations, I got to spend about a decade doing organizing campaign work both in the Workers' Rights Movement, the Economic Justice Movement, and the Immigrant Rights Movement. My decade of work in the immigrant rights and economic justice movements is not work that was separate from the Movement to End Violence Against Women and Girls, not only because poverty is itself a form of violence, but also because so much violence happens in the workplace. I myself am a survivor of sexual assault in the workplace. One of the reasons why people immigrate is because of violence and immigrants experience a disproportionate level of violence in this country. When I came to work with the National Domestic Workers Alliance, which is the anchor group of the Caring Across Generations campaign, they already had thirty-eight affiliates across the country. Our members are mostly immigrant women, and African American women and, I would dare to say mostly are survivors. When I came to work at the National Domestic Workers Alliance, we were preparing to launch our first national campaign—a campaign called Caring Across Generations. We launched this campaign because after seven years of organizing to win the New York state-wide Domestic Worker Bill of Rights, which was a groundbreaking victory for domestic workers and low-wage workers across the country, we had gleaned important lessons about how to lead successful campaigns. We were ready to run campaigns that could help us scale our impact. In short, it clear to us that improving working conditions for the 2.5 million domestic workers in this country would require building up a lot more political power for our membership base. So Caring Across Generations was conceived as a strategy to build that political power. Caring Across Generations was launched as a national campaign that was multi-issue, built under the strategic premise that we need to identify areas of overlapping self-interest and interdependence with strategic allies so that we can bring allies into relationship with our members and take collective action on a multi-issue agenda.

We also believe that we need to be experimenting with strategies for jumping scales. I am talking about both increasing the scale of engagement with a constituent base, so increasing the scale of base-building work, but also experimenting with a larger scale impact on social change and policy change work. The policy agenda for the Caring Across Generations campaign was: (1) to create two million new

² There were many slides used to illustrate the points made in this presentation. Slides can be obtained by e-mailing the author at Jolguin-tayler@demos.org.

homecare jobs that were good, living wage, quality jobs; (2) have a workforce development component so there was a training and pathway to citizenship for the care workers in that workforce; (3) by creating that good, well supported workforce, we would also be creating better access to more sustainable and higher quality long-term care for seniors and people with disabilities. So, we were interweaving not only issues, but interweaving the interests of people from different demographics. This approach of multi-issue, values-based organizing campaigns was to help break us out of our issue and sector silos to build new strategic partnerships that would result in more political power for all of us.

So, I do not want to focus on the details of the Caring Across Generations Campaign, instead I want to offer it as an example of the role that organizing campaigns can play in movement building work. In particular I want to think about the ways that we look at indicators of successful organizing campaigns—the ways that we are measuring our success. When we think about different kinds of success indicators for organizing campaigns, I think about three categories that indicate success. The first is around uniting and organizing people into more powerful relationships with each other. It is often thought about as base building, but it is not just about base building, it is about building the capacity for increasing the scale of base building work. The second category is concrete improvement in people's lives—meaning improvements in material conditions. And then the third category of success indicators is generative and transformational changes. When we look at the kind of success indicators of what organizing accomplishes, it is important to see that if an organizing campaign is successful, there will be these kinds of changes in behavior, political consciousness and culture; new infrastructure in relationships and partnerships; new innovations and practice and structural and systems change. All of these things lead to us having more power and a better ability to use our collective power together.

We have a saying in the domestic worker movement—the domestic work is the work that makes all other work possible. As an organizer, I feel that organizing campaigns are a critical piece of movement work that makes all other movement work possible to do. So, when we step back and think about the role of organizing campaigns and why organizing campaigns matter, it is because of that critical role they play in building movement infrastructure. And, as an organizer, one of the core beliefs that I hold most dearly is that there is no change in scale that is real change unless it is backed by, *fueled by*, and created by a social movement that is not only demanding those changes, but *creating* those changes. That is what creating lasting, real movement change means, and it is organizing campaigns that harness our ability to do that. Campaigns

align progressive infrastructure and turn it into movement infrastructure. When I am talking about movement infrastructure, I am talking about the different organizations and institutions that make up the entirety of progressive forces—the entirety of our organizations and institutions that are working on social change and progressive direction. Sectors and fields also have their own infrastructure and together it makes up progressive infrastructure. Although we need all of these core capacities to be functioning, to be doing movement building work, there is also a key part of it that is how these core capacities are functioning in relationship to each other. So, I am going to tell you guys a secret, which is that about a decade into my organizing work I started having nightmares about sinking ships. It was a nightmare about the state of our progressive movement and the lack of coordination of our infrastructure and our ability to work between different capacities. It has been through the work of working with the National Domestic Workers Alliance and the Caring Across Generations Campaign, and exposure to other campaigns and our sister alliances that are doing really innovative work that I have been able to see how organizing campaigns can start to be more aligned. There are different organization and issues leading in different lanes, but they are united in a vision and moving forward with more purpose. So, with the Caring Across Generations work, there were a lot of issues that we touched on. It is a multi-issue organizing campaign, so these issues are all intersecting and a challenge within the field is that so often these issues are siloed, they are not in relationship to each other, there are not cross strategies. What we were trying to do was to put these issues in relationship to each other to be able to use the different lenses so that we could function together with a primary lens of improving long term care, but doing that in a way that furthered the interests and the goals of these other sectors and movements.

There are a lot of examples of cross sector organizing campaigns that are doing this kind of work. Caring Across Generations is one of them, and Cindy Wiesner talked about another example, the World March of Women. As cross sector organizing campaigns work together, a real key challenge becomes coordinating so that these campaigns can become more than the sum of their parts and together these campaigns can help build the infrastructure for the entire progressive movement. We are aligning communications, we are aligning research, and we are moving forward with a shared framework that helps us become a movement of movements doing this work together. It is based on the belief that organizing campaigns are what is needed. Organizing campaigns makes all other movement work possible because no change is lasting or real unless there is a movement behind it building, demanding and creating that change.

BUNCH:

[Video played] As men, we have unwritten rules and agreements, un-negotiated deals and codes of silence that other men come to expect from us. This collectively defines many aspects of our manhood. I remember asking a twelve year old boy, a football player, so how would you feel if your coach told you in front of all the other players that you are playing like a girl? I thought he would say I'd be mad, I'd be angry, I'd be sad. But no, the boy told me, "It would destroy me." I said wow, if it would destroy him being told that he's playing like a girl, what are we as men teaching him about girls? If we continue to treat women and girls as if they are of less value, the property of men and sexual objects, we continue to maintain a culture that reinforces discrimination and abuse towards them. It is important to rethink and reshape how we as men have been taught to act and behave. We need to hold on to the many wonderful aspects of manhood and remove those things that hold us back. We need to stop laughing and begin challenging inappropriate comments made about women and girls. We need to educate ourselves, our sons and other young men and boys. Let's be the solution. Our liberation as men is directly tied to liberation of women. A CALL TO MEN works when men and women can create a world where all men and all women are loving and respectful and all women and girls are valued and safe. Help us create a new world by being part of the next generation of manhood.³

Thank you. That was sort of a Public Service Announcement for our organization, A CALL TO MEN. A CALL TO MEN is a national organization focused on violence prevention, specifically ending violence against women and galvanizing a national movement of men to do the same. We were born out of the Battered Women's Movement. About twelve years ago, we founded A CALL TO MEN. Our work was built on the work that women had already done. Some of those women are here today, including Beth Richie, and Lavon Morris-Grant, Jackie Payne, Monique Hoeflinger, Nan Stoops, and others. I also want to shout out to other men doing the work as well. Neil Irvin from *Men Can Stop*

³ A CALL TO MEN, *The Next Generation of Manhood* (Oct. 5, 2012), <https://www.youtube.com/watch?v=GG9fefzuFWs> (last visited May 28, 2015).

Rape is in the room; David Rivers is also here for the New Mexico Coalition. Our work was born out of the Battered Women's Movement. I was running the largest batterers program in the country for Safe Horizons in New York City. We had about thirty classes a week with 600 men, all court mandated.⁴ At the same time, Tony Porter (co-founder of A CALL TO MEN) was doing work with batterers with Phyllis Frank in Nyack, New York. We were doing all this work with men who batter, and it was clear to us that men who batter do not seek to make changes. Actually, most men who go into batterers programs are court mandated to attend, and they go because they have to go, or to get out of a jam, or because they are in trouble. But, when we look at the numbers of men who engage in violence against women, it is a much larger number than those sent to treatment programs. And even those men who wind up going to batterers programs, if they do not comply with the program, they are not held accountable for not attending.

We wanted to look at the socialization of men, which requires looking beyond the individual men who commit sexual assault or domestic violence. Yes, those men need to be held accountable, but the larger issue is about men as a collective. The men who are violent against women are acting out this thing in manhood that teaches men to dominate and control. It is embedded in our socialization that women have less value than men, that women are the property of men, and that women are objects for men. And all men play that socialization out in some level or in some way. So the differences are in how we play it out and whether we are aware of it or not.

I try to be aware of how we move in the world; how we take up the understanding that male privilege is available for me here. That is what male privilege is, it is already in the room waiting for the man to come in and to take it. In the beginning of A CALL TO MEN we sat outside of the circle until the women in the movement brought us in. We had to first demonstrate that we could be allies. And there was a lot of resistance to our work for really good reasons. Some were concerned that we were interested in taking over.

Our mission is to work to create a world where all men and boys are loving and respectful, and all women and girls are valued and safe. And I want to emphasize ALL because that means going into every community, that means going to Hmong communities, that means going to Indigenous communities, and that means going into inner-city Chicago in the most difficult of circumstances. That means going everywhere that men and boys are because if we are going to end violence against all

⁴ See A CALL TO MEN, <http://www.acalltomen.org/> (last visited May 22, 2015).

women, then we have to work with the men and boys that they love. That is our responsibility. So, when we say all women, that is what we mean—*all* women. And we have a motto: “We go from the board room to the barber shop.” Wherever there are men, that is where we want to go because all men are impacted by this everywhere. Wherever there is patriarchy, wherever there is sexism, you have violence against women, discrimination, and oppression of women.

I want to share with you the principles of A CALL TO MEN. First, the roots of violence and discrimination against women and girls—men’s violence and discrimination against women and girls—is rooted in the history of male domination that has deeply influenced the definition of manhood in our culture. The definition of manhood has three primary aspects that promote and support the culture of violence and discrimination. The overwhelming majority of violence against women is men’s violence, and though most men are not violent, we are silent about the violence that other men perpetrate, and our silence is as much a part of the problem as the violence itself. So, if eight out of the ten men say to the two men who are doing violence against women or making sexist remarks, “knock it off, I’m offended by that,” we believe that those two men will stop doing what they are doing. We are expecting them to, and we are holding them accountable. These men are not abusive in other areas. They are not abusive when the police come to the door, for example. They have the ability to change. They are beating and yelling at their partner, but when the police knock at the door, they answer the door with, “hello officers, may I help you?” Well, that is anger management, is it not?

So, the second principle of A CALL TO MEN is that women are perceived as of less value than men. We say to the six year old boy, “you’ve got to throw harder than that, *you throw like a girl*.” That is our socialization. A sixteen year old boy, when a girl walks by, he is expected to talk to her. He has learned that he should objectify her and if he does not, then he is seen as not a man. So, the issues of seeing women as less valuable, as property, and as objects, create an environment where violence and discrimination is accepted, even tolerated, even encouraged. Preventing domestic violence, sexual assault, and other forms of violence against women is primarily the responsibility of men. As men, it is our responsibility to address this in the same way that white people must organize other whites to address racism.

When we look at commercial sexual exploitation and trafficking of women, we see again women treated as less valuable, as property. This is how many of our youth are learning what sex looks like. Their exposure to what sex looks like is through the lens of degrading women.

The third principle of A CALL TO MEN is that we cannot focus on one form of violence and discrimination against women and girls without focusing on *all* forms of violence and discrimination. The third principle is about the importance of an intersectional framework. We are purposely comprehensive in our work, understanding that many women and communities experience multiple forms of oppression.

The fourth principle is the importance of including the voices of women and having systems of accountability to women. We had an all-woman board for the first ten years and we only opened our board up to men two years ago. Men can get together with the best of intentions, and create a program in their community, but we need to know from women leaders if it is helpful to women in that community. So, it is important to have leadership and vision from women.

We are committed to grass roots organizing. We do organizing through training and education. We want to not just go in and inspire a community with a one-time event, but instead, we want to *do* something within this community.

And then the final principle of A CALL TO MEN is that while we want to educate men—all men—to the realities around male domination, social norms, and the need for cultural change, we also want to provide hope and care for men. We want to provide healing for men. Men are harmed by patriarchy, as well. Our work is an invitation to men, not an indictment. I want to give you an example of what men have done without even trying, and to ask you to imagine what we could do if we organized with women and made an effort to make this social change. My sixteen year old boy is a jock. He eats, drinks, and lives sports. I am reeducating him every day because he is spending time with these men who are saying things like, “*you throw like a girl.*” So, it is all this reeducating, and it is a wonderful conversation, and a wonderful experience. My son Joshua came to me and said “Daddy, will you dye my socks pink?” Why do you think he wanted me to dye his socks pink? It was for breast cancer awareness, but it was not because he and his teammates cared that much about breast cancer awareness. He wanted to do this because the NFL put out a statement telling athletes to wear pink during October. He is wearing pink socks not because he is now going to go and volunteer to do a Breast Cancer Awareness march. He is wearing pink because the men that he emulates are wearing pink. So, my son, who two years ago would never have asked to wear pink, now is asking me to dye his socks pink. Because the NFL said so, pink is now a cool color for men—just like that. Joshua plays basketball. What color are that boy’s socks? Well, they are actually fuchsia because when I dyed them I said “oh, you want pink socks? You are going to get some pink

socks, my brother!” So, you go to Dick’s Sporting Goods, Walmart, you find pink socks for men. Pink, just like that. This is social change!

This is my final note. So, Joshua says “Dad, take me to get a haircut.” I said, “Sure, Josh.” So Josh comes out in his pink socks and his blue Vans. He is going to the barber shop. So, Joshua comes out like this to go to the barber shop. You talk about a male culture. Joshua’s not concerned about people seeing his pink socks. He is going to the barber shop and nobody is laughing at his pink socks. Now, a cultural shift has occurred. No one made an announcement about anything; they just did it, and look at the ripple effects. Now, everybody’s wearing pink, my son’s wearing pink, and all these boys say “cool color!” Just like that. So, pink is the new black, and this is really how social change can occur. All of these efforts that bring us into the same conversation towards social change—that is really where it is at and men need to be a big part of that change.

TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on New Possibilities for Reframing Work to End Gender-Based Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

*Monique Hoeflinger (moderator)**

Neil Irvin

Marcia Olivo

Jackie Payne

PAYNE: I am here on behalf of the NoVo Foundation.¹ Move to End Violence is a ten year, \$80 million project of the NoVo Foundation. About seven years ago the NoVo Foundation was gifted a lot of money from Warren Buffet to his son, Peter Buffet and Peter's wife, Jennifer Buffet. Peter and Jennifer run the Foundation and they determined that they wanted to end domination and exploitation and expand collaboration and partnership. When they thought about how they wanted to do that, they felt like the best thing they could do was to center their strategies around the most powerful and untapped resource in the world

^o This transcript has been edited from its original transcription for clarity.

^{*} Monique Hoeflinger has been active in social justice movements for the past 20 years, serving as a lawyer, organizer, strategist, and funder. Hoeflinger has served in leadership positions at the Ms. Foundation for Women, Obama for America (2008), National Gay and Lesbian Task Force, and the Ohio Justice and Policy Center. Neil Irvin is the Executive Director of Men Can Stop Rape (MCSR), which seeks to mobilize men to use their strength for creating cultures free from violence, especially men's violence against women. Marcia Olivo is one of the co-chairs of the CONVERGE! conference and co-founder of Miami Workers Center of Sisterhood Survivors. Jackie Payne is the director of Move to End Violence, a ten-year movement-building project of the NoVo Foundation. Hoeflinger, Irvin & Olivo are all MOVEMENT TO END VIOLENCE Cohort members.

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¹ For more information the NoVo Foundation, please visit <http://novofoundation.org/>.

and they believe that to be girls. If you view girls as the most powerful and untapped resource, you have to say what is holding girls back from being their fullest selves? And, as we all know, a big part of what is holding them back is violence.

There has been incredible progress over the last forty years in the work to stop violence against women and a lot of that progress is due to the tireless work of activists in this room. I want to acknowledge that and think about how attitudes have shifted, the importance of the work around resource allocation, and how folks have made changes to systems. And yet, as we all know and have talked so much about over the last couple of days, staggering rates of violence still exist in the United States and so much of what we have tried to do is not working for so many. The NoVo Foundation leaders asked themselves what could we do differently? They did not want to spend more money on services though that would have been a laudable goal; they wanted to see what work they could do that other funding providers would not invest in. And so, when we started out, we interviewed about 200 activists to find out what folks in the field thought were the strengths and challenges of the current work. Here are some of the themes that we heard in those conversations regarding strengths.

The first strength interviewees noted is that there has been a dramatic shift in public perception around the acceptability of violence against girls and women. The polling on this is striking. Second, federal VAWA funding has created a nationwide infrastructure that allows us to provide lifesaving services in every state in the nation. Other movements would love to have that infrastructure. Third, we have deep expertise on the issue, and continued improvements in how systems respond to violence, although, as we acknowledge, it still clearly is not enough. Fourth, there have been incredible innovations in the field, particularly the work being done in marginalized communities, work that reflects an intersectional analysis and approach.

What we heard regarding challenges, over and over again, was about burnout. People in the field are working themselves and their organizations absolutely to the bone to try to meet the needs of survivors. There is a scarcity of resources; there are only enough resources to meet a small percentage of the need. In fact, when I asked people what we should be investing in, they said do not just give us money, because if you give us money, we will have to use it for more beds and services because we cannot morally turn away the people at the door and yet I know that is not the best solution or the only solution. We have to expand our thinking. The second challenge was the limited funding for advocacy which is the result of a heavy reliance on government money. There is very little money from other sources and almost no money for

organizing or social change. People talked about being in a siloed, isolated and competitive field. A lot of folks talked about an abusive environment in which we are at each other's throats. Many expressed uncertainty about whether they are even part of a "movement" or are they just part of a field, and they were trying to figure out what the difference is and if it matters. Many expressed concern that our movement has moved away from our social change roots. Our field has increasingly become professionalized and we have a lack of experience now in organizing and social change and we have a feeling that we are not getting at the root causes of violence against girls and women. In fact, many organizations do not have a mission to end violence against women. A number of people said, "We are a movement of no"; they expressed a sense of feeling stuck.

In 2010, we launched Move to End Violence.² Our goal is to help strengthen the movement by bringing together innovative leaders from across different sectors to help redefine and expand what the movement looks like in today's America. We provide the time and space and resources to help these folks step away from the intense pressures of the everyday to come together to have essential movement building conversations, to think about strategy, and to develop skills. Over the course of ten years we hope to help the movement become a powerful engine for social change, made up of a critical mass of people aligned around a common vision and moving in the same direction. So, every two years we find people—innovative leaders from across the country, including lots of folks in this room, who are doing this work, and bring them together to have these conversations. Over the course of two years, we are giving them this opportunity to talk with one another, to lift up their own wisdom and their own knowledge, and to think about vision and strategies. We also provide individual leadership training and organizational support. We are looking for visionary leaders from organizations which really get intersecting oppressions at a fundamental level, and that often means folks from scrappy, under-resourced organizations working at the margins. We think they are on to something in terms of what the right direction is for how you create social change. The first cohort leaders worked on defining a new vision for the movement. The second group of movement makers is engaged in some of the essential conversations that we have been having at this conference: What do we mean by violence? What do we mean by gender? How do we understand violence as inextricably linked to racial and economic and social justice? If that is what we believe, what does

² MOVE TO END VIOLENCE, <http://www.movetoendviolence.org/our-people/> (last visited May 26, 2015).

that mean for how we approach the work? What opportunities does this present? What kind of movement will we need? Who should we be partnering with? How does it shift both our analysis and our approach to the work? What does it look like to do cross-movement building where we understand how we are all connected and we are working together towards a common strategy?

IRVIN: This conference is unfolding in a way which feels tangible and allows us to start thinking about what it looks like to work together and what are some solutions for all of the challenges that we face. My name is Neil Irvin. I am the Executive Director of Men Can Stop Rape,³ and based in Washington, D.C. Our mission, since our inception in 1997 is mobilizing men, to use our strength to create cultures free from violence—especially men to stop violence against women. And we are real intentional with that language—violence against women and girls, because we recognize that women are experiencing the majority of the violence. It is men and it is boys who are learning to devalue women and to perpetrate this kind of violence as an expression of our masculinity. We think that we are able to work with boys in the way that we do because of the work that you all are doing as advocates, as policy people, as direct service providers, and as leaders in this work.

One of the ways that we help boys to understand how they have been misled about their humanity and who they are as men is by uncovering dominant stories about masculinity. This dominant story tells them that being a man is determined by how much sex they have with women, how much money they make, and how much success they have on the athletic fields. They find themselves in relationships with no social or emotional intelligence to help them gauge how to interact with people in a full and healthy way.

Our work now starts in elementary school with summer camps and in middle schools and high schools. We have been working with some young men who have been a part of our program for almost 15 years. They serve as facilitators, trainers, speakers; they mentor our younger men and boys.

The words most often used to advertise boys' toys are: battle, launch, heroes, armor, vehicle, cage, special-forces, stop, hero, arena, stealth, ultimate, and action. Our boys know very quickly what happens if they disagree with those expectations of masculinity. The violence in our young people's lives is not theoretical. There are policies and laws that already say you are not supposed to harm people. More policies and laws may not be the thing that is going to create communities where young

³ MEN CAN STOP RAPE, <http://www.mencanstoprape.org/> (last visited May 26, 2015).

people are safe and can have role models of how to interact with one another in a healthy, productive way.

When it comes time to work with boys, we have some core principles and they are all focused on starting with social and emotional intelligence. A CALL TO MEN,⁴ co-directed by Ted Bunch, Ulester Douglas at Men Stopping Violence,⁵ and many other organizations across the country have done a great deal to engage boys and men in change. But now for the next twenty to forty years, we need to talk about *how* you do that. It is good to do it, but there is a way in which it needs to be done. If activists walk into a room to talk to boys about ending rape, nobody is listening because most men are not violent, they are not raping, so they think you are not talking to them. So, for us it is really important to build relationships. We stay positive; we are male positive. It is important that this field start to think about what is it to really embrace men and masculinity as a resource, the same way the Buffets are looking at girls as an untapped resource. We have to re-harness the resource that men and boys want to be. We want to organize young men to internalize this work and sustain it for a lifetime.

We have to meet young men where they are. You cannot talk about rape day one; we cannot talk about sexual orientation and gender identity on day one because the homophobia and the heterosexism are so high. All men do not agree with what they have been taught. It is important for us as activists to realize that many boys are just concerned about getting home safely. They do not really care about violence against girls because people are perpetrating violence against them. Boys are trying to heal from trauma and then they find themselves in relationships with people, and they have no emotional intelligence or ability to share or speak. We must develop leaders, be patient with them, have regular check-ins with these young men, and provide incentives for change.

The last thing I would say to you is to get involved. It does not mean you have to start a non-profit, it does not mean you have to do Take Back the Night marches. You may just go to a play. Maybe you can write a check. Maybe you can celebrate someone who got a good grade, but you have to be involved in young people's lives to show them the alternatives. Thank you.

OLIVO: (*ORIGINAL SPANISH*) Yo soy co-fundadora de Sisterhood of Survivors. Cuando nosotros empezamos Sisterhood of Survivors

⁴ For more information on A CALL TO MEN, please visit <http://www.acalltomen.org/>. See also Cathy Albisa et al., *Panel on Organizing Campaigns*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 505 (2015).

⁵ For more information on Men Stopping Violence, please visit <http://www.menstoppingviolence.org/>.

estábamos en una organización que provee servicios. La idea original era crear un grupo de apoyo para mujeres sobrevivientes de violencia domestica. Como parte del trabajo teníamos que participar en diferentes espacios donde se desarrollan estrategias decisiones que impactarían a las familias afectadas por violencia domestica. Lo primero que nosotros observamos fue que esos espacios estaban ocupados por profesionales—pero las mujeres que la corte nos mandaba a nosotros no estaban sentada en la mesa, ni eran parte del proceso. Entonces de ahí nosotros vimos la oportunidad que había y la necesidad mas que todo, de que esas mujeres estuvieran sentadas en esas mesas, porque esas decisiones iban impactar sus vidas. Cuando nosotros empezamos a traer mujeres a esos espacios, un día tuvimos que salir de una reunión porque mientras la gente hablaba a un lado, nosotros le hacíamos la interpretación, y eso estaba molestando a las otras personas y tuvimos que salir. Entonces vimos esa oportunidad de crear un espacio donde la voz de las mujeres, esas mujeres marginalizada fueran las que estuvieran dirigiendo esa lucha. Llegó un punto en que ya no podíamos continuar estar ahí porque nos convertimos en un problema político para la organización que nos estaba alojando y para sus aliados.

Muchas de las personas e instituciones responsable de crear los cambios y responder a nuestras demandas eran parte de la junta directiva o tenían conecciones políticas o controlaban recursos. En ese proceso nosotros empezamos a buscar un espacio a donde ir, por que en esa época tampoco teníamos ni un centavo. Entonces no estábamos en condiciones de hacer un trabajo de independizarnos en nada de eso. Nosotros nos íbamos a ir a un espacio que fuera mas alineado con la visión que nosotros teníamos, entonces nosotros, después de un tiempo, terminamos en el Miami Workers Center. El Miami Workers Center es una organización que ha estado aquí en Miami por unos catorce años, pero su enfoque principal siempre fue justicia racial y justicia económica. La mayoría de los miembros del Miami Workers Center son mujeres, luego venimos nosotros y trajimos más mujeres. Lo que nosotros encontramos, y todavía la parte de los retos que tenemos en el Miami Workers Center, y no solo Miami Workers Center sino que es un reflejo del movimiento de justicia social, es que por ejemplo nosotros vinimos allí. Nosotros salimos de servicio, de una organización de servicio más que todo porque las organizaciones de servicios eran solamente eso, ocupando espacio sin un análisis de raza, sin un análisis de clase. Nosotros llegamos a Miami Workers Center, una organización con una historia de justicia social increíble aquí en Miami, y la mayoría de sus miembros son mujeres que habían sido expuesta, que habían sido victimas de violencia domestica, de asalto sexual, de todas esas cosas. Donde está ubicado el Miami Workers Center es una de las comunidades

mas pobres de Miami, sometida y viviendo diariamente la violencia del sistema. Lo que paso fue que nosotros veíamos, y es parte todavía de los retos que tenemos en el Miami Workers Center y fue un reflejo también de las otras organizaciones allá afuera, que no tienen un análisis de género. Y toda su vida en el transcurso de Miami Workers Center como una organización, han hecho un trabajo increíble pero sin tomar en cuenta realmente como esas personas, la mayoría de sus miembros, han sido impactadas precisamente por su género. Entonces estamos en esta gran contradicción que tenemos por que por ejemplo, el trabajo increíble que se está haciendo, el trabajo increíble que está haciendo el Miami Workers Center, el trabajo increíble que está haciendo la Coalición de Inmigrantes de la Florida, el trabajo increíble que está haciendo las organizaciones por derechos laborales donde la mayoría de esas organizaciones, otra vez los miembros, que están dirigiendo la lucha, son mujeres. Pero todo esto esta pasando individualmente, “yo trabajo en inmigración, yo trabajo en esto, yo trabajo en esto” pero no hay nada que nos traiga junto, no hay nada que nos junte, no hay un análisis, no hay un análisis de genero y no hay un análisis de violencia.

Cuando nosotros empezamos con Sisterhood of Survivors, lo que nos trajo junto, la necesidad fue este grupo de mujeres que recibían golpes de sus. Eso significó que nosotros abrimos la puerta para cualquier mujer que fuera victima de violencia domestica. Ahí nosotros teníamos unas profesoras de acá de la universidad de Miami, que siempre nos escribían un buen cheque, teníamos abogadas, teníamos contadoras, teníamos mujeres blancas, teníamos musulmanas de todo estaba ahí. La mayoría de mujeres sin embargo, eran mujeres de color, mujeres de clase trabajadora, mujeres pobres. Cuando nosotros teníamos reuniones estas mujeres profesionales blancas hablando ingles dominaban el espacio. Ellas dominaban el espacio aun cuando eran menos. Cuando empezó eso a suceder, vino la necesidad de reestructurar la forma como nosotros estábamos trabajando y el enfoque de nuestro trabajo. Primero nosotros teníamos que determinar quien iba dirigir esa lucha. El trabajo que nosotros estábamos haciendo era en base a la opresión que sufren las mujeres de lo que esta pasando en nuestra sociedad, pero las principales personas afectadas eran esas mujeres, principalmente mujeres de color, mujeres de la clase trabajadora, mujeres pobres. Entonces, si ellas son la mayoría y son la que están mas impactada por eso a la hora de quien va dirigir la lucha, para nosotros era importante que esas mujeres—las persona mas marginalizada en nuestra sociedad—sean las que dirijan la lucha. Esa fue la primera cosa que tuvimos que hacer. Pero sin dejar de reconocer que los golpes son golpes, violencia domestica es una forma de opresión, no discrimina, no tiene raza, no tiene color, no tiene nada de eso. Entonces en ese espacio, a la misma ves que nosotros queríamos

determinar quien dirige la lucha nosotros también estábamos en una decisión de encontrar cual era el papel que esas mujeres—mujeres blancas, mujeres con un estatus económico mas alto—iban a jugar en ese movimiento y en ese espacio que nosotros estábamos desarrollando. Utilizando los privilegios que tienen, privilegios de raza o privilegios económicos, vamos a ver como nosotros podemos explotar eso para avanzar los derechos de las mujeres en general. Pero, quien va a dirigir la lucha son las mujeres que están directamente impactadas por esto.

Pero todavía lo estamos tratando de determinar, yo no tengo una respuesta todavía y yo espero que un día la tenga. Uno de los grandes impactos que Sisterhood of Survivors hizo aquí en Miami fue crear un espacio que estaba inexistente aquí en la Florida, donde se empezó a hablar de la participación de las mujeres desde un punto de vista político y el impacto que estaban teniendo. Todavía nosotros no estamos donde necesitamos estar, pero hemos visto los cambios que están sucediendo aquí, ahora todo el mundo quieren incluir mujeres y que bueno, porque eso es lo que nosotros queremos y que cada institución, cada organización, cada movimiento de justicia social incluyan un análisis de genero y un análisis de violencia en el enfoque del trabajo que hacen.

Como es que nosotros, como es que los servicios, como es que los movimientos de justicia social y como es que espacios como este de la universidad, espacios como esta conferencia que nosotros creamos aquí, van a trabajar juntos para avanzar esos derechos y para avanzar en una agenda que cambie las condiciones y la vida de las mujeres que están cada vez más impactada por las opresiones que vivimos.

Para mi es muy importante que en espacios como este si nosotros vamos hacer realmente reales en lo que queremos hacer, esas mujeres marginalizadas tienen que estar también. Esas conversaciones tenemos que tenerlas, estructuras de poder en términos no solo de poder de recursos, sino poder de espacio, poder político, todo esos poderes, nosotros tenemos que hablar de eso, y como cada uno de nosotros queremos relacionarnos en base a ese poder.

Las personas mas marginalizadas son las que tienen que estar a frente de la lucha. Segundo nosotros debemos determinar cual es el rol de las otras personas que no califiquen dentro de ese primer grupo, cual es el papel que van a desempeñar. Y tercero también determinar cuales son las necesidades de esas agencias para poder transformar el trabajo que ellos están haciendo. Que es lo que nosotros necesitamos hacer para cambiar esa estructuras? Para nosotros lograr los cambios que necesitamos en el estado de la Florida, tenemos que expandir nuestro trabajo y sacarlo de Miami-Dade County, necesitamos el trabajo aquí pero el trabajo tiene que ser un trabajo estatal donde se reúnan todos esos recursos. ¿Cómo es que las organizaciones por justicia social y derechos

laborales van a incluir en el trabajo que hacen, o van a enfocar el trabajo que hacen, en base de un análisis de género y un análisis de violencia? ¿Cuáles son los recursos que nosotros necesitamos para hacer ese trabajo? La respuesta yo no la tengo, pero lo que yo sí sé, es que cada uno de nosotros tenemos que salir de aquí y determinar, ¿Cuál es el rol que yo voy a jugar para yo lograr que esos cambios, pasen?”

Yo pienso que la mayoría de la gente que vino a esta conferencia es porque realmente están preocupadas y le preocupa todo lo que significa el impacto de la violencia en la comunidad y en todas nuestra gente. Pero, venir a una conferencia no es suficiente. ¿Qué es lo que nosotros necesitamos hacer? ¿Cuál es el rol que va a jugar cada uno de ustedes para lograr ser parte de ese movimiento y para lograr ser parte de esos cambios y para ayudarnos avanzar esa agenda y esa plataforma que nosotros necesitamos?

OLIVO: (*ENGLISH TRANSLATION*) My name is Marcia Olivo. I am the co-founder of Sisterhood of Survivors. When we began Sisterhood of Survivors we were with a service providing organization. The original idea was to create a support group for women that had survived domestic violence. As part of our job, we had to participate at the tables where domestic violence policy was being made. The first thing we found was that in that space were only this group of people--professionals--making decisions, but the women who the Court sent to us were not sitting at the table. The professionals were making decisions that would govern the lives of these women. We saw the opportunity and the need that those women be seated at the table because those decisions would impact their lives.

When we started taking women into those spaces, one day we had to leave a meeting because while people talked in English, we would interpret for the women on the side, and that was bothering other people, and so we had to go. From that we saw the opportunity to create a space where women, the voice of marginalized women, was to be heard and where they would be the ones guiding the fight. There came a point that we no longer could be in the service provider's office. Because we became a problem for the program and other service organizations with whom they worked. Many of the demands were made of those people who were at the table, so we had to leave that organization. We started looking for a space, but did not have a dime, so we were not in the right condition to become independent. We wanted to go to a space that was more aligned with our vision, so we ended up at the Miami Workers Center.

Miami Workers Center is an organization that has been here in Miami for about fourteen years; its main focus was racial and economic justice. The majority of the Miami Workers Center's members are

women and when we joined, we brought more women. A challenge we have with the Miami Workers Center, and not only with the Miami Workers Center, is that there was no analysis of gender. We left the service provider organization because the service provider organizations were without an analysis of race or class. We arrived at the Miami Workers Center, an organization with an incredible history of social justice work and the majority of its members are women who had been victims of domestic violence or sexual assault. Miami Workers Center is located in one of the poorest communities in Miami, where people experience on a daily basis the violence of the system. But MWC did not have an analysis of gender. Miami Workers Centers had done an incredible job, but without taking into account how the majority of its members have been impacted because of their gender. So, there is this great contradiction that we have the incredible work that Miami Workers Center is doing, the incredible work that the Florida Immigrant Coalition is doing, the incredible job that the organizations for labor rights are doing, where the majority of these organizations are led by women. But all this is happening separately. People say, "I work at immigration, I work in this, I work in this," but there is nothing that brings us together, there is nothing that joins us, there is not an analysis, there is not an analysis of gender, and there is not an analysis of violence.

When we began Sisterhood of Survivors, what brought us together was the need of this group of women who were being assaulted by their partners. So that meant that we opened the door to any woman who had been the victim of domestic violence. We had teachers from the University of Miami, who always wrote a nice check, we had lawyers, accountants, white women, Muslim women; we had everything there, but the majority of women were women of color, working-class women, and poor women. When we had meetings, these white professional women speaking English dominated the space. They dominated the space even when there were less of them. When that started to happen, it became necessary to restructure the way we were working and the focus of our work. We first had to determine who was going to lead this fight. The work we were doing was based on the oppression that women suffer, and the main persons affected by this oppression were women of color, women of the working class, and poor women. If they are the majority and they are the ones most impacted, it is important that these women—the most marginalized people in our society—be the ones that directed the fight. So that was the first thing we had to do. But we still recognized that hits are hits, domestic violence is a form of oppression, it does not discriminate, it does not have a race, and it has no color. At the same time that we were wanting to determine who was going to lead the fight, we were also making the decision of what role these white women,

women with a higher economic status, were going to play. Using the privileges they have, privileges of race or economic privileges, how can those privileges be used to advance the rights of women in general? Still, the ones that will *direct* the fight are women who are directly impacted.

I do not have an answer yet. Sisterhood of Survivors created a space that was non-existent here in Florida where we began to talk about the participation of women from a political point of view. We are still not where we need to be, but we have seen the changes that are happening here; now everybody wants to include women and that is good because we want every institution, every organization, every social justice movement to include an analysis of gender and an analysis of violence in the focus of the work they do.

How is it that we, how is it that the service providers, how is it that the social justice movements and spaces like this at the University, spaces such as this Conference that we created here, will work together to advance those rights and to advance an agenda that changes the conditions and lives of women who are most impacted by the oppression that we live?

For me it is very important that in spaces like this one, if we are going to be real about what we want to do, those marginalized women have to be here as well—not just when we go out and protest, not just when we occupy a space, but when decisions are being made. If we are really going to develop this movement, we have to talk about the structures of power in terms of resources, space, and political power, and how each one of us wants to relate on the basis of that power.

The most marginalized people have to be the ones in the front of the fight. Second, we must determine what is the role of the people who do not qualify within that first group, what is the role that they will play? Third, what do service agencies need in order to transform the work they are doing? What is it that we need to do to change those social service structures? We really have to expand our work and take it out of Miami-Dade County; we need to be state-wide. How is it that organizations for social justice and labor rights are going to include in the work they do an analysis of gender and an analysis of violence? What are the resources that we need to make this work? I do not have the answer, but what I do know is that each one of us has to get out of here and determine, “What is the role that I’m going to play so that I can make those changes happen?”

I believe that the majority of the people who came to this Conference are here because they are really concerned and worried about the impact of the violence in our community. But attending a conference is not enough. What is it that we need to do? What is the role that each one of

you will play to be part of this movement and to be part of these changes, and to help us advance this agenda and platform that we need?

PAYNE: One of the things that I think is the most challenging has to do with the current funding structures. The vast majority of our funding comes from the government. That funding limits what you do in terms of advocacy, organizing, and social change. But, I think we place more limitations on ourselves than funding actually requires. We need to take risks, understand the opportunities, and push. So, you heard from Nan Stoops this morning on the plenary about how to bring to the center of the mainstream movement the work that is happening on the margins to help folks shift the analysis and the approach.⁶ She has the incredible advantage of the infrastructure that that group of people gets together like six times a year. The folks who are working in the margins do not have that same level of resources. So, folks are recreating the wheel in isolation or just not having the opportunity to learn from each other, and the rest of this movement is not getting the full benefit of what is happening out there. So, I think that is a big one that we are trying to address. We have got to get comfortable about talking about targets and talking about power and the use of it and building it. We have to have a fundamental shift in how this movement is operating if we are going to win. That means we have to address how we can work together with our allies in the movement so we can hear each other and we can build our power.

HOEFLINGER: So, Marcia, your work relies on survivors leading the conversation and setting the agenda. What advice would you give to service providers and advocates who are interested in broadening the way they think about and engage with survivors? Neil, building on your last comment about men, you asked what does it mean for this movement to embrace men. What does it look like for men to be part of this movement? Jackie, I think one of the amazing things about the Move to End Violence Project is that we have service providers and activists and advocates and funders sitting in the same circle together and that is a rare opportunity. What are the benefits and challenges of this collaboration?

OLIVO: (*ORIGINAL SPANISH*) Lo que yo le diría a services providers y otros sectores del movimiento primero es hay que tomar riesgos. Si queremos ganar, hay que tomar riesgos. Y por ejemplo nosotros estamos claros que proveedores de servicios son instituciones creadas por el gobierno, pero yo como proveedora de esos servicio es parte de mi responsabilidad tomar riesgos y retar a ese sistema. Entonces uno para mi es que hay que tomar riesgos y son la condiciones que

⁶ See Caroline Bettinger-Lopez et al., *Plenary 4—Mobilization*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 487 (2015).

tenemos pero hay que hacerlo. La otra parte que es sumamente importante sobre todo cuando viene a instituciones de servicios, es practicar humanidad y compasión con las personas a quien esos servicios van dirigidos. Y parte de lo que nosotros escuchamos cada día de las mujeres con quien nosotros trabajamos, es precisamente la falta de compasión y de humanidad de esas instituciones que representan al sistema.

OLIVO: (*ENGLISH TRANSLATION*) What I would say to service providers and other sectors of the movement is this. First, risks must be taken. If we want to win, we need to take risks. For example, we are clear that service provider institutions are created by the government, but as a service provider, it is my responsibility to take risks and challenge the system. So, you need to take risks within the conditions that you face. The other part is that service providers must practice humility and compassion with the persons with whom they work. What we hear every day from the women with whom we work is precisely the lack of compassion and humility from those institutions that represent the system. This is how institutions can turn into mechanisms of oppression.

IRVIN: I would like to see boys here. I would like to see young boys here learning, experiencing, and having this opportunity to role model. I would like to see young people here. They become the future generations that internalize this work—young men, young women who are learning and who can start helping us think about what the vision needs to look like. I would like to see more youth involved earlier and more diverse ways for men to be involved that serve this work, and be invited here to be awkward and heterosexist and homophobic because that is what we are going to be when we come in here. That should not to be a moment to attack, but to say, “Well, hey of course you’re that way because that is how you have been taught to be.”

PAYNE: In some ways the strengths are obvious. So many people in this room coming from different pieces of the spectrum of the movement, working on child abuse and domestic violence and sexual violence and domestic workers, and thinking about the intersections of all of the issues to understand how they are linked, to really explore their relationship between economic justice and racial justice and the end to violence. There are a couple of challenges. One of them is how we are together and how much space we have for each other to be able to learn and do better. How are we going to create a learning space? And then also there is a political question about what it means to be a movement and how if we understand the need to broaden our movement, how are we going to invite other folks into this even if we do not agree with everything they think. And they do not agree with everything we think. I was thinking about what is happening in the immigration reform movement and how

some of my gay male friends are working with some of the really extreme religious right to pass immigration reform, they are sitting at a table every day with people who think they are going to hell. They are making the choice to sit at that table with those folks because they want to win immigration reform. Their strategy is that sitting with those folks will help them win. I will leave it to you to make your own choice, but I will tell you when you are focused on the win, if you think that is going to help you get the strategy and create change for people, then maybe you make that choice.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on Beyond the Rape Exception: Using Law and Movement Building to Ensure Reproductive Health and Justice for All Gender Violence Survivors

UNIVERSITY OF MIAMI SCHOOL OF LAW

Jamie Vanaria (moderator)^{†}*

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Lillian Hewko

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GONZÁLEZ-ROJAS: Thank you for having me. My name is Jessica González-Rojas. I am the Executive Director of the National Latina Institute for Reproductive Health (NLIRH). I want to give a special thanks to Dian Alarcon, our local Field Coordinator here in

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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Florida who has been doing amazing work organizing across social justice movements. I am going to share a bit about the reproductive justice framework, how it intersects with work around gender violence and how we bring diverse theories together. I will talk a bit about reproductive oppression, provide a couple of examples, and then provide a snapshot of work that NLIRH is doing in Texas that highlights some of the human rights abuses that has happened in that part of the country. Often a place like Texas, which is led by ultra-conservative politicians who are anti-choice, anti-woman and anti-LGBTQ, ends up being a training ground for bad policies that are replicated in other parts of the country.

The first thing I would like to explain is “what is reproductive justice?” I will also share the difference between reproductive justice and reproductive health, and why the justice frame is really critical in our work. We see reproductive justice as a movement dedicated to ensuring that everyone, regardless of age, race, ability, national origin, income, religion, immigration status, sexual orientation or gender expression, has equal rights and access to reproductive health services, as well as a right to make informed decisions about whether or when to have children. Often it is about whether people can create the families they wish to create and are able to parent those families. For example, the criminal justice system, including detention centers, has torn families. Those who have chosen to create families are often unable to parent the children they have because the children have been placed in foster care or under the care of other family members. The reproductive justice framework acknowledges the systemic barriers that multiple communities face and brings movements together to advance the health and dignity of women and families, rooted in human rights. It offers a strong framework around which to do organize in impacted communities, rooted in “intersectionality.” Intersectionality refers to the way that different identity factors intersect to form an individuals’ reality and lived experience. It recognizes that individuals and groups are shaped by multiple and intersecting identities and that these must be taken into account when doing organizing work.

Reproductive oppression is the controlling and exploiting of women and girls’ bodies, sexualities, and reproduction by families, communities, governments, institutions, and societies. Coercive sterilization, in particular, has been an issue in the Latino community. There have been cases around coercive sterilization in institutions like prisons and public hospitals. In Puerto Rico, between the 1930’s and the 1970’s, there was an island-wide campaign to promote smaller families because of high rates of poverty and agricultural displacement. This was rooted in a racist and sexist notion of overpopulation, placing blame on low-income Latino

families for degradation of the land and characterizing people of color as wasteful, unclean, and uncaring. The campaign also sought to reduce childbirth to encourage women to enter the workforce. The fears of overpopulation targeted women's childbearing and reproductive decision-making. This campaign was a federally-funded effort to coerce women into sterilization and was marketed it as a means out of poverty. There were deceptive advertisements across Puerto Rico of white people with two children, describing the "ideal family" as a small one and encouraging women to seek "la operación" (publicly funded sterilization). By 1968, approximately a third of all women in Puerto Rico were sterilized. The campaign was so "successful" that in towns like Barceloneta, in the northwest part of Puerto Rico, the government was forced to close down elementary schools because there were not enough children to fill those schools. In the 1950's, scientists in the United States mainland were looking for a place for human trials to test contraceptives. They targeted women in Puerto Rico, describing them as poor, uneducated, and eager to reduce their family size. These women faced high dosage rates, sustained awful side effects, and were treated as guinea pigs, without adequate informed consent. While that existed several decades ago, we still see reproductive coercion happen now in the criminal justice system. There has recently been an investigation in California's women prison regarding charges of coercive sterilization, without informed consent.

This is why addressing poverty and other conditions that impact women's lives is so important. We have such amazing partnerships here in Florida where we work across gender justice, immigrant rights, LGBTQ rights, economic justice and labor rights to lift up how various policies impact a person's ability to make and exercise decisions about their health, family and future. The work of NLIRH sits at an intersection of multiple movements. We are often the ones in the women's rights and reproductive rights movements bringing the Latina or immigration lens, and we are often in the Latino civil rights and immigrant rights movements bringing the gender lens. We are working together because the reproductive justice framework allows for that intersection.

The "reproductive justice" term was created by and for women of color. It was coined in 1994 by the Black Women's Caucus after the International Conference on Population and Development in Cairo, Egypt, and was born out of a need to address intersectionality. The term "pro-choice" did not resonate with women of color because it was too limiting. Many women of color are not able to actualize "choices" in their life due to systemic and institutional barriers. Obtaining the legal right to an abortion may not exist if you are poor, if you are an immigrant, if you do not speak the language, or if you live in rural

community with a nonexistent reproductive health system. That “choice” is out of reach for many women. Thus, a focus solely on rights does not address a person’s ability to actually exercise that right. Pro-choice is the view that a woman should have control over her fertility, to continue or terminate a pregnancy, but women of color found that choice is relative to the options that exist in a person’s life.

In terms of other frameworks, the term “reproductive health” often focuses on service provision and ensuring actual services in healthcare. Often the policy advocacy strategies to focus on improving and expanding services, research, and access are more within a legal context. Protecting women’s rights and reproductive healthcare services with a focus on keeping abortion legal and increasing access to family planning services is generally limited to a legislative, rather than an organizing strategy. By contrast, the reproductive justice framework is largely focused on movement building. We view reproductive oppression as a result of the intersections of multiple oppressions and connected to the larger struggle for social justice and human rights. Reproductive justice puts women of color and communities affected at the center of the work and it supports their leadership, it builds their power, it integrates other social justice and human rights issue.

Community mobilization strategies include organizing, leadership development, civic engagement, grassroots advocacy and culture shift. We are doing work to highlight Latina voices to change the conversation and shift the narrative. I am going to show a short video on our work in Texas, but first I will provide a bit of context about that community. NLIRH has been doing work in the Rio Grande Valley since 2006 to 2007. The Valley is home to 1.3 million people, largely Latino including many immigrants; urban, rural and suburban communities. The communities that we work with are mostly very rural. There is a high concentration of colonias. Colonias are unincorporated communities that often do not get basic services—they do not get transportation, electricity, or water. There are a lot of trailer homes and not a lot of resources. Most of the community members are low income and uninsured. As outlined in our report, “*Nuestro Texas: The Right to Women’s Reproductive Health in the Rio Grande Valley*,”¹ the state of Latina health in Texas is really dismal. Women in Texas consistently rank lower in terms of health. Latinas are the most likely racial ethnic group to report being in fair or poor health conditions; they are less likely to have a doctor. Half of Latinas of reproductive age in Texas are uninsured. Hidalgo County, where we are doing a lot of our work, has

¹ See *THE WOMEN OF RIO GRANDE VALLEY*, www.nuestrotexas.org/ (last visited May 22, 2015).

the highest rate of uninsured women in any urban county in this country. When it comes to diseases like cervical cancer, which is almost 100% preventable, Latinas in the Rio Grande Valley have the highest incidences in the country and many are dying from it. The health conditions are really dismal and the disparities are really stark.

We partnered with the Center for Reproductive Rights to conduct a human rights investigation of the impact of the 2011 cuts in the Family Planning Program in Texas. We talked to 188 women. Their stories were hard and difficult, but what I want to share in the end is their resiliency, their sense of power, and that they are on the front lines of fighting for justice. This is just a snapshot of one of the stories: "It's \$60 for a health checkup. I thought I would either pay \$60 or buy food for my children. Either I pay the rent and get my children a place to live or I have a mammogram, a pap test or contraception. It's one or the other, not both." These are the kind of predicaments that women face. Oftentimes they are going to choose to put food on the table and then their health is sacrificed. What we did in the report is document what kind of human rights violations are happening in the Rio Grande Valley. This as a form of reproductive oppression and it includes violations of the right to health, the right to life, the right to privacy and reproductive autonomy, and the right to nondiscrimination and equality and freedom from ill treatment. We include strong policy recommendations in the full report. The website is NuestroTexas.org, so please check it out. Now, I am going to show a quick video from that campaign.

[Video:] Two years ago I became pregnant because they closed the clinic in Mission [Texas]; there wasn't enough funding to take care of me. Unfortunately, two years ago [government] funding was cut for women's reproductive health. We were all affected: working women, women with their immigration documents, and it was especially those women without their papers in order that were most affected by the cuts in funding for women's reproductive health. I'm fighting against cancer and I don't have health insurance. They ask that I become a citizen in order to be seen [by a doctor] in Houston. Funding for women's health has been cut. Grants have been cut and women who used to before have access to going and getting a mammogram, a pap smear, getting checked, they have no income and they have no access to those funds. The barriers that I see in the community where I work . . . transportation is one of them. Sometimes women miss their appointments because of this. There are no longer the same benefits;

they ask you for a lot of paperwork. We fear demanding from the government that we have rights. Nothing is going to stop us. We will continue fighting. This is just the beginning of the fight. We will need to forge ahead with more battles and struggles, holding more protests, using our voices, speaking with political representatives, holding an endless amount of things like meetings, whether they're small or large, uniting ourselves. As women of these communities, we have the power to make all of this change. We are not going to surrender; we are going to continue this fight so that the funding will come back and stay with us. Some of these women don't leave their houses. They don't leave the four walls of their homes. They don't even go outside because of fear. They also have many emotional problems and struggles with domestic violence. It's within this reality that we reach out to these women and we see that even within all these difficult situations, we can bring out the most beautiful in them . . . their power. Good morning neighbor. Women living in the lower Rio Grande Valley have struggled for years to obtain affordable healthcare in the face of numerous barriers including cost, immigration status, and the lack of transportation. Despite these barriers and the daily risk to their lives, they continue uniting under one cause – a right to healthcare and a more just Texas. Our Texas! For our Texas! Because we are Texan! Because this is where my children were born. Our Texas! For the health of our women! Because I don't want to be another number here in Texas. Our Texas! For our families, our state, our country!²

Those women in Texas are going to create social change. Dian here in Florida is going to create social change. That's how we are changing society. I want to leave you with a quote referring to a bill that would have expanded the prohibition on the use of federal funding for abortion:

Here's another problem: Calling HR7 "the rape audit bill" may have grabbed headlines and stirred the passions of the pro-choice base, but it came with a cost. This bill isn't primarily about rape. It's about abortion.

² LATINA INSTITUTE, *Nuestro Texas: The Fight for Access to Reproductive Health Care in the Rio Grande Valley*, YOUTUBE (Nov. 11, 2013), https://www.youtube.com/watch?v=kWL4_M2LFY0&feature=youtu.be.

And whenever the need for safe, legal abortion for all women is justified only by the most extreme cases, we risk obscuring many women's experiences behind a poster child façade.

This "rape audit" frame, for a bill about abortion and poor women, also creates a convenient excuse for some feminists to avoid conversations about privilege, poverty, and institutional racism—conversations which feminism is desperately in need of having (hello, #solidarityisforwhitewomen).

Defending women's reproductive autonomy is hard work, and our opposition is frequently strident, relentless, hyperbolic and even duplicitous. But while the heat of political scrutiny may tempt us to shield our views from behind seemingly unassailable, sympathetic avatars like rape survivors, justice demands more of us.

I say this as a woman who has never needed an abortion, but has experienced sexual assault. As a survivor, I start to worry when the discussion of rape becomes a political ploy for anybody—including those whose politics I generally agree with.

Justice demands that those of us who defend reproductive autonomy do so for all women, without placing the same judgments upon them as those who seek to deprive them of their rights. And while we're at it, justice demands that mainstream feminism stop avoiding conversations about racial and economic inequality, however uncomfortable or long-overdue those conversations may be.³

Thank you.

AINSWORTH: Hi everybody. First, I want to thank Angela and Jessica and Lillian for agreeing to come together to do this. I am finding it very thrilling first of all to be with these wonderful allies, but also to get to have the conversation in the context of a conference focused on gender violence. Just to give you a little context of the work I do, I started my law practice as a legal services lawyer representing survivors

³ Kimberly Inez McGuire, *Feminists Should Have Never Called it the "Rape Audit" Bill. It's Much Worse Than That.*, POLICY.MIC (Jan. 28, 2014), <http://mic.com/articles/79881/feminists-should-have-never-called-it-the-rape-audit-bill-it-s-much-worse-than-that>.

of domestic violence. The majority of the people I worked with were immigrants facing domestic abuse and immigration status issues. I work in the Seattle area, which is very different from the Miami community, but the same issues are there for the people who are there facing immigration issues and other issues of marginalization. I then worked at a legal organization where I worked on reproductive rights and health issues, eventually learning to incorporate the reproductive justice frame into my work. I learned a lot of that from the Latina Institute and other organizations.

What I am going to talk about today are some of the issues in individual perpetration of intimate partner violence and sexual violence, what those incidents of violence do to women's reproductive health and autonomy, and some of the barriers to healing, recovery, and safety. And then I wanted to pick some examples of legal advocacy or other remedies. I am going to also just touch briefly on medical violence and the intersection of child birth interventions for survivors of intimate partner violence and sexual assault. I will try to touch on what are the limits of these legal responses, who is leading them, and how are we mobilizing communities to work together.

We know that the majority of rapes are perpetrated by intimates or acquaintances, and we know that victims of domestic violence experience high rates of sexual violence. We also know that sexual violence is hard to talk about. Those of us who work in the field as lawyers often find ourselves talking about the physical violence and not asking our clients to relive the sexual assaults with us in an interview room or on paper to a judge. I support those decisions to keep that private, but I also see that it makes the problem more hidden and it is harder for all of us to realize how pervasive rape is. We also know that approximately 5% of rape victims will become pregnant as a result of the rape. This probably substantially undercounts the number of people that get pregnant as a result of rape because we know rape is underreported and because this study did not account for intimate partner violence at all. So, plenty of children born into marriages are born as a result of rape and are not included in this kind of statistic. And none of those statistics account for reproductive coercion—the kinds of techniques that abusive partners use to control birth control, sabotaging birth control, preventing their partner from using any birth control, and forced and coercive pregnancy. And we know that this is a real problem for teenagers across racial demographics and this is not accounted for in this 5% figure.

It is completely obvious that a rape survivors' primary concern immediately after a rape is likely to be avoiding pregnancy if the rape victim is a person of reproductive age. There are several studies that confirm that this is so. If you do not avoid the pregnancy, we also know

that in the context of intimate partner violence, pregnancy is a very risky proposition for women. There is a higher incidence of severe abuse in pregnancy and homicide is the third leading cause of death for pregnant women in the United States—and that is across demographics.

When someone is facing reproductive coercion, their decision making is hampered by a lot of barriers. They have probably already been prevented from preventing the pregnancy by their partners' coercive acts, and then if they do become pregnant, there are a host of things that limit their ability to get what they need, whether they want to have the child or whether they want to have an abortion. Many barriers come from the partners' conduct in preventing them from accessing healthcare. We know that when women become pregnant as a result of rape, more than half (just a little more than half) choose to have an abortion.

I want to talk now about some barriers that limit survivors' options: poverty, immigration status, and batterer abuse generate risks. If you cannot get to a pharmacy to get emergency contraception because you are not allowed to leave the house, if you have to account to your abuser for every dollar that you spend, you are not going to be able to get to the services that you need.

So, these posters went up all around New York on subways and at bus stations. The posters showed children who were either African American or mixed race. They were targeted at teenagers to try to make them feel that having a baby is a bad decision. I am particularly struck by how these messages completely ignore the fact that a lot of teenagers become pregnant because of reproductive coercion and intimate partner violence. It is not a decision that teens are making in order to flout societal norm. In addition, there is lack of access to healthcare; many immigrants are excluded from Medicaid. So, there are so many ways in which people that need reproductive healthcare in the context of intimate partner violence cannot access it.

Another issue regards crisis pregnancy centers. Crisis pregnancy centers target young people and low income people, people who lack insurance, and they do a variety of things to obstruct people's access to reproductive healthcare. One of the things that is more insidious about them is that they have started to indicate that they take referrals from domestic violence programs and they are trying to serve domestic violence survivors. In fact, what they are doing is tricking those survivors into not accessing abortion services by telling them things that are not true, including delaying them by saying their pregnancies are not as far along as they are, or convincing them that they have to come back to the crisis pregnancy center for an ultrasound in twelve or thirteen weeks to get the pregnancy confirmed, this delaying access beyond the

first trimester. An Oklahoma doctor refused to provide emergency contraception to a rape victim in the emergency room. She was twenty-four years old, her mother brought her there. Her mother talked on camera in a news report about the fact that he refused not only to give her birth control, but to treat her *at all* because there was no trained nurse examiner to collect a rape kit at the hospital. So she was sent in an ambulance to another hospital across town and traumatized by that action. Similarly, some pharmacists refuse to provide over the counter emergency contraception.

So, just to touch on one organization that is doing amazing work in Seattle: Open Arms Perinatal Services trains people to serve as birth doulas. We know that the Somali immigrant community in Seattle has a higher rate of C-sections and other birth interventions than the comparable population of other communities, but they also do not want those interventions. They speak out very strongly against those interventions. So, Open Arms is organizing Somali immigrant women to train them as doulas and they now have five people serving the immigrant community. They also help with language access issues.

In Washington State, we tried to deal with the pharmacist problem of refusing to fill prescriptions for Plan B by encouraging the Pharmacy Board to create a rule that all pharmacies have to fill prescriptions. This work was initially led by Planned Parenthood and Legal Voice. But then in December of 2010, the Board changed their mind. When that happened, we decided that we had to do reproductive justice work *for real*. We went into everybody's community. And so at the Board's hearing, we had many communities of color and the disability advocacy community, standing up and saying this rule making process is not accessible, there is no language access, there are no notices provided in people's languages. So we challenged not just the rule, but the process to show why it was exclusive of communities. We had rape survivors and intimate partner violence survivors speak. And so lessons learned: we should always start from the beginning to do this work *together* because we need to work in partnership. And it was not easy. There was a lot of tension at the table because the table was set initially by mainstream white reproductive activists and that was wrong. Good things can come from working together, those of us that did work together on this project liked working together so much that we started our own reproductive justice collaborative. We are holding a forum on immigrant access to reproductive healthcare on March 1st with immigrant communities and immigrant rights activists (not reproductive rights activists—they can come to the next table.)

HEWKO: We know that the United States incarcerates more individuals than any other nation in the world, but less known is that

more and more of the nation's incarcerated population are women.⁴ The rate of incarceration for women is now increasing at nearly double the rate of men.⁵ As racism exists on every level of criminal justice involvement from arrest, conviction, sentencing, women and girls of color are disproportionately represented.⁶ Incarceration has unique and shattering effects on women, their families, and their communities. Reproductive justice demands a focus on the needs of those who have faced the greatest harms, and an end to systems that foster these harms. Extremely troublesome is the fact that statistics show the pathways that lead individuals into prison are often rooted in sexual and physical violence.⁷ Instead of being treated for trauma, depression, addiction and other injuries of violence, women are displaced into our criminal justice system. We have an obvious public health problem to which we are applying a criminal justice approach. If we really wanted to help people, we would give them access to mental health services, treatment services, education and healthcare. Instead we are putting individuals behind bars which is actually the perfect way to break communities down. And, by communities, I am referring to communities of color.⁸

Our "incarceration solution" fails to address the underlying issues of abuse that led people to prison. The prison by its very nature is set up to inflict power and control over women. For example, incarceration places women at risk of widespread sexual and physical violence at the hands of correctional officers.⁹ These women are survivors, have high rates of depression, are working to overcome substance abuse and addiction and once they are in these spaces, they have little access to healthcare, prenatal healthcare services are nonexistent, and an inability to choose

⁴ The speaker noted in her introduction that she uses "women," "mother" and "female" in this talk, but wants to recognize and highlight the fact that many individuals housed in female prisons may identify as gender-queer, gender-nonconforming, or transgender.

⁵ Allen J. Beck, *Prison and Jail Inmates at Midyear 2000*, BUREAU OF JUSTICE STATISTICS 5 (2001), available at <http://zimmer.csufresno.edu/~haralds/govdocs/prisonandjailinmates2000.pdf>; see also Paul Guerino, *Prisoners in 2010*, BUREAU OF JUSTICE STATISTICS 7 (2011), available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>. Washington, DC: Bureau of Justice Statistics.

⁶ Paul Guerino, *Prisoners in 2010*, BUREAU OF JUSTICE STATISTICS 7 (2011), available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

⁷ Caroline Wolf Harlow, *Prior Abuse Reported by Inmates and Probationers*, BUREAU OF JUSTICE STATISTICS 1 (1999), available at <http://www.bjs.gov/content/pub/pdf/parip.pdf>.

⁸ DRUG POLICY ALLIANCE, *The Drug War, Mass Incarceration and Race* (2014), available at http://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_Feb2014.pdf.

⁹ Allen J. Beck, *PREA Data Collection Activities*, BUREAU OF JUSTICE STATISTICS 1 (2012), available at <http://www.bjs.gov/content/pub/pdf/pdca12.pdf>.

birthing options.¹⁰ At the prison I work at, we had a doula services program where numerous women had worked with a doula up until the point of their birth, and at their labor, the prison guards refused to call the doulas to attend the actual delivery. Women have told me stories where they were forced by prison medical staff to consider abortion. When they did not consider abortion, they were given “protection pills” for their health that then led to miscarriage. As lawyers and law students in the room, we must recognize that there is little we can do when there is really no trail of records; in the end it is a woman’s voice against the prison system. Even with the passage of a law in 2010 that ended the practice of shackling pregnant women prisoners during labor and during transport in Washington State, I spoke to a woman, S, who was shackled.¹¹ When I asked her if she wanted to try and fight, she stated that she was too exhausted, and that her most important concern was that the state was now moving to terminate her parental rights—her baby would be permanently separated from her. The imbalance of power created by prisons leads to laws on the books being ignored without consequence.

When the law is not always enough, what can we do? As reproductive justice advocates, we can listen to the needs of the women we are working with to make systemic change, not just address their legal problems at hand. In S’s case, after being shackled, the state fast-tracked her case and terminated her parental rights after only six months. The state usually gives parents twelve months. Federal law demands that the state terminate parental rights when a child is out of home care for fifteen of the last twenty-two months.¹² Here, the grandmother was available to parent the child, but since the child had special needs and the grandmother was not very wealthy, the state said that the child was better off in foster care.

So, when speaking of reproductive rights and choices, what kind of choice is being offered to parents like S? We know from social science research and from the voices of youth, that although their parents may be less than perfect, the love that they have for their parents is as real and strong as any other child’s. The loss experienced by these children when their relationships are severed is real. I want to just share a quick poem that was written to a mother I worked with:

¹⁰ LEGAL ACTION CENTER, *After Prison: Roadblocks to Reentry: A Report on State legal barriers Facing People with Criminal Records*, 16 (2004), available at http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf.

¹¹ *Id.*

¹² Adoption and Safe Families Act, 42 U.S.C.A. § 675 (5)(E)(2010).

Now Mom, this is only a poem, do not think anything bad from it, okay? I love you with all my heart and I know all the answers to all these questions but I was just making a poem out of them, okay? I love you so much. We have only 129 days left to go and I am 100% sure we can make it. Mom, why did you have to leave? Why did you go so far away? Why did you have to go somewhere we couldn't? How come you haven't come home? When will these things be normal again? Will they ever? I miss you. Why are so many people hurt? Whose fault is this? Was I doing something wrong? I miss you!—Carina Perry, age 14.

In 1996, we passed “welfare reform.” Just like our current immigration reform—it did not reform anything, instead it took more away, gutted more resources, and completely cut the social safety net for low income women in the United States. At the same time, the war on drugs was ramped up, and more and more low-income people were racially profiled and arrested for low-level drug offenses. Then, in 1997, we passed the Adoption and Safe Families Act which created financial incentives for adoption and made it easier and quicker to terminate parental rights by adding the arbitrary timeline I mentioned before. States could “free up” children in the foster care system and make it easier for them to be adopted.¹³ As a result, incarcerated parents in the child welfare system are now losing their children at twice the rate of those parents not involved in the criminal justice system.¹⁴ What message is this sending? The message is that these women are not valued as mothers and that their struggle and attempts at survival of poverty and violence are not supported. In some cases, adoption is needed, and thankfully there are loving families to step in, but we cannot at the cost of destroying certain families. The state gets a “bonus” if they complete enough adoptions, whereas there are no incentives for reunifying families. As Professor Dorothy Roberts says, “Adoption often provides to children a loving home and to capable adults a chance to parent, but there’s a reality that this is a political institution that reflects social

¹³ *Id.*

¹⁴ Marilyn C. Moses, *Correlating Incarcerated Mothers, Foster Care and Mother-Child Reunification*, CORRECTIONS TODAY (2006) (Illinois study showed incarcerated parents in the child welfare system are now losing their children at twice the rate of those parents not involved in the criminal justice system).

inequities, including race, class, and gender hierarchies, and in serving powerful ideologies and interests.”¹⁵

Reproductive justice advocates in Washington State—with the direction and leadership of formerly and currently incarcerated parents—changed our child welfare law, modeled off of 2010 changes in New York.¹⁶ Specifically, we amended our law to include an exception to the current timeline for incarcerated and formerly incarcerated parents.¹⁷ We used positive rights language that would get women the resources and contact with their children that they need in order to be successful—such as rights to attend hearings via videoconference or teleconference, and rights to visitation and protections at the termination stage that forces the court to analyze and recognize the barriers of our current system.¹⁸

I work from a prison abolition framework, so for those of you that are struggling with what that can look like, knowing that prisons will not be gone tomorrow, we must do our work in a manner that does not make the criminal justice system stronger. The parent’s rights bill is an example of this prison abolition framework. We must begin to imagine a different system and change the institutional structures and underlying belief systems that drive that system. We can use structures already in place. Through the Affordable Care Act, the basic health and mental health services, resources, and reentry support available to women is unprecedented. Our courts lag behind these social movements. We can talk about race, and use social science research that show disproportionate racial or poverty effects. It will take creative solutions to find ways to support marginalized populations that are invisible. However, as reproductive justice advocates, if we start with supporting women in prison, all of the situations that we have been talking about this weekend in getting women in the general population access to reproductive health care will be possible.

¹⁵ Dorothy E. Roberts, *Adoption Myths and Racial Realities in the United States*, in *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* 50 (Jane Trenka et. al eds., 2006).

¹⁶ Substitute H.B. 1284, 63rd Leg., Reg. Sess. (Wash 2013).

¹⁷ See Wash Rev. Code Ann § 13-34-145(4)(a)(iv).

¹⁸ Wash Rev. Code Ann § 13-34-067(3) (requiring that a parent unable to participate in a hearing in person, must have the option to participate through use of teleconference or videoconference); Wash Rev. Code Ann § 13-34-136(2)(b)(i) (requiring state social workers to assess an incarcerated parent’s ability to participate in meetings, the treatment available in the facility where they are confined and provide visitation unless it is deemed contrary to the best interest of the child); Wash Rev. Code Ann § 13-34-180 (stating that for parents who did not receive services, experienced delays and barriers to visitation and other meaningful contact, the court may consider this as evidence of rebuttal to any presumption established pursuant to § 13.34.180(1)(f) and § 13.34.180(2)).

On the Same Bodies: Exploring the Shared Historical Legacy of Violence Against Women and Reproductive Injustice

Eesha Pandit*

Your legal right to an abortion; the freedom to raise the family you want and parent the children you want; being safe inside your home; being safe outside of it—each of these struggles is about autonomy, self-determination and individual and community health. These issues are connected, but often the movements that focus on them are not. In this piece I consider the historical, political and cultural connections between reproductive justice and anti-violence organizing. While there are divergences in each movement’s trajectory, there can be great value in naming the connections. In this piece I examine the connections between these arenas of women’s human rights advocacy and make the case for looking at them as deeply connected issues in the fight for gender equality and justice.

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I. SHARED HISTORIES

The argument here is simple. The way we conceive, define and fight for reproductive freedom as well as freedom from violence is rooted in the belief that our bodies are our own. Both of these struggles stand in opposition to historical and contemporary efforts to ensure that the bodies of women, cis- and transgender women alike, are not fully ours.

The ability to control our body is deeply connected to the amount of economic, social, cultural and political power we have. In fact, it was an attempt to name those lived realities that brought women of color together in 1994 in Cairo, Egypt at the United Nations International Conference on Population and Development (ICPD).¹

Frustrated with the narrow pro-choice paradigm, these women discussed the limitations of making bodily autonomy a matter of freedom from interference by the state, disregarding the impacts of slavery and colonialism on women around the world for whom choice meant so much more than an argument rooted in the right to privacy.²

In a moment that would spark and root the current reproductive justice movement in the United States, women of color came together to challenge the paradigm of reproductive rights, which zeroed in on birth control and the right to an abortion, as particularly inadequate for poor women of color around the world.³ The central tenet of the argument is that the lives of women of color around the world do not lend themselves to a single-issue movement focusing on the right not to have a child.

That same year, 1994, the United States Congress signed the very first Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, which funded services for victims of rape and domestic violence, allowed women to

¹ See INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, UNITED NATIONS POPULATION FUND, <https://www.legalbluebook.com/R-18-1> (last visited April 26, 2015) (explaining the “global recognition that fulfilling the rights of women and girls are central to development” can be traced back to Cairo in 1994 at the International Conference on Population and Development).

² See CENTER FOR REPRODUCTIVE RIGHTS, UNITED NATIONS POPULATION FUND, ICPD AND HUMAN RIGHTS: 20 YEARS OF ADVANCING REPRODUCTIVE RIGHTS THROUGH UN TREATY BODIES AND LEGAL REFORM (2013), http://www.unfpa.org/sites/default/files/pub-pdf/icpd_and_human_rights_20_years.pdf (highlighting the progress countries have made through their laws and policies to implement the International Conference on Population and Development “Programme of Action” and describing national and international human rights developments over the past two decades on issues related to sexual and reproductive health and reproductive rights).

³ *Id.*

seek civil rights remedies for gender-related crimes, and provided training to increase police and court officials' sensitivity.⁴ While VAWA was indeed groundbreaking in creating legal recourse for domestic and intimate partner violence, it relied deeply on the criminal justice system which meant that key provisions were inaccessible to many women, particularly women in communities of color that are heavily criminalized, immigrant communities, and Native women living on tribal lands.⁵

About two years ago, twenty years after the first VAWA passed Congress, a version of the bill was authorized that makes it possible for Native women to bring charges against non-Native men for violence that occurs on tribal lands, ending the relative impunity which existed up until March 2013.⁶

Knowing this political history enables a deeper understanding of the connection between reproductive autonomy and freedom from violence. Take for example the many cases in which violence and coercion anchor reproductive oppression:

- Between 1968 and 1982, a third of all women of childbearing age in Puerto Rico were sterilized.⁷
- Native women living on the Mohawk reservation in New York were not told of the dangerous environmental toxins in their communities, and passed those toxins onto their babies through breast milk.⁸
- Mexican-American immigrant women miscarry and go into labor prematurely due to the immense stress they experience during home raids.⁹
- Women in prison, disproportionately women of color, experience staggering rates of rape, sexual assault, sterilization abuse and inadequate prenatal care.¹⁰

⁴ See LISA N. SACCO, CONGRESSIONAL RESEARCH SERVICE, *THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING* (March 6, 2014), available at <https://fas.org/sfp/crs/misc/R42499.pdf>.

⁵ BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012).

⁶ See Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013).

⁷ D. Marie Ralstin-Lewis, *The Continuing Struggle Against Genocide: Indigenous Women's Reproductive Rights*, 20 WICAZO SA REV. 71, 76 (2005).

⁸ WINONA LA DUKE, *Akwesasne: Mohawk Mother's Milk and PCBs*, in ALL OUR RELATIONS: NATIVE STRUGGLES FOR LAND AND LIFE 11 (1999).

⁹ Syd Lindsley, *The Gendered Assault on Immigrants*, in POLICING THE NATIONAL BODY: RACE, GENDER AND CRIMINALIZATION IN THE UNITED STATES 175 (2002).

¹⁰ DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1998).

- Women on welfare were coerced, often as a condition of their welfare funds, to use Norplant, a long-term contraceptive with extensive side effects, which can include permanent sterilization.¹¹

- Vietnamese women who make up 80% of the nail salon workers in California are exposed to toxic chemicals that contribute to higher levels of spontaneous abortion, fetal abnormalities, and reproductive problems.¹²

- Transgender women are often sterilized, deemed unfit to parent and/or refused medical care on account of their trans identity.¹³

As we can see, there are broad patterns of violence and abuse, by the state, already at play here. Notably, it is these same groups of women who face compounded risks of intimate partner and family violence, in their homes and in their communities. Intimate Partner Violence (“IPV”), including sexual, physical, emotional and economic abuse, affects the lives of women across all races and income levels.¹⁴ Nevertheless, women of some racial and socioeconomic backgrounds experience different, often increased, rates of violence.¹⁵

Poverty, stress, unemployment and substance use are all predictors of IPV.¹⁶ Such violence contributes to higher rates of unintended pregnancy and even escalates during pregnancy.¹⁷ One study found that a woman’s odds of experiencing IPV rose by 10% with each pregnancy.¹⁸ Native American women have higher rates of nonfatal IPV as compared to either Black or White females,¹⁹ but Black women account for 22% of all

¹¹ Rachel Stephanie Arnow, *The Implantation of Rights: An Argument for Unconditionally Funded Norplant Removal*, 11 BERKELEY J. GENDER L. & JUSTICE 19, 39 (2013).

¹² Ann Rojas-Cheatham et al., *Looking Both Ways: Women’s Lives at the Crossroads of Reproductive Justice and Climate Justice*, 5 THE MOMENTUM SERIES 1, 15 (2009), available at <http://forwardtogether.org/assets/docs/ACRJ-MS5-Looking-Both-Ways.pdf>.

¹³ Katherine Cross, *Trans Rights Are Reproductive Rights*, FEMINISTING (2012), <http://feministing.com/2012/04/10/trans-rights-are-reproductive-rights/>.

¹⁴ CALLIE MARIE RENNISON, U.S. DEP’T OF JUSTICE, BJS, NCJ 197838, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993–2001 (2003), <http://www.bjs.gov/content/pub/pdf/ipv01.pdf> (85% of IPV victims are women.)

¹⁵ JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES (1999).

¹⁶ INST. ON DOMESTIC VIOLENCE IN THE AFRICAN AM. COMMUNITY, UNIV. OF MINN., *Fact Sheet: Intimate Partner Violence (IPV) in the African American Cmty.*, http://www.dvoinstitute.org/media/publications/FactSheet.IDVAAC_AAPCFV-Community%20Insig hts.pdf (last visited April 26, 2015).

¹⁷ Lauren Roth et al., *Predictors of Intimate Partner Violence Among Women Requesting Medical Abortion*, 78 CONTRACEPTION 190 (2008).

¹⁸ Rebekah E. Gee et al., *Power Over Parity: Intimate Partner Violence and Issues of Fertility Control*, 201 AM. J. OBSTETRICS & GYNECOLOGY 148.e1, 148.e5 (2009).

¹⁹ Bureau of Justice Statistics, *Intimate Partner Violence in the U.S.: Victim Characteristics* (2007), available at <http://www.ojp.usdoj.gov/bjs/intimate/victims.htm>.

intimate partner homicide victims.²⁰ There are also both language access and cultural barriers to seeking help for many women, who may fear authorities even more than their batterer, or who have trouble accessing culturally appropriate services in the language they are most comfortable speaking.²¹

By tracking these multiple, overlapping and linked histories, we can tease up and out the anchors of violence and reproductive injustice: entrenched racism, economic inequity, and patriarchal social norms, as well as colonization. We also see a beam of light as groups of women of color, queer, and trans people call for a paradigm shift and create movements that look through an intersectional lens.

II. POLITICAL CONTEXTS

In 2013, Republican legislators around the country introduced more than 300 state-level restrictions on access to reproductive health care.²² Consider the sheer breadth and volume of that effort, which is aimed at keeping people from getting access to health care. Many of those same legislators have embarked on a quest to minimize the reach and scope of the government, federal and state, that capitalizes on racial anxiety and stands in the legacy of states' rights movements of old.²³ This demonizing of government has resulted in a push to make it "smaller," save military spending and congressional salaries (and the resulting health care coverage that all congresspeople enjoy).²⁴ This effort includes a push to limit any money spent on things that are deemed extraneous to the basic functioning of the country. Into that category falls the funding

²⁰ INST. ON DOMESTIC VIOLENCE IN THE AFRICAN AM. COMMUNITY, *supra* note 16, at 1 (Black women are only 8% of the United States' population.)

²¹ See, *Alianza History*, ALIANZA: NATIONAL LATINO ALLIANCE FOR THE ELIMINATION OF DOMESTIC VIOLENCE, <http://www.dvalianza.org/about-us.html> (last visited April 26, 2015) ("National Latino Alliance for the Elimination of Domestic Violence (Alianza) was established as one of three domestic violence "Cultural Institutes" to address the particular needs and concerns of communities of color experiencing family violence.").

²² Tara Culp-Ressler, *2013 is Shaping Up to be the Worst Year for Reproductive Freedom in Recent History*, THINKPROGRESS (June 13, 2013, 3:40 PM), <http://thinkprogress.org/health/2013/06/13/2152801/2013-worst-year-reproductive-freedom/>.

²³ CTR. FOR REPRODUCTIVE RIGHTS, UNDER ATTACK: REPRODUCTIVE RIGHTS IN THE 112TH CONGRESS (2013), *available at* http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Legislative%20Wrap%20Up%202015_0.pdf (documenting how reproductive rights were under sustained assault in the 112th Congress).

²⁴ See LOIC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY (2009).

of domestic violence shelters and program.²⁵ Both reproductive health care and access to services that serve low-income survivors of violence are, in these ways, clearly under attack.

To put a finer point on it: what women need, what low income people need, what low income survivors of violence need are social supports very often considered a drain on society. The key to understanding how these legislative attacks link together is noticing that they, in fact, target the same women. Lest we forget the unapologetic words spoken aloud in 1977, while he stood in the Congressional chamber,²⁶ what Congressman Henry Hyde, for whom the Hyde Amendment is named, said when debating adding the Medicaid restriction on abortion coverage:

I certainly would like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle-class woman, or a poor woman. Unfortunately, the only vehicle available is the . . . Medicaid bill.²⁷

Poor people are often at the mercy of their government in being able to access the social services, like abortion coverage, that they need. They are also the people who are least likely to have a safety net that would enable them to leave a violent home or relationship. Recently, the National Network to End Domestic Violence surveyed its 56 member, state and territorial, coalitions, and 69% of them reported that domestic violence programs experienced overall funding decreases from Fiscal Year 2011 to Fiscal Year 2012.²⁸ All this while, 80% of states report that their programs were losing funding from local county and city sources, and 90% of states report a decrease in private donations and over this very same period in decreased resources, 88% of these coalitions are seeing an increase in need.²⁹

So there we have it, a long-standing legacy that refuses federal resources to low-income people who need abortion care. A legacy that

²⁵ Mattea Kramer & Jo Comerford, *That Time When DC Stopped Funding Domestic Violence Shelters While Both Congressional Gyms Stayed Open*, THE NATION (Oct. 17, 2013), <http://www.thenation.com/article/176713/time-when-dc-stopped-funding-domestic-violence-shelters-while-both-congressional-gyms>.

²⁶ Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL'Y REV. 1 (2007), available at <http://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html>

²⁷ *Id.*

²⁸ NAT'L NETWORK TO END DOMESTIC VIOLENCE, LOWERED FUNDING JEOPARDIZES SERVICES TO VICTIMS OF DOMESTIC VIOLENCE 1 (2013), available at http://nnedv.org/downloads/Policy/CoalitionFundingReport_2013_ExecutiveSummary.pdf.

²⁹ *Id.*

erodes the (literal) safety net that many low-income women, disproportionately women of color, rely upon to access the social services they need to build their lives free from violence. These legacies are intertwined, as are these issues in the lives of women who experience violence and need reproductive health care, including birth control and abortion.

The reproductive justice framework places reproductive health and rights within a social justice framework by supporting the right of individuals to have the children they want, raise the children they have, and plan their families through safe, legal access to abortion and contraception. If we take steps to address the racial and socioeconomic inequities that deny low-income women access to reproductive health care, we will be working to provide the services that survivors of violence need in order to escape violence and live in safety. As anti-violence survivors and advocates know all too well, controlling their partner's sexual and reproductive life is often an element of intimate partner violence, so restrictions on access to family planning and abortion can keep survivors of violence physically and financially vulnerable.³⁰

The Hyde Amendment bans federal funding of abortion except in cases of rape, incest, or life endangerment.³¹ These kinds of restrictions may force a low-income woman to carry her pregnancy to term and maintain contact with a violent partner or family member. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court acknowledged that restricting a woman's access to abortion by requiring her to notify an abusive husband or partner of her decision can result in increased violence and abuse and often serves as a "a flashpoint for battering and violence," including physical and psychological abuse.³²

It is here—at this intersection of violence and reproductive justice—that our call to action waits.

There are not categories of people who need access to public funding for abortion and a separate category of those who need shelters and programs to be safe from violence. The diminishing resources and

³⁰ Sharon Levin, *Abortion Restrictions Can Make it Harder to Leave Violent Relationships: What the New Study Means for Our Current Policy Fights*, NAT'L WOMEN'S L. CTR. (Oct. 2, 2014), <http://www.nwlc.org/our-blog/abortion-restrictions-can-make-it-harder-leave-violent-relationships-what-new-study-means-o> (describing Sarah C.M. Roberts et al., *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC MED. 144 (2014)).

³¹ See Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL'Y REV. 12 (2007).

³² *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 889 (1992).

restrictions on access to health care create a perfect storm, which targets women living at the intersections of violence and poverty. Access to comprehensive reproductive health care can prevent abusers from isolating victims, and contact with a health care provider often presents a rare opportunity for a survivor to get help. That these ever-increasing restrictions fall on the shoulders of those with the least resources should be the lightning rod that our movements for ending violence and securing reproductive justice must work together.³³

III. CULTURAL NARRATIVES

Having discussed the historical and political legacy that connects the reproductive justice movement and the anti-violence movement, and I have made the argument for a shared legislative agenda to respond to the attacks, the last portion of this conversation is about culture, and in some ways, that's the most intractable problem. We often ask ourselves: what is it in our culture/s that creates and sustains gender based violence and an opposition to reproductive justice? Here it behooves us to avoid an anemic analysis of culture as an idea that it lives merely in our hearts and minds, and winds up there via our socialization. This is true, values and beliefs live in our hearts and minds, but not there alone.

Culture is created and sustained by structures, systems and institutions: legal, political, and social. And violence is created and sustained in those same spaces. Unless we trace rape culture into these institutions, their roots and their histories, we run the risk of repeatedly being swept away in the ever-recurring victim-blaming narratives. Take for example, the case in Steubenville, Ohio, which garnered national attention.³⁴ It is true that the boys convicted of raping their fellow student were operating from a particularly craven sense of what constitutes masculinity and sex. It is true that they receive messages, beginning as soon as they can understand the world around them, about what it means, "to be a man": aggressive, heterosexual, dominant, unfeeling.³⁵ Never vulnerable. Never empathetic.

³³ Bryce Covert, *Domestic Violence Shelters Warn That Sequestration Has Put Women's Lives on the Line*, THINKPROGRESS (June 3, 2013, 3:00 PM), <http://thinkprogress.org/economy/2013/06/03/2093221/domestic-violence-shelters-fear-the-ultimate-cost-from-sequestration/>.

³⁴ Juliet Macur & Nate Schweber, *Rape Case Unfolds on Web and Splits City*, N.Y. TIMES, Dec. 16, 2012, http://www.nytimes.com/2012/12/17/sports/high-school-football-rape-case-unfolds-online-and-divides-steubenville-ohio.html?_r=0.

³⁵ See Kristin L. Anderson & Debra Umberson, *Gendering Violence: Masculinity and Power in Men's Accounts of Domestic Violence*, 15 GENDER & SOC'Y 358 (2001).

The brave young woman who testified in her own case received messages how she would be seen.³⁶ She forecast the CNN coverage of the poor boys with “promising futures” whose lives were ruined³⁷ when she admitted her hesitation in coming forth because she “knew everyone would just blame me.”³⁸ A whole host of institutions like schools, churches, temples, courts, TV, movies, and news send us messages about masculinity, femininity, sex, and violence that leads young men to believe that raping an unconscious girl is acceptable because she didn’t say “no.” College campuses are notorious for sweeping sexual assault under the rug, so as not to affect their reputation (take for example the honor code violation a University of North Carolina at Chapel Hill student was charged with when she recently spoke out about her assault, without having even named the offender).³⁹

The anti-violence movement’s response to these phenomena is the beautiful and important statement, “I believe her.”

Policies that seek to eliminate access to reproductive health care, as I have argued, are largely about targeting poor women who rely on the government to help them access health care. A few years ago New York City woke up to a billboard in Soho claiming, “the most dangerous place for an African American child is in the womb.”⁴⁰ These billboards popped up all over the country and are particularly vile given that the disparity in abortion rates mirrors all other health care disparities in the Black community from heart disease to infant mortality and diabetes.⁴¹

The reproductive justice movements’ response to these phenomena is the beautiful and important statement, “Trust [B]lack women.”⁴²

The notion that we are in the midst of “the culture wars” is both right and wrong. The national debate about reproductive health policy concerning abortion is not new. In 1995, Michelle Dillon took issue with

³⁶ See Macur & Schweber, *supra* note 34.

³⁷ Poppy Harlow, *Guilty Verdict in Steubenville Rape Trial*, CNN (Mar. 17, 2013, 11:00 PM), <http://transcripts.cnn.com/TRANSCRIPTS/130317/rs.01.html>.

³⁸ Drew Singer, *Accuser in Steubenville Rape Case Says She Recalls Little*, REUTERS (Mar. 16, 2013, 7:12 PM), <http://www.reuters.com/article/2013/03/16/us-usa-crime-ohio-idUSBRE92E0ZS20130316>.

³⁹ Allie Grasgreen, *Slaying the Messenger?*, INSIDE HIGHER ED (Feb. 26, 2013), <http://www.insidehighered.com/news/2013/02/26/unc-charged-allegation#sthash.3SrywSfY.dpbs>.

⁴⁰ *New Racist Anti-Choice Billboards Show Up in NYC*, FEMINISTING (Feb. 24, 2011), <http://feministing.com/2011/02/24/new-racist-anti-choice-billboards-show-up-in-nyc/>.

⁴¹ Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, 11 GUTTMACHER POL’Y REV. 2, 2 (2008).

⁴² SISTER SONG: WOMEN OF COLOR REPROD. JUSTICE COLLECTIVE, RACE, GENDER AND ABORTION: HOW REPRODUCTIVE JUSTICE ACTIVISTS WON IN GEORGIA 13–15 (2010), available at http://www.trustblackwomen.org/SisterSong_Policy_Report.pdf.

the argument that the abortion debate was somehow different, by virtue of the kind of discourse or the beliefs of the people involved, than any other political issue. Dillon found that “abortion is debated in the public arena the same way as are other political issues.”⁴³ The lesson of the shifting national conversation about domestic or intimate partner violence, seen as an intractable cultural issue within very recent memory, gives us a point of contextualizing the impact of a national conversation that advocates for culture change and institutional change simultaneously. Culture gives us narrative, and it gives us a story to tell. It also is created by us every day, via our policies and structures. So, to my mind this is a chicken-egg, all at the same time, strategy: change laws, policies, institutions and we will change the culture, and also vice versa.

⁴³ Michele Dillon, *The American Abortion Debate: Culture War or Normal Discourse?*, in AMERICAN CULTURE WARS: CURRENT CONTESTS AND FUTURE PROSPECTS 116 (James L. Nolan, Jr. ed., 1996).

Advancing a Human Rights Framework to Reimagine the Movement to End Gender Violence

Rosie Hidalgo*

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The United States has a strong interest in preventing and responding to gender-based violence around the world. Regardless of the form that gender-based violence takes, it is a *human rights violation* or abuse, a public health challenge, and a barrier to civic, social, political, and economic participation . . . Gender-based violence undermines not only the safety, dignity, overall health status, and *human rights* of the millions of individuals who experience it, but also the public health, economic stability, and security of nations.¹

The statement above is found in the opening section of the strategy document that was jointly published by the U.S. State Department and the U.S. Agency for International Development in August, 2012 entitled “United States Strategy to Prevent and Respond to Gender-Based Violence Globally.” The development of this strategy is part of an

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¹ U.S. DEP’T OF STATE, & USAID, U.S. STRATEGY TO PREVENT & RESPOND TO GENDER-BASED VIOLENCE GLOBALLY 7 (2012) (emphasis added) [hereinafter U.S. STRATEGY TO PREVENT].

ongoing effort to strengthen the United States' commitment to addressing gender-based violence globally as an explicit goal within foreign policy and international assistance efforts. While organized efforts over the past four decades to prevent and end domestic violence and sexual assault within the United States have rarely involved the use of human rights terminology or an explicit human rights framework, adopting this framework can help advance efforts to reimagine and expand the movement to end gender-based violence within the United States as well.

A human rights framework calls for a comprehensive, multi-faceted approach to ending gender-based violence. It recognizes that domestic violence is not "a private family matter" and that the state has an obligation in efforts to prevent and respond to this violence in a manner that is holistic, effective and accessible to *all* individuals, regardless of race, class, economic status, sexual orientation, immigration status, age, or other such characteristics. Additionally, it should take into account the intersection of oppressions that heighten vulnerabilities to abuse. Furthermore, a comprehensive human rights framework calls not only for institutional or social services responses, but for broader prevention efforts that include changing social norms and promoting social justice.²

I. DEVELOPMENT OF LEGISLATION IN THE UNITED STATES WITHIN GLOBAL CONTEXT OF HUMAN RIGHTS ADVOCACY

While efforts in the United States during the past four decades to strengthen legal and institutional responses to domestic violence and sexual assault may not have explicitly espoused human rights terminology, it is important to view those efforts in the context of the broader human rights efforts that were underway globally during that same time period. In particular, during the period in which advocates were calling for the passage of the Violence Against Women Act (VAWA) in the United States, there were significant efforts by advocates around the world to obtain a state commitment to addressing violence against women as a human rights issue.

VAWA legislation was first introduced in Congress in 1990 but passage was unsuccessful during that term of Congress. In 1993, prior to the U.S. Congress approving VAWA, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women.³ This came about following the 1993 World Conference

² Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISP. J. BEHAV. SCI. 107, 107–33 (1999).

³ The Declaration on the Elimination of Violence Against Women was adopted without a vote by the U.N. General Assembly on Dec. 20, 1993 through Resolution

on Human Rights, which recognized violence against women as a human rights violation and called for the appointment of a Special Rapporteur on violence against women in the Vienna Declaration and Programme of Action.⁴

Additionally, on June 9, 1994, the General Assembly of the Organization of American States (OAS) adopted in a special session the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.⁵ Several months later, the U.S. Congress finally passed VAWA with bipartisan support, and it was signed into law on September 13, 1994 by President Clinton.⁶

During this same time period, there were many preparations underway for the United Nations 4th World Conference on Women, held in 1995 in Beijing, China. The Beijing Declaration and Platform for Action included the goal to “*Prevent and eliminate all forms of violence against women and girls*” and stated that “*Violence against women is an obstacle to the achievement of the objectives of equality, development and peace.*”⁷ That same year, the U.S. Department of Justice created the Violence Against Women Policy Office and the Violence Against

48/104. The Declaration is considered to complement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979 by the United Nations General Assembly. While the United States is a signatory to CEDAW, it has not ratified it. Declaration on the Elimination of Violence against Women, 85th Plen. Mtg., U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

⁴ The Vienna Declaration and Programme of Action was adopted by a consensus of representatives of 171 countries participating in the World Conference on Human Rights in Vienna, Austria on June 25, 1993. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, 37, U.N. Doc. A/CONF.157/23 (July 12, 1993); see also *Global Norms and Standards: Ending Violence Against Women*, UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards> (last visited Sept. 6, 2014).

⁵ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women was adopted June 9, 1994, at the 24th regular session of the General Assembly of the Organization of American States (“OAS”) held in Brazil. It has been ratified by 32 of the 35 States of the OAS (Canada, Cuba, and the United States are not parties to this treaty). *The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, ORG. OF AM. STATES (June 9, 1994), available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

⁶ The Violence Against Women Act (“VAWA”) was enacted as Title IV, sec. 40001-40703 of the Violence Crime Control and Law Enforcement Act of 1994, H.R. 3355, signed as Pub. L. 103-322 by President Bill Clinton on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040). VAWA was reauthorized in 2000, 2005, and most recently in 2013. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat 54.

⁷ *Beijing Declaration and Platform for Action*, THE FOURTH WORLD CONFERENCE ON WOMEN 4, 78 (Sept. 1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/>.

Women Grants Office to begin implementation of VAWA grant programs.⁸

VAWA was a significant step forward in encouraging states to develop and improve a more coordinated response to domestic violence and provided resources through the U.S. Department of Justice to support those efforts. However, one of the problematic aspects of the passage of VAWA is that it was part of a larger, more controversial crime bill, the Violent Crime Control and Law Enforcement Act of 1994.⁹ While an effective criminal justice response is an important tool in efforts to prevent and respond to violence against women, through the years it has been demonstrated that an overreliance on the criminal legal system has resulted in a number of significant unintended consequences. These consequences have disproportionately impacted communities of color, immigrants, LGBT communities and others who do not fit the mainstream paradigm.¹⁰ Additionally, an overemphasis on a criminal legal response has detracted from a broader social justice analysis of gender violence and attention to multiple forms of oppression that impact marginalized communities, as well as the need for more comprehensive responses and different pathways for survivors to pursue safety and well-being.

One recent article in the New York Times described the significant expansion of the domestic violence unit of the New York City Police Department—a 40% increase in staff over the last several years to 450 officers—as part of an effort to reduce domestic violence homicides.¹¹ During 2012, there were thirty-nine homicides in New York City involving intimate partners.¹² However, it is significant to note that, as stated in the article, “Less than a quarter of the victims and perpetrators of domestic homicides had contact with the police in the year before the murder, according to city statistics.”¹³ Inevitably this highlights the importance of programs and efforts to reach individuals confronting domestic violence issues who do not turn to the police for assistance.

⁸ OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, *About the Office* (Dec. 16, 2014), <http://www.justice.gov/ovw/about-office>.

⁹ BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* 86 (2012). The author notes how the Violent Crime Control and Law Enforcement Act of 1994 legislation included a set of harsh laws that moved away from rehabilitation efforts, added many new death penalty offenses, and provided for huge increases in law enforcement budgets and prison construction, among other things.

¹⁰ *Id.* at 91–92.

¹¹ Joseph Goldstein, *Police Take on Family Violence to Avert Death*, N.Y. TIMES, July 25, 2013, at A1.

¹² *Id.*

¹³ *Id.*

Additionally, when domestic violence victims do reach out to the police, courts, or service providers for help, they at times encounter significant barriers. One example is when survivors encounter life threatening language barriers, despite the fact that all recipients of federal funds have a legal obligation, under Title VI of the Civil Rights Act, to provide meaningful access to services for individuals with limited English proficiency.¹⁴ In the case of Deisy Garcia, she and her two young daughters were murdered in New York City on January 18, 2014 by her ex-husband despite her attempts to reach out to the police for help. Following her murder it was discovered that Deisy had filed police complaints on three separate occasions in her native language of Spanish, describing incidents of abuse and stating that her ex-husband had threatened to kill her, but those complaints were never translated into English for review and possible action.¹⁵

This story demonstrates that when victims choose to turn to the police for help, it is important that the police respond in an effective manner and that the services are accessible to all survivors. In August 2011, the Inter-American Commission on Human Rights issued a landmark decision in the case of *Jessica Lenahan (Gonzalez) v. United States*.¹⁶ The decision found that the United States violated the American Declaration on the Rights and Duties of Man when the police failed to respond appropriately to the domestic violence perpetrated against Jessica Lenahan and her three daughters, including their rights to life, non-discrimination, and judicial protection. The results of this case and the case of Deisy Garcia demonstrate the need to engage in systems advocacy in order to improve access and ensure a more effective response from an international human rights framework.

At the same time, it is important to note that an over-reliance on police response is insufficient, particularly when, as reported in the New York Times article, 75% of homicide victims in the city did not have contact with the police department in the year before their death.¹⁷ This demonstrates the need to provide a wider array of prevention and intervention responses for survivors. While VAWA legislation has been criticized as resulting in an over-reliance on the criminal legal system, it is important to recognize that our nation's first federal legislation to

¹⁴ Rosie Hidalgo, *Ensuring Meaningful Access to the Courts for Individuals with Limited English Proficiency*, 64 JUV. & FAM. CT. J. 45, 45–49 (2013).

¹⁵ Chris Boyette & Maria Santana, *A Woman's Plea in her Native Language Goes Untranslated, Three Lives are Lost*, CNN, Feb. 20, 2014, <http://www.cnn.com/2014/02/19/us/new-york-domestic-killing-warnings/>.

¹⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, CASE 12.626, REPORT NO. 80/11, JESSICA LENAHA (GONZALES) ET AL. UNITED STATES (2011).

¹⁷ Goldstein, *supra* note 11.

support services for victims of domestic violence actually came ten years earlier, in 1984, when Congress first passed the Family Violence Prevention and Services Act (FVPSA).¹⁸

FVPSA authorized federal funding for the first time to help victims of domestic violence and their dependent children by providing funds, administered by the U.S. Department of Health and Human Services, that are primarily targeted to domestic violence shelters and related assistance. The following year, in 1985, the U.S. Surgeon General, C. Everett Koop, identified domestic violence as a public health issue that could not be dealt with by the police alone and testified to that effect at a U.S. Senate hearing on this issue.¹⁹ However, over the past three decades, Congress has failed to authorize and appropriate sufficient resources to FVPSA to really address domestic violence as a public health issue or support more comprehensive responses or prevention initiatives.²⁰ Nonetheless, FVPSA continues to be an important federal program with opportunities to continue to strengthen the legislation when it is up for reauthorization in 2015.

While VAWA's primary emphasis has been on encouraging states to strengthen the criminal legal system response to domestic violence, 30% of the VAWA funds that go to the states through the Services, Training, Officers and Prosecutors (STOP) grant program are allocated to victim services programs. The distribution of FVPSA and VAWA funds for services at the state level have primarily gone to mainstream shelter-based domestic violence service providers and has often resulted in a "one-size fits all approach." Under this approach, victims are mostly expected to go to domestic violence shelters and seek an order of protection and/or press criminal charges.²¹ This approach, while beneficial to some, often fails to address the complexities of intimate partner violence and the lived realities of survivors. Inevitably, the risks

¹⁸ The Family Violence Prevention and Services Act ("FVPSA") was first authorized as part of the Child Abuse Amendments of 1984 (PL 98-457). FVPSA was most recently reauthorized in 2010 as part of the Child Abuse Prevention and Treatment Act ("CAPTA", S. 3817 of the 111th Congress) through fiscal year 2015. See Child Abuse Prevention and Treatment Act, Pub. L. No. 111-320 (2010).

¹⁹ *Domestic Violence and Public Health: Hearing Before the S. Subcomm. on Children, Family, Drugs, and Alcoholism of the Comm. on Labor and Human Resources*, 99th Cong. 433 (1985) (statement of Dr. C. Everett Koop, Surgeon Gen., U.S. Pub. Health Serv., U.S. Dept. of Health & Human Services).

²⁰ FVPSA authorization levels are at \$175 million a year, an amount that did not increase in the 2010 reauthorization. However, actual appropriations by Congress have been less than \$130 million, with a slight increase to \$133.5 million for Fiscal Year 2014. DEPT. OF HEALTH & HUMAN SERVICES, ADMIN. FOR CHILD. & FAMILY, CHILD. & FAMILY SERVICES PROGRAM, FY 2014 PROPOSED APPROPRIATION.

²¹ Hannah Brenner, *Transcending the Criminal Law's One Size Fits All Response to Domestic Violence*, 19 WM. & MARY J. WOMEN & L. 301 (2013).

and challenges are heightened for survivors who face multiple oppressions at the intersections of race, ethnicity, poverty, immigration status, sexual orientation, disabilities, age, mental health issues, and other characteristics that place one under the category of “underserved.” Nonetheless, the manner in which federal resources are distributed has made it very difficult for community-based organizations to access funding to develop innovative approaches to preventing and ending gender violence and to better meet the needs of communities of color and underserved populations in a more comprehensive manner.

While it is important for the criminal legal system and domestic violence shelters to be accessible for survivors who wish to pursue that path, it is critical to recognize that our national response to gender-based violence falls very short of a comprehensive human rights approach to preventing and responding to domestic violence if we fail to take into consideration these intersections and complex realities. Additionally, the allocation of resources in such a manner has had the unintended consequence of turning the domestic violence movement more into a network of social services programs rather than a social change and social justice movement.²²

II. OPPORTUNITIES FOR IMPROVEMENT WITH THE REAUTHORIZATION OF GENDER VIOLENCE LEGISLATION

One advantage of the VAWA and FVPSA laws is that the requirement to reauthorize the legislation approximately every five years provides an opportunity to reassess the benefits as well as identify the gaps and shortcomings of the current legislation. With each prior reauthorization of VAWA (in 2000 and 2005), progress has gradually been made to strengthen a broader approach to addressing gender violence. The reauthorization of VAWA in 2013, though it proved to be a major legislative challenge, ultimately made advancements in expanding a human rights lens that called for improved protections for *all* survivors, particularly marginalized populations. This came about largely because of the solidarity of the National Task Force to End Sexual and Domestic Violence that agreed to stand together to insist that VAWA needed to include important protections for vulnerable populations who face additional barriers to accessing safety and well-being.²³ In particular, VAWA 2013 made advancements in efforts to

²² RICHIE, *supra* note 9, at 77.

²³ The National Task Force to End Sexual and Domestic Violence (“NTF”) is organized by a Steering Committee comprised of national organizations whose primary purpose is to end domestic violence, dating violence, sexual assault, and stalking as well as a number of allied organizations who have historically focused significant time,

address gender violence against Native Americans, LGBT survivors, and immigrants and also strengthened grant programs focused on underserved communities and racial and ethnic minority communities.²⁴

VAWA 2013 made significant advancements in strengthening protections for Native American victims of domestic violence on tribal land through a tremendous advocacy effort led by the National Congress of American Indians and other tribal organizations, working in collaboration with the National Task Force to End Sexual and Domestic Violence. The tribal jurisdiction provisions that were ultimately included in VAWA faced much heated debate and extensive opposition from those who did not support recognition of tribal sovereignty to hold non-Indian perpetrators accountable for domestic violence and dating violence perpetrated against Native American survivors on tribal land. These new provisions made a significant advancement in protecting the human rights of Native American survivors who suffer much higher rates of domestic violence and sexual assault on tribal land, often at the hands of perpetrators who are non-Indians. The provisions authorize tribal governments to prosecute non-Indian defendants involved in intimate relationships with Native women and who assault these victims on tribal land.²⁵ Prior to the enactment of this new version of VAWA, federal laws did not authorize tribal courts to pursue any form of prosecution against these non-Indian perpetrators. Jurisdiction for these types of cases largely rested on federal courts and U.S. Attorneys' offices, often hundreds of miles away, who did not prioritize these kinds of domestic violence cases and rarely prosecuted them.

The courageous testimony of Native American survivors, such as Diane Millich, highlighted how the lack of adequate protections increased the risks and dangers for Native American survivors of

resources and energy to ending violence against women. Steering Committee members work collaboratively to ensure that public policy initiatives are informed by diverse perspectives, address priority concerns, and help advance efforts to end violence against women. The Steering Committee activates the larger NTF membership when appropriate and creates and provides guidance to the numerous NTF subcommittees and workgroups. NAT'L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE AGAINST WOMEN, <http://4vawa.org/> (last visited Sept. 9, 2014).

²⁴ *The Violence Against Women Act Reauthorization of 2013: Summary of Changes*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, http://nnedv.org/downloads/Policy/VAWA2013_Summary.pdf (last visited Sept. 6, 2014).

²⁵ *President Obama Signs Violence Against Women Act into Law: NCAI Praises Passage of Protections for All Women; Tribal Courts Gain Jurisdiction Over Non-Indian Domestic Violence Perpetrators*, RESTORATION OF NATIVE SOVEREIGNTY & SAFETY FOR NATIVE WOMEN MAG., at 3–4, June 2013, <http://restoration.niwrc.org/files/Restoration-V10.2.pdf>.

domestic violence at the hands of non-Native abusers.²⁶ During her testimony at a congressional briefing, Diane shared how the violence continued to escalate over the course of her marriage to her husband who was not Native American. She stated, “After one beating, my ex-husband called the tribal police and sheriff himself to show me that no one could stop him.”²⁷ When she left her husband he subsequently showed up at her workplace and tried to kill her, shooting and wounding instead a co-worker who pushed her aside during the shooting. Even then, there was confusion over who had jurisdiction between the federal and state courts and they agreed to let him take a plea to a minor offense.²⁸

Jefferson Keel, the President of the National Congress of American Indians (NCAI) and Lt. Governor of the Chickasaw Nation, in speaking about the implementation of the new VAWA law stated, “We have strong tribal courts systems that protect public safety, and we will need to continue to expand our capacity and our codes. The law respects tribal sovereignty and also requires that our courts respect the due process rights of all defendants. My hope is that this new law is rarely used. Our goal isn’t to put people in jail. It is to create an effective deterrent so that our people can lead safe and productive lives.”²⁹

While these new provisions providing for tribal jurisdiction for non-Indian perpetrators of domestic violence were an important advancement of protections in VAWA and a historic advancement for Tribal sovereignty, ultimately Congress did not go far enough to include victims of sexual assault on tribal land at the hands of non-Indian assailants and did not include necessary protections for Alaska natives.³⁰ Continued advocacy is underway to further expand these protections.

A second major area of contention in efforts to expand the protections of VAWA during the recent reauthorization process revolved around provisions to enhance access to services and prevent discrimination for LGBT survivors of domestic violence, sexual assault, stalking and dating violence. The 2013 reauthorization of VAWA made important and historic changes that will have a life-saving impact for many LGBT survivors. First, it added the term “intimate partner” to the list of eligible relationships for domestic violence protection.

²⁶ SoleyByRequest, *Diane Millich’s Story and The Violence Against Women Act*, YOUTUBE (Mar. 7, 2013), <https://www.youtube.com/watch?v=ahE6D4MjX1g>.

²⁷ *Signing of VAWA 2013: Historic Introduction of Vice President Joe Biden by Diane Millich*, RESTORATION OF NATIVE SOVEREIGNTY & SAFETY FOR NATIVE WOMEN MAG., June 2013, at 6–7, <http://restoration.niwr.org/files/Restoration-V10.2.pdf>.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Introduction to the Violence Against Women Act*, COURT CLEARINGHOUSE: A PROJECT OF THE TRIBAL LAW & POLICY INSTITUTE, http://www.tribal-institute.org/lists/title_ix.htm (last visited Sept. 6, 2014).

Additionally, “sexual orientation” and “gender identity” were explicitly added to the anti-discrimination language, clarifying that programs and services for domestic violence survivors may not discriminate on these grounds. Also, individuals who face barriers in accessing and using services due to their sexual orientation or gender identity are designated as “underserved” populations, meaning more resources can go toward prevention, outreach, and access to services within the LGBT population. Finally, there was a creation of a new purpose area within the VAWA victim services funds that allows for the targeting of victim services funds toward LGBT services.

In January of 2013 the Centers for Disease Control released the first set of national prevalence data on intimate partner violence, sexual violence, and stalking victimization by sexual orientation. The study found that lesbian, gay and bisexual people experience intimate partner violence and sexual violence at the same or higher rates over their lifetimes as heterosexuals.³¹ Additionally, the New York City Anti-Violence Project’s National Coalition of Anti-Violence Programs (NCAVP) found that transgender people experience sexual violence at twice the rate of non-transgender people.³² The new provisions in VAWA, which were a historic advancement in explicitly identifying and seeking to address the needs of LGBT individuals in federal legislation, represent a significant step toward ensuring that all people, regardless of sexual orientation, gender, or gender identity, are able to access services and seek safety and well-being.

A third major area of contention in the VAWA reauthorization efforts entailed maintaining and enhancing protections for immigrant survivors. Since its enactment in 1994, VAWA has always included vital protections for immigrant survivors of domestic violence and sexual assault. Congress recognized that the abusers of immigrant victims often use their victims’ lack of immigration status as a tool of abuse, leaving the victim too afraid to seek services or report the abuse to law enforcement. Congress sought to remedy that in VAWA to ensure that all victims have access to safety and protection and that all perpetrators can be held accountable. VAWA “self-petitioning” was created in 1994 to assist victims married to abusive spouses who are U.S. citizen or lawful permanent residents and who use their control over the victims’ immigration status as a tool of abuse (e.g., by failing to petition for them

³¹ Press Release, Centers for Disease Control and Prevention (“CDC”), CDC Releases Data on Interpersonal and Sexual Violence by Sexual Orientation (Jan. 25, 2013), http://www.cdc.gov/media/releases/2013/p0125_NISVS.html.

³² Sharon Stapel & Rea Carey, *An Open Letter About New Protections for LGBT Survivors of Violence*, ANTI-VIOLENCE PROJECT (October 2, 2013), <http://www.avp.org/resources/avp-resources/274>.

and thus intentionally leaving victims without legal status and without legal work authorization).

In the 2000 reauthorization of VAWA, Congress expanded protections for immigrant survivors as part of the Victims of Trafficking and Violence Prevention Act. The T visa was created to assist victims of trafficking and the U visa was created to encourage immigrant victims of certain serious crimes (including domestic violence and sexual assault) to report those crimes and cooperate with police and prosecutors without fearing they could face deportation.³³ The 2005 VAWA reauthorization continued bipartisan support for all these protections and included additional enhancements in the protections for immigrant survivors.

While the bipartisan VAWA reauthorization bill that was introduced in the Senate in 2012 sought to maintain and enhance protections for immigrant survivors, the separate VAWA reauthorization bill that was initially introduced and passed in the House of Representatives later that year actually would have rolled back critical protections for immigrant survivors for the first time ever in the history of VAWA.³⁴ It was revealed that some of those provisions to weaken protections for immigrant survivors were being advocated for by organizations that had ties to the mail-order bride industry in the United States.³⁵ Once again, the solidarity of the National Task Force to End Sexual and Domestic Violence and the support of grassroots advocates throughout the country was critical in sending the message to Congress that VAWA needed to protect all survivors and that the advocacy community nationwide refused to accept a VAWA that endangered the safety and well being of immigrant survivors. Ultimately, the reauthorization legislation that was signed into law did not roll back any existing protections and did expand the eligibility categories for the U visa, improved protections for the children of U visa applicants, strengthened the International Marriage Broker Regulation Act to better regulate the mail-order bride industry, and reauthorized the Trafficking Victims Protection Act, among other provisions for immigrant survivors.³⁶ Although it was not possible during

³³ Victims of Trafficking and Violence Prevention Act ("VTVPA"), Pub. L. No. 106-386, 114 Stat. 1464, 1479-1534 (2000).

³⁴ MUJERES LATINAS EN ACCION & NAT'L LATINO NETWORK: CASA DE ESPERANZA, LATINA PORTRAIT: THE REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT AND LATINAS, 15 (2012), available at http://nationallatinonetwork.org/images/MMLEA_REPORT2012FINALOL.pdf

³⁵ Laura Basset, *Mail Order Bride Company President Lobbying to Weaken Protections for Abused Immigrants*, HUFFINGTON POST (May 8, 2012, 4:19 PM), http://www.huffingtonpost.com/2012/05/08/violence-against-women-act_n_1500693.html.

³⁶ IMMIGRATION COMM. OF THE NAT'L NETWORK TO END SEXUAL AND DOMESTIC VIOLENCE, IMPORTANT PROTECTIONS FOR IMMIGRANT VICTIMS IN THE VIOLENCE AGAINST

the reauthorization process to obtain an increase in the number of U visas available to immigrant victims, a commitment was made to continue pursuing that goal in subsequent immigration reform legislation.³⁷

A fourth area of advancement in VAWA 2013 was making some changes in grant programs to improve access to critical funding for community based organizations that are primarily focused on addressing the needs of racial and ethnic minority communities or other underserved populations. Specific grant programs in VAWA, such as the “Culturally Specific Services for Victims Program” and the “Outreach and Services to Underserved Populations Grant,” both of which were strengthened in the 2013 reauthorization of VAWA, are important steps forward in this direction.³⁸

It is well known that domestic violence occurs across all racial, ethnic, and economic groups. However, the number and quality of studies aimed at having a better understanding of the prevalence and nature of gender violence in communities of color is still very limited. Beyond issues of prevalence, it is important to recognize that domestic violence victims from communities of color often face intersecting issues that compound the problem, including heightened economic and employment barriers, language access barriers, challenges dealing with the criminal legal system and immigration system, racism, anti-immigrant sentiment, and barriers to accessing health care and mental health services, among others. These issues have a disproportionate impact on marginalized racial and ethnic minority communities and result in additional layers of complexity in reaching and providing effective assistance to these survivors in a comprehensive and accessible manner. It is also important to address intersecting issues that affect individuals within racial and ethnic minority communities who are also underserved as a result of disabilities, sexual orientation, geographic isolation, immigration status, age and other factors that compound the challenges for them to access safety and well-being.

As a result of the added complexities in addressing domestic violence in communities of color, it is necessary to support the development of programs that provide culturally competent and trauma-informed services to ensure that more victims of gender violence in racial and ethnic minority communities receive appropriate intervention and prevention services. Additionally, it requires supporting initiatives

WOMEN REAUTHORIZATION ACT OF 2013 – S. 47, available at <http://casadeesperanza.org/pdfs/VAWAImmigrationfactsheetS47.pdf>.

³⁷ *How Comprehensive Immigration Reform Affects Immigrant Survivors of Violence*, NAT’L LATINO NETWORK (July 25, 2013), <http://www.nationallatinonetwork.org/policy-and-action/policy/immigration-reform>.

³⁸ 42 U.S.C. §§ 14045(a) (2010).

and allocating resources to build capacity within racial and ethnic minority communities to take the lead in addressing domestic violence and sexual assault in their communities and to develop innovative approaches within community-based organizations that are trusted by the community. It is well known that many survivors from communities of color have different patterns of seeking and utilizing services. For example, studies have found that Latinas are less likely to seek shelter services and more likely to speak to family members, friends or neighbors about violence than other ethnic groups.³⁹ Additionally, Latinas are less likely to contact authorities and pursue legal remedies.⁴⁰ While it is important that traditional services be fully accessible to all individuals, it is important to listen to the voices of survivors and develop more holistic programs that provide survivors with choices and different pathways to safety and well-being. These types of programs contribute not only to enhancing access to services, but also can play a significant role in fostering social change.

One example of such a program is Caminar Latino, a comprehensive intervention program in Atlanta, Georgia for Latino families affected by domestic violence. The intervention program developed by Caminar Latino over the course of more than two decades is based on an approach focused on listening and incorporating the voices of survivors and the emerging needs of the population served. In this manner, they have developed programs that create behavior change, build strength and resiliency, and enhance self-empowerment.⁴¹ As stated in the article about Caminar Latino, "What most of the women wanted was for the violence to stop, not to leave their partners, with whom many of them continued to live."⁴² Following the voices of women participants in the program, additional programs for youth and men who battered were developed, creating an intervention that incorporates and addresses the needs of the entire family in a culturally relevant approach. Additionally, they use a community engagement model to raise awareness and foster leadership in the community, and they involve participants of the

³⁹ Sharon M. Flicker et al., *Concomitant Forms of Abuse and Help-Seeking Behavior Among White, African American, and Latina Women Who Experience Intimate Partner Violence*, 17 VIOLENCE AGAINST WOMEN 1067, 1078 (2011). See also Eben M. Ingram, *A Comparison of Help Seeking Between Latino and Non-Latino Victims of Intimate Partner Violence*, 13 VIOLENCE AGAINST WOMEN 159, 168 (2007).

⁴⁰ Maria J. Zarza & Rachel H. Adler, *Latina Immigrant Victims of Interpersonal Violence in New Jersey: A Needs Assessment Study*, 16 J. AGGRESSION MALTREATMENT & TRAUMA 22, 36 (2008).

⁴¹ Julia L. Perilla et al., *Integrating Women's Voices and Theory: A Comprehensive Domestic Violence Intervention for Latinas*, 35 WOMEN & THERAPY 93, 100–02 (2012).

⁴² *Id.* at 95.

program in the development and implementation of community-based participatory research.

While the grant programs for culturally specific and underserved communities were strengthened in VAWA, nonetheless, the reality is that these grant programs are very small compared to the extent of the need. Additionally, community-based organizations focused on marginalized communities will continue to face significant barriers for sustainability unless there is a more intentional effort to increase access to federal resources, such as VAWA, FVPSA and the Victims of Crime Act (VOCA) funds, which are generally distributed at the state level to more traditional programs.

III. EXPANDING ADVOCACY BEYOND LEGISLATION FOCUSED ON GENDER VIOLENCE TO ADDRESS HUMAN RIGHTS ABUSES

While legislation such as the Violence Against Women Act and the Family Violence Prevention and Services Act provide important opportunities for policy advocacy to continue striving to improve our nation's response to and prevention of gender violence, advocates must also lend our voices and increase our advocacy efforts around other pieces of legislation that can have a significant impact on addressing and reducing gender violence and protecting human rights in the United States. One clear example is the movement to obtain comprehensive immigration reform.

As previously stated, since the enactment of VAWA, Congress has recognized the heightened vulnerability to abuse that immigrant survivors face when their immigration status can be used against them as a tool of abuse. As Congress considers how to meaningfully reform the nation's immigration system, it has a special obligation to safeguard and enhance protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other abuses. Unfortunately, despite current humanitarian provisions of U.S. immigration law and current VAWA protections intended to reduce these vulnerabilities, many obstacles to immigrant survivors' access to safety and justice still remain. Immigration reform is necessary not only to protect those who have experienced abuse, but it is critical to help prevent and reduce the significant vulnerability to abuse and exploitation that currently exists in the United States.

In particular, the significant increase in the entanglement of local law enforcement with immigration enforcement has driven immigrant victims further into the shadows. Even before the implementation of these new policies, research showed that immigrant victims of domestic

violence without legal immigration status were half as likely to call police as those with stable legal status.⁴³

The U.S. immigrant population in 2012 was approximately 41 million, or 13% of the total U.S. population. As a point of comparison, immigrants as a share of the total U.S. population reached a peak of approximately 15% in 1890. In 2012, approximately 51% of the overall immigrant population was female.⁴⁴ Estimates are that there are approximately 11.5 million undocumented or unauthorized immigrants living in the United States.⁴⁵ This includes 4.1 million women living in the United States as undocumented immigrants.⁴⁶ Abusive partners, opportunistic predators, and manipulative employers often exploit a victim's lack of immigration status, or dependent immigration status, as a way to maintain power and control and to keep victims silent, too afraid to seek help for fear of deportation or fear of losing custody of their children.⁴⁷

Whereas the U visa was created with the intent of helping immigrant victims and to serve as a law enforcement tool, the annual cap is currently limited to 10,000 U visas per year. Additionally, survivors must provide a certification from law enforcement or an investigative agency regarding their cooperation with the investigation or prosecution of a designated crime in order to be able to apply for U visa. Many immigrant survivors are fearful and do not want to get involved with the criminal legal system, but for those who are willing to do so, they discover after coming forward that there is no obligation for law enforcement to certify that they have been cooperative, regardless of the situation.⁴⁸ Furthermore, the standard is applied very differently by different jurisdictions throughout the country, with some agencies refusing to provide a certification for U visa applications altogether regardless of the immigrant victim's helpfulness in the prosecution or investigation of a

⁴³ Leslye Orloff et.al, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L. J. 43, 60 (2003).

⁴⁴ Chiamaka Nwosu, Jeanne Batalova & Gregory Auclair, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POLICY INSTITUTE (Apr. 28, 2014), <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2>.

⁴⁵ *Id.*

⁴⁶ Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEWRESEARCH CENTER: HISPANIC TRENDS (Apr. 14 2009), <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>.

⁴⁷ Rosie Hidalgo, *Crossroads: The Intersection of Immigrant Enforcement and the Child Welfare System*, 64 Juv. & Fam. Ct. J. 35, 37–39 (2013).

⁴⁸ DEPT. OF HOMELAND SEC., U VISA LAW ENFORCEMENT CERTIFICATION RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL & TERRITORIAL LAW ENFORCEMENT 2 (2012), http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

designated crime.⁴⁹ Furthermore the discretion exercised by law enforcement agencies is not subject to any form of review. This uncertainty, combined with the lack of information, limited access to legal services and advocacy assistance, and fears of deportation leaves millions of individuals in the shadows and with heightened vulnerability to abuse and exploitation.

At the same time that protections for immigrant victims are very limited in scope and availability, the United States has embarked on a massive enforcement effort that has resulted in the deportation of nearly two million individuals in the past five year period, tearing apart families and communities.⁵⁰ Annual deportations have increased more than 400% since 1996, averaging nearly 400,000 people per year during the past several years, and has resulted in more than 2 million deportations during the first five years of the Obama Administration.⁵¹ This has partly been the result of a significant increase in the entanglement between local law enforcement and the efforts of Immigration and Customs Enforcement (ICE).⁵²

There have been numerous reports of victims of domestic violence who have been arrested and put into immigration detention when they or someone else called the police as a result of a domestic violence incident.⁵³ The vulnerability of immigrant survivors is further heightened at the intersection of immigration issues with language access barriers. The heightened danger for immigrant survivors is evident in the story of Isaura Garcia.

On February 6, 2011, Isaura Garcia, a resident of Los Angeles, was arrested and placed in deportation proceedings after she called 911 to

⁴⁹ Dan Levine & Kristina Cooke, *Special Report: U.S. Visa Program for Crime Victims Is Hit-or-Miss Prospect*, REUTERS (Oct. 21, 2014, 9:18 AM), <http://mobile.reuters.com/article/idUSKCN0IA1H420141021?irpc=932>.

⁵⁰ See RACE FORWARD (FORMERLY THE APPLIED APPLIED RESEARCH CENTER), SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 3–4 (2011).

⁵¹ Walter A. Ewing, *The Growth of the U.S. Deportation Machine*, IMMIGRATION POLICY CENTER (Apr. 9, 2014), <http://www.immigrationpolicy.org/just-facts/growth-us-deportation-machine>; Ana Gonzalez-Barrera & Jens Manuel Krogstad, *U.S. Deportations of Immigrants Reach Record High in 2013*, PEWRESEARCH CENTER (Oct. 2, 2014) <http://www.pewresearch.org/fact-tank/2014/10/02/u-s-deportations-of-immigrants-reach-record-high-in-2013/>.

⁵² AARI KOHLI ET AL., UNIV. OF CAL., BERKELEY SCH. OF LAW, C.J. EARL WARREN INST. ON LAW & SOC. POL'Y, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS & DUE PROCESS 1 (2011).

⁵³ See, e.g., Rebecca T. Wallace, *Claudia's Story: How a Domestic Violence Victim's Call for Help Resulted in Three Days in Jail and Deportation Proceedings*, COLORADO RIGHTS BLOG (June 19, 2014), <http://aclu-co.org/blog/claudias-story-domestic-violence-victims-call-help-resulted-three-days-jail-deportation-proceedings/>.

seek help after her boyfriend beat her and violently threw her out of their apartment.⁵⁴ When the police arrived she tried to explain in her broken English what had happened but the police credited her boyfriend's version of events over hers and arrested Isaura.⁵⁵ Isaura, a victim of severe ongoing domestic violence with a history of 911 calls and emergency room visits, was startled to find that officers were arresting her and fainted.⁵⁶ The police officers took her to the hospital where a doctor found bruises on her body and identified her as a victim of domestic violence.⁵⁷ Nonetheless, LAPD officers booked her on a felony domestic charge.⁵⁸ Under a controversial policy known as "Secure Communities," which as of 2013 is now in effect in every police jurisdiction nationwide, her arrest resulted in sending her fingerprints to Immigration and Customs Enforcement, which determined that she was undocumented and subsequently issued a detainer.⁵⁹ Despite the fact that LAPD dropped the charges, Isaura was nevertheless transferred to immigration authorities as a result of the ICE detainer, and was placed in deportation proceedings to be sent back to Mexico and away from her young son.⁶⁰ Once the ACLU became aware of the situation and intervened with a public protest, ICE later dropped its deportation proceedings and an attorney was able to help her file for U visa. However, countless other victims are swept into the ICE dragnet without coming to the attention of advocates. ICE has said that its priority is to deport criminal offenders. But ICE deports approximately 400,000 people each year, and in 2012 only 55% had criminal convictions.⁶¹ Additionally, these incidents are well-known in immigrant communities and have a significant chilling effect on the willingness of other victims and witnesses to come forward and seek help.⁶²

⁵⁴ *Domestic Violence Victim's 911 Call for Help Results in Deportation Proceeding*, ACLU OF S. CAL. (May 12, 2011), <https://www.aclusocal.org/a-domestic-violence-victims-911-call-for-help-results-in-deportation-proceedings-secure-communities-program-endangers-crime-victims/>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ RAPE IN THE FIELDS (PBS, Univision, & Center for Investigative Reporting broadcast June 25, 2013).

⁶² The National Latin@ Network for Healthy Families and Communities, a project of Casa de Esperanza, partnered with the National Domestic Violence Hotline to develop and conduct a survey of Latina callers over a six week period in 2012 regarding barriers that Latina domestic violence survivors face when seeking and accessing services. The results of the survey documented issues with language accessibility as well as issues related to immigration status. Thirty-nine percent of Latinas who indicated that they had

Many law enforcement officers and communities have expressed deep concerns that programs that increase the entanglement between local law enforcement and immigration enforcement efforts undermine public safety and community policing and drive immigrant victims further into the shadows.⁶³ As Congress debates immigration reform legislation, some legislators are proposing even stronger measures aimed at further increasing the involvement of state and local law enforcement in the implementation of more stringent enforcement provisions, such as through the Strengthen and Fortify Enforcement Act (“SAFE” Act, HR 2237), which passed the House Judiciary Committee on June 18, 2013.⁶⁴ The Major Cities Chiefs Association, an association comprised of police chiefs and sheriffs from the sixty-six largest law enforcement agencies in the United States, issued the following statement in opposition to such legislation:

Any Congressional measure that would require state and local law enforcement agencies to engage in immigration enforcement is strongly opposed by the Major Cities Chiefs. This proposal would undermine the trust and cooperation between police officers and immigrant communities, which are essential elements of community-oriented policing. Such a measure would result in fear and distrust of local police, damaging our efforts to prevent crime and weakening our ability to apprehend those who prey upon the public. Moreover, it would divert scarce and critical resources away from the

been born in a foreign country reported that they were afraid of calling the police or going to court for help as a result of the general immigration situation. Survivors stated that abusers often threaten them that they will be deported if they call the police. They also feared being separated from and losing custody of their children if they are put into detention. Nearly one in three Latinas who completed the survey in Spanish (31%) reported that they had encountered challenges accessing domestic violence related services because of language accessibility issues. See NATIONAL LATINO NETWORK FOR HEALTHY FAMILIES & COMMUNITIES AND THE NATIONAL DOMESTIC VIOLENCE HOTLINE, REALIDADES LATINAS: A NATIONAL SURVEY ON THE IMPACT OF IMMIGRATION AND LANGUAGE ACCESS ON LATINA SURVIVORS 3–8 (2013); see also NIK THEODORE, UNIV. OF ILL. AT CHICAGO, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 1–18 (2013).

⁶³ Pamela Constable, *For Immigrant Women, Domestic Violence Creates a Double Shadow*, WASHINGTON POST (Dec. 2, 2013), http://www.washingtonpost.com/local/for-immigrant-women-domestic-violence-creates-a-double-shadow/2013/12/02/5626b85e-55e6-11e3-8304-caf30787c0a9_story.html.

⁶⁴ *What’s on the Menu: Immigration Bills Pending in the House of Representatives in 2014*, Immigration Policy Center (Mar. 26, 2014), <http://www.immigrationpolicy.org/just-facts/what%E2%80%99s-menu-immigration-bills-pending-house-representatives-2014>.

core mission of local police—to create safer communities.⁶⁵

Increased exploitation in the workplace is also a reality for many undocumented individuals who often face poor working conditions, sexual abuse and harassment, and wage theft. In a recent documentary produced by PBS Frontline, Univision, and the Center for Investigative Journalism, entitled “Rape in the Fields,” a one year investigation revealed very high levels of rape and sexual assault of immigrant women who work in the agricultural sector in the United States.⁶⁶ As stated in the documentary, over half a million women labor in the fields in the United States, the great majority undocumented. Most are too afraid to come forward to report the rape or sexual abuse for fear of losing their jobs and being unable to feed their children, or for fear of being arrested and placed in detention. For those who do come forward, they have often found that local law enforcement is not interested in prosecuting their reports of these crimes.

William Tamayo, an attorney with the Equal Employment Opportunity Commission (EEOC) has been successful in bringing some cases against agricultural companies that fail to stop the abuse of mid-level supervisors who often are the ones that prey on the migrant workers. “Sexual violence doesn’t happen unless there’s an imbalance of power,” Tamayo said, “and in the agricultural industry, the imbalance of power between perpetrator, company and the worker is probably at its greatest.”⁶⁷ As stated in the investigative report, the combination of financial desperation and tenuous immigration status make agricultural workers vulnerable to workplace violence and less inclined to report crimes. This situation of heightened vulnerability to abuse and exploitation of immigrant women is found not only in the agricultural industry, but throughout the hotel and restaurant industry, as well as those who are employed as domestic workers, in addition to other sectors.⁶⁸

⁶⁵ Statement, Major Cities Association, Police Chiefs from Nation’s Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law (June 2013), <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/MCCAPC130821.pdf>.

⁶⁶ Nwosu, Batalova & Auclair, *supra* note 44.

⁶⁷ Bernice Yeung & Grace Rubenstein, *Female Workers Face Rape, Harassment in U.S. Agricultural Industry*, CENTER FOR INVESTIGATIVE REPORTING (June 25, 2013, 2:39 AM) <http://www.pbs.org/wgbh/pages/frontline/social-issues/rape-in-the-fields/female-workers-face-rape-harassment-in-u-s-agriculture-industry/>.

⁶⁸ LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT, TRABAJADORAS: CHALLENGES & CONDITIONS OF LATINA WORKERS IN THE UNITED STATES 49 (Mariya Strauss ed., 2012).

The current situation demonstrates that very limited access to remedies such as the U visa, which even then are only available after someone has been raped or beaten, do not come close to addressing what is a critical situation of high levels of vulnerability to abuse and exploitation for millions of undocumented women in the United States. Furthermore, a system of immigration enforcement that relies on increasing entanglement with local police drives immigrant victims further into the shadows, undermines their access to safety and state protection, and further emboldens perpetrators. Immigration reform that provides a pathway to legalization and work authorization is urgently needed to address these human rights' abuses and help prevent and reduce domestic violence, sexual assault, and trafficking.

IV. CONCLUSION

As stated at the outset, "Regardless of the form that gender-based violence takes, it is a *human rights violation* or abuse, a public health challenge, and a barrier to civic, social, political, and economic participation."⁶⁹ A human rights approach is necessary not only in addressing gender violence globally, but in order to advance efforts to prevent and end gender violence in the United States as well.

A human rights framework helps one understand that all individuals, regardless of their individual circumstances, have a right to live free from the threats and realities of domestic violence, dating violence, sexual assault, stalking, and trafficking. In order to accomplish this, such a model needs to develop a more comprehensive approach as well as develop policies to end violence at the intersections with other forms of oppression. This requires supporting the efforts of different communities, particularly historically marginalized communities, to access effective services. Furthermore, it also requires widening access to resources to help build capacity and leadership within different communities to prevent and respond to gender-based violence in effective, culturally-accessible ways that contribute to wider social change. By acknowledging that a "one-size fits all approach" is not conducive to meaningful access, a human rights framework should move us toward developing and supporting different policies and pathways for survivors to seek safety, stability, and well-being at the personal, familial, and community level.

⁶⁹ U.S. STRATEGY TO PREVENT, *supra* note 1, at 7.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Interview—Caroline Bettinger-López and Marleine Bastien on the Fight to Stop Gender Violence: From Haiti to Miami

Caroline Bettinger-Lopez (Interviewer)^{†}
Marleine Bastien (Interviewee)*

BETTINGER-LÓPEZ: My name is Carrie Bettinger-Lopez. I direct the Human Rights Clinic at the University of Miami School of Law.¹ I have the pleasure of speaking today with Marleine Bastien, the

[°] This transcript has been edited from its original transcription for clarity.

^{*} Caroline Bettinger-Lopez is an Associate Professor of Clinical Education and Director of the Human Rights Clinic at the University of Miami School of Law. Professor Bettinger-Lopez is currently on a leave of absence serving as the White House Advisor on Violence Against Women. Professor Bettinger-Lopez focuses on implementation of human rights norms at the domestic level, principally in the United States and Latin America. Marleine Bastien is a licensed clinical social worker. Ms. Bastien is the founder and Executive Director of Fanm Ayisyen Nam Miyami, Inc. (Haitian Women of Miami), a group that provides desperately needed assistance not only to Haitian women and their families, but to the community at large. Bastien is the Chair of the Florida Immigration Coalition and the Vice-Chair of the Haitian American Grassroots Coalition. Bastien formed the Justice Coalition for the Haitian Children of Guantanamo, is a founding member of the Haitian-American Grassroots Coalition, the Haitian Neighborhood Center (Sant La) and many more community organizations.

[†] Caroline Bettinger-Lopez also participated as a speaker at the Converge! Reimagining the Movement to End Gender Violence Conference, that took place at the University of Miami School of Law on February 7-8, 2014. See Caroline Bettinger-Lopez et al., *Plenary 4—Mobilization*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 487 (2015).

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¹ For more information, please visit University of Miami Human Rights Clinic, available at <http://www.law.miami.edu/human-rights-clinic/>.

Executive Director of FANM,² Haitian Women of Miami. Marleine is a longtime activist in our community and has gained international recognition for her steadfast commitment to promoting the rights of not only Haitians, but of all immigrants.

We will be talking today to Marleine about her fight to stop gender violence, a battle that traverses the hemisphere from Haiti to Miami. We will hear from Marleine about how she has used a human rights framework to address the problem of gender violence.

Marleine, could you tell us a little bit about your experience witnessing gender violence when growing up?

BASTIEN: Thank you, Carrie. Growing up as a little girl in Haiti, I was an eyewitness to life at the market. The women were the life of the market. Very early in the morning before dawn they would be coming down single file from the mountains, carrying baskets of fruits and food on their head. At the market the women were selling, they were cleaning the fish, they were cooking for the children. Because the children were there, they had to feed them. I was always surprised at how the men would come out of nowhere while the women would be doing all the work. They would bring big batons and would then start beating them. As a little girl, I would ask myself, “The women are doing all this work, where are the men? Who is standing up for these women?” This experience really had a big impact on me growing up.

BETTINGER-LÓPEZ: Tell us about your journey to the United States and how that experience of observing gender violence at such a young age became a formative moment.

BASTIEN: When I came to the United States in 1981, I volunteered at the Haitian Refugee Center. Women would come to the Center with black eyes. Pregnant women especially would come with big bumps on their tummy. I realized that there was a void in services because the Haitian Refugee Center would help them with their political asylum applications, but here they were being beaten up by their husbands and they did not know what to do. I had to take care of these women and find shelters for them and soon enough I found out that most of the women refused to go to shelters. When you call the police, they would not want to speak. Often times, when they called the police, the *women* were the ones getting in trouble. So I organized FANM, now known as Haitian Women of Miami, to fill this void, to provide the services I felt were missing from the Haitian Refugee Center. FANM is the creole name for women and stands for Fanm Ayisyen nan Miyami—Haitian Women of

² For more information, please visit Fanm Ayisyen nan Miyami, Haitian Women of Miami, available at www.fanm.org/.

Miami. Now as you can imagine, this created a big outcry: “Why are you calling the organization FANM? Are you trying to get the women to wear the pants in the family? To make decisions in the family?” The organization is called FANM because I wanted to show that women—the life of the market, the backbone of the Haitian family—were important. We must invest in women, respect women, and treat them with dignity. If we respect and treat women with dignity, the whole family benefits.

BETTINGER-LÓPEZ: I find the power of the human rights framework is that it allows for a focus on state accountability, a focus on how the government can prevent acts of violence and human rights violations. Have you observed governmental attitudes towards violence against women change over the years?

BASTIEN: Today in Haiti there have been some gains, things have changed a bit, but women are afraid even today to report acts of violence against them because of the fear of reprisals. During the earthquake in 2010, which killed hundreds of thousands of people, the women were the soul of their camps. They took care of everybody in the camp. They had to organize their own security, their own safety. Girls as young as 6-months old were being sexually abused. Even today women often times have to have security to get to court. When they muster the courage to bring their perpetrator to court, they need protection. So there have been improvements in Haiti because at least now there are authorities they can report to, but in terms of real protection, we still have a way to go.

In the United States, I can say from the time I came here as a young political asylee in 1981, I have seen a lot of changes. There have been a lot of gains. The court is more responsive and more ready to prosecute. There was a time that the abuser would be let go because our judges did not feel that women were important enough to be protected. I see a difference now. I see more and more women having access to protection under the courts. I see that there is more attention brought to the problem of violence, the prevalence of violence in our society.

I believe that we have had some gains, but we still have a way to go. I see that in some cases, the women do not receive the protection they deserve. When a woman tells the local authorities, those who were hired or elected protect her, that she feels that she is in danger, that her children are in danger, it is still the case that often times her voice is not listened to. So there is a necessity to give the women avenues so that women who are victims of abuse have an outlet locally, nationally and even internationally. So when they come to the authority, they can say “You see I presented my case. I was believed. I am a person and I am deserving of my human rights. I should not be forced to live in fear.”

BETTINGER-LÓPEZ: I think that the power of the human rights framework is that human rights bodies are a forum that we can go to

when our domestic systems are not working. If you have gone to the police or court and you are not able to seek protection or redress there, then you can turn to the international community because you have a problem with access to justice. The Inter-American Commission on Human Rights,³ or the United Nations, can hold governments to account when they do not address the human rights of their citizens. The other power of the human rights framework is that it gets to root causes, it gets to structural problems in our society and legal systems that condone or promote acts of gender violence. When we think about the role of the state, that is when we think about big pictures fixes.

BASTIEN: I agree. We are at a crossroads. In order for us to have the moral ground to dictate to the nations to respect human rights, the United States must uphold basic rights here.

BETTINGER-LÓPEZ: So, Marleine, lets take the case of a woman who has experienced severe gender violence. Does it change the equation for her to articulate the harm that she has suffered in terms of human rights?

BASTIEN: I do believe that for someone who is being abused to believe that as a human being it is her basic human right not to be violated, not to be abused, is important because in many societies women are not valued. Women are not valued; they are not protected because they feel that women are not important enough to be protected. Women are not important enough to drive. Women are not important enough to go to school. Women are not important enough to make their own decisions. So when someone who is being abused actually believes that I am a human being, that belief changes a lot. We have clients that come to our office after years of abuse, but when it is time for them to stand up and press charges, or do something about the abuse, they do not because they do not think that they are valuable enough. They do not believe that people will stand up for them. So we want to get to the point where women facing abuse believe, "I am a human being and am deserving; I have rights and it is a basic human right for me to be protected, for the state to protect me, for local officials to protect me, for members of Congress to enact laws to protect me." If the woman who is being abused believes in her basic human right not to be abused, it is a huge step toward changing the course of her life.

When we organized FANM in 1991, we made domestic violence a big part of our focus. The first thing we did was to start a big campaign.

³ The Inter-American Commission on Human Rights is a body of the Organization of American States ("OAS"), whose mission is to promote and protect human rights in the American hemisphere. *What is the IACHR?* OAS.ORG. available at <http://www.oas.org/en/iachr/mandate/what.asp>.

The campaign was implemented in the community, within the “Chita Kozes” which are informal weekend workshops. We set up the “Chita Kozes” wherever we could set up a table, play music and share some Haitian food. We were at Sabel Palm, which is a housing complex. We were at Barry University. We were on the streets of Little Haiti. We were on the radio every week. Why? Because we were getting so many cases of women being victimized, coming with black eyes, and often times they were the ones being arrested. Children were being removed from the parent’s custody because of acts of violence against the spouse.

We felt that the women needed to understand their rights because in Haiti they do not have any rights. The moral of the campaign was to tell the women that they are human beings, they are valued, they have rights, they are living in a country with rights, and to understand that they are no longer children. Because until Michele Bennett was the wife of “Baby Doc” Duvalier, women were believed to be children, they had the status of children. Women could not inherit land. This was not that long ago.

So we implemented a campaign to inform women about the laws and how they work here in this country, and what kind of resources are available. Believe it or not when we were doing that in the early 80’s it was really difficult. Men would call threatening us with even death. Even women would call our radio show with the Bible in their hands claiming that sometimes women deserve to be beaten because they do not listen to their husbands, because the Bible says women have to be submissive and obey their husbands. Men told us, “Do not try to put all these bad ideas in women’s heads, telling them they have rights, because the Bible says that women have to obey and when they do not obey they get beaten.”

Fast forward twenty-four years, now we have both men and women coming to the Center to take anger management classes, domestic violence intervention classes, and join support groups. When the family is well balanced and safe, the children grow up to be safe and well-balanced, physically and emotionally. Most of the present population of abusers are men who were abused or whose father was abusive towards their mother. So we want to change that. We need to create a better society, a better environment for little girls to grow up to be responsible citizens so they can aspire to be whatever they want to be without fear.

BETTINGER-LOPEZ: Let me ask you one more question. We are talking about the critical role of governments in promoting and protecting human rights. How does FANM interact with other government officials, representatives of social services, the Department of Children and Families (DCF), with elected officials and other individuals who represent the government of Miami-Dade County, Florida?

BASTIEN: We believe in being proactive. When I first came here I realized that we were dealing with a completely different system, and I needed to understand the system so I could help women that were being abused. I joined the Health and Rehabilitation Services Board. I was nominated to the board by the late Commissioner Arthur Teal. I was there for four years learning and then sharing what I knew with the community and going on the radio and saying “this is what is considered abuse; this is what happens here when you beat up on your woman; this is what happens if you are beaten or if you are abused; these are the things you can do.” In the case of elected officials we play an important role in educating them. They do not understand the differences in the family systems and, that immigrant families bring resources and values with them. Instead of always putting those values aside, or arresting them—I am not saying that in a few cases that is not what should be done, what is needed is education. We teach about Haitian culture, about how families are viewed, about the gender roles, and about the generation role differences. It is important for DCF to understand that.

We also organize our clients. This is what makes FANM unique. We not only provide services—domestic violence intervention, support groups, anger management groups, parenting groups—we also organize. We give a voice to our clients; they go to the County Commission and speak to the Commissioners. Commissioners need to hear from women whose children were removed. They need to hear from people who need affordable housing. We spent the night on the Miami Dade Commission Grounds to make a point that access to affordable housing is important to help women to get out of abusive situations.⁴ Access to child care and a living wage, not a minimum wage, is important. If you receive a minimum wage you do not even have money to pay for child care. Women are being punished because they are being good parents, strong courageous parents. This needs to stop. We need to create environments for women to be safe, to have access to child care, access to affordable housing, access to a livable wage, vacations, and respite care so women can breathe. Women are not donkeys; we get tired. These needs are linked to gender violence.

A society free of violence is a society that can thrive. It is a society that can aspire to peace. The full emancipation of women is a condition for peace and we aspire to peace. We cannot have peace when women are hostages in their own homes, when they are living in fear from those who are supposed to protect them and love them.

⁴ The clients and staff of FANM, Miami Workers Center (MWC), and other organizations were part of the event organized by MWC.

Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement

Donna Coker & Ahjané D. Macquoid*

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I. INTRODUCTION

The number of people in U.S. prisons and jails has experienced an astounding six-fold increase since the 1970s.¹ This growth in the number of people imprisoned is unprecedented in U.S. history and outstrips the current incarceration rates of any other country.² The reach of the criminal justice system is far wider and deeper than that experienced by the two million who are imprisoned.³ Another five million people are under the supervision of the criminal justice system—on parole or probation.⁴ Approximately 35,000 people are held in immigration detention on any given day,⁵ and more than 400,000 were detained and removed from the country in 2013.⁶ As we describe in detail below, this hyper-incarceration⁷ has devastating effects on those under criminal

¹ Marie Gottschalk, *The Past, Present, and Future of Mass Incarceration in the United States*, 10 CRIMINOLOGY & PUBLIC POL'Y 483 (2011).

² ROY WALMSLEY, INT'L CENTRE FOR PRISON STUDIES, WORLD PRISON POPULATION LIST (TENTH EDITION), http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf (last visited Apr. 11, 2015) (The U.S. prison population rate of 716 per 100,000 is the highest among the 222 independent countries and dependent territories included in the study.).

³ *Id.*

⁴ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (revised ed., 2012). The growth in the number of people who are incarcerated or otherwise under the control of the criminal justice system is the result of the intersection of a series of government policy decisions: (1) drug crime policies that focused on surveillance and control in urban communities of color; (2) mandatory minimums and “three-strikes” legislation that dramatically increased the years served for convictions; (3) expansive drug conspiracy charging that resulted in lengthy terms of incarceration for minor players, including a number of women in abusive relationships. INTRODUCTION TO CRIMINAL LAW STORIES 3 (Donna Coker & Robert Weisberg eds., 2013).

⁵ ALISON SISKIN, CONG. RESEARCH SERV., IMMIGRATION-RELATED DETENTION 13 (2013), available at www.fas.org/irp/crs/RL32369.pdf. The average size of the noncitizen detention population has increased 75% since 2002. *Id.* at 12.

⁶ ALISON SISKIN, CONG. RESEARCH SERV., ALIEN REMOVALS AND RETURNS: OVERVIEW AND TRENDS (2015), available at <http://fas.org/sgp/crs/homesecc/R43892.pdf>.

⁷ See discussion *infra* Part II defining the term “hyper-incarceration.”

justice system control and those close to them and weakens the social structures of entire communities.

We demonstrate that these negative effects of hyper-incarceration increase the risks for domestic violence. We argue that the movement to end domestic violence should therefore focus attention on efforts to stop hyper-incarceration. In Part I, we describe the growth of hyper-incarceration and its racial, class, and gender disparate character. This growth in criminalization has been fueled by racist ideologies and is part of a larger neoliberal project that also includes disinvestment in communities, diminishment of the welfare state, and harsh criminalization of immigration policy. We place the dominant crime-centered approach to domestic violence in this larger neoliberal context. Anti-domestic violence advocates have responded to neoliberal anti-poor and anti-immigrant policies with two strategies: exceptionalizing domestic violence victims and expanding the reach of VAWA, both of which are likely to become less tenable in the current political climate. We argue for a more inclusive political alignment with justice organizations that addresses the larger structural inequalities that fuel violence. A key part of that alignment is opposition to hyper-incarceration. In Part II, we describe four of the negative impacts of hyper-incarceration: collateral consequences of conviction; prison trauma and the deepening of destructive masculinities; economic and emotional harms to the families of those incarcerated, especially children; and harms of hyper-incarceration to communities. In Part III, we demonstrate the risks for domestic violence that are the result of the effects of hyper-incarceration on the economic and mental well-being of individuals and on the social structure of communities. We conclude with a description of opportunities to join the work against hyper-incarceration. For the most part, anti-domestic violence organizations have not been at the forefront of this work, but there are notable exceptions which we describe.

A. *The Rise of the Carceral State*⁸

The police shooting in Ferguson, Missouri⁹ of an unarmed African American man and the related Department of Justice report,¹⁰ the racial

⁸ We borrow the term from Marie Gottschalk. See MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWES: THE POLITICS OF MASS INCARCERATION IN AMERICA* 1 (2006).

⁹ See, e.g., Monica Davey, *Fatal Encounter in Ferguson Took Less Than 90 Seconds, Police Communications Reveal*, N.Y. TIMES, Nov. 16, 2014, http://www.nytimes.com/2014/11/16/us/ferguson-shooting-michael-brown-darren-wilson.html?_r=1.

¹⁰ See U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* (Mar. 4, 2015), available at http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

disparities in the application of “stand your ground” law,¹¹ and the racially discriminatory “stop-and-frisk” practice in New York City¹² have (re)focused popular attention on the racial nature of the growth in criminalization. African American men and women make up an extraordinarily disproportionate number of those arrested and incarcerated, representing nearly 40% of male prisoners and 25% of female prisoners.¹³ They are incarcerated at rates six times higher than that of white men and women.¹⁴

While much of the attention on hyper-incarceration has focused on African American men,¹⁵ the biggest growth in incarceration numbers has been among *women* whose imprisonment rates have grown over 800% since the late 1970s,¹⁶ with the biggest increase among African American women.¹⁷ George Lipsitz describes the ways in which racial discrimination in housing and employment, gender norms in the structure of caretaking responsibilities, vulnerability to male abuse, and the resulting economic vulnerability of African American women and Latinas, combine to make poor women of color particularly vulnerable to incarceration.¹⁸

¹¹ See Donna Coker, “Stand Your Ground” In Context: Race, Gender, and Politics, 68 U. MIAMI L. REV. 943 (2014) (describing Florida’s self-defense law and the trials of George Zimmerman for killing Trayvon Martin, Michael Dunn for killing Jordan Davis, and Marissa Alexander who claimed to have fired a “warning shot” in self-defense against her abusive husband).

¹² See, e.g., *Stop and Frisk Data*, N.Y. CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Apr. 11, 2015) (finding that the majority of those stopped and frisked in New York were people of color and innocent of any wrong doing); see also Deborah M. Weissman, *Rethinking a New Domestic Violence Pedagogy*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 635 (2015) (describing the absence of anti-domestic violence activists in negotiating the end of stop and frisk with New York City).

¹³ PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, PRISONERS IN 2010, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BJS 26, tbl.12 (2011), www.bjs.gov/content/pub/pdf/p10.pdf.

¹⁴ Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1437 n.52, tbl.2 (2012).

¹⁵ As Kimberlé Crenshaw notes, “race has become a central feature in the growing understanding of mass incarceration[,]” but the impact on women is largely ignored, while the feminist discourse on women and the criminal justice system has “replicate[d] the race-neutral framing of gender that is characteristic of the wider field of feminist criminology.” *Id.* at 1423–24.

¹⁶ See Priscilla A. Ocen, *Unshackling Intersectionality*, 10 DU BOIS REV. 471 (2013).

¹⁷ Crenshaw, *supra* note 14; PAUL GUERINO, PAIGE M. HARRISON, & WILLIAM J. SABOL, U.S. DEP’T OF JUSTICE, OJP, BJS, NCJ 236096, PRISONERS IN 2010 1 (2011).

¹⁸ George Lipsitz, “In an Avalanche Every Snowflake Pleads Not Guilty”: The Collateral Consequences of Mass Incarceration and Impediments to Women’s Fair Housing Rights, 50 UCLA L. REV. 1746 (2012).

The relationship between women's incarceration and their violent victimization is often overlooked. A significant number of women in prison are there as a result of their attempts to escape, survive, or ameliorate their violent victimization.¹⁹ The strict limitations of duress law, the limits on courts' abilities to lessen sentences on the basis of coercion, and the broad sweep of conspiracy law, result in long prison sentences for women who were coerced into criminal offending by an abusive partner or who played a minor role in a drug crime in which an abusive partner played a more significant role.²⁰

The growth in incarceration is one aspect—a particularly alarming aspect—of a larger phenomenon of what Jonathan Simon refers to as “governing through crime”²¹ and what Beth Richie calls “America’s prison nation.”²² Simon describes the growth of the use of crime technologies, crime metaphors, and crime paradigms to address a wide range of social ills and perceived (often exaggerated) risks. “[C]rime and the forms of knowledge historically associated with it . . . [have become] powerful tools with which to interpret and frame all forms of social action areas as a problem for governance.”²³ Richie’s focus is on the ratcheting up of punitive state controls directed at those who are marginalized as a function of race, class, sexual identity, sexual orientation, and other oppressed identities. “Prison nation” refers to “the ideological and public policy shifts that have led to the increased criminalization of disenfranchised communities of color, more aggressive law enforcement strategies for norm-violating behavior, and an undermining of civil and human rights of marginalized groups.”²⁴

This dramatic criminalization occurred during a period in which the already meager U.S. welfare state was dismantled and “underpaid,

¹⁹ Myrna S. Raeder, *Gender-Related Issues in a Post-Booker Federal Guidelines World*, 37 MCGEORGE L. REV. 691, 696 (2006) (“Female offenders report very high instances of physical and sexual abuse . . . ranging from 69% to 80%” and many enter the criminal system as juveniles running away from abusive homes); see Lillian Hewko’s remarks in Sara Ainsworth et al., *Panel on Beyond the Rape Exception: Using Law and Movement Building to Ensure Reproductive Health and Justice to All Gender Violence Survivors*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 535 (2015).

²⁰ Donna Coker, *Foreword: Addressing the Real World of Racial Injustice in the Criminal Justice System*, 93 J. CRIM. L. & CRIMINOLOGY 827, 834 (2003); Crenshaw, *supra* note 14 at 1430–40 (describing the case of Kemba Smith).

²¹ See JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007).

²² BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* (2012).

²³ SIMON, *supra* note 21, at 17.

²⁴ RICHIE, *supra* note 22, at 3.

precarious work” became the norm.²⁵ It is important to see the link between these phenomena—the increase in hyper-incarceration, the disinvestment in communities, and the diminishment of the welfare state. As Dorothy Roberts writes, “The welfare, prison, foster care, and deportation systems have all become extremely punitive mechanisms for regulating residents of the very neighborhoods most devastated by the evisceration of public resources.”²⁶

Racism is deeply embedded in the growth in incarceration, the diminishment of the welfare state, and the increasing criminalization of immigration enforcement. As Michelle Alexander documents, overt white supremacist rhetoric in opposition to Civil Rights gains gave way, over time, to the concealed racism imbedded in anti-crime rhetoric.²⁷ The intent and racial outcomes of the resulting hyper-incarceration lead Alexander to describe the current circumstance as “The New Jim Crow.”²⁸ Political attacks on the welfare state used similar racist rhetoric, illustrated by Ronald Reagan’s thinly disguised racial trope of the “welfare queen” in his campaign rhetoric.²⁹ Similar racist imagery fuels the incredible criminalizing of immigration policy.³⁰

The increase in punitiveness and the diminishment of the welfare state are rooted in a global neoliberal project. By neoliberal, we refer to

²⁵ LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* 5 (2009); see also, Deborah M. Weissman, *The Personal is Political—and Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. REV. 387 (2007) (describing the negative impact of factory closings on individuals and families, resulting in family distress and domestic violence.)

²⁶ Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1478 (2012).

²⁷ ALEXANDER, *supra* note 4.

²⁸ *Id.* See also, Lipsitz, *supra* note 18 at 1760 (“Massive prison building projects and mandatory sentencing laws . . . were fueled by race- and gender-inflected rounds of blaming and shaming that targeted the ‘underclass,’ immigrants, welfare recipients, the homeless, inner city youth, and single mothers.”).

²⁹ ALEXANDER, *supra* note 4, at 49.

³⁰ See Allegra M. McLeod, *The U.S. Criminal-Immigration Convergence and It’s Possible Undoing*, 49 AM. CRIM L. REV. 105, 165 (2012) (the criminalization of immigration policy is the result, in part, of suppressed racial anxiety which, rather than view migration as “a complex global problem [of] regulating migration flows and integrating immigrant populations” instead views it as a crime problem and non-white immigrants as deviant threatening criminals); Kevin Johnson & Joanna E. Cuevas Ingram, *Anatomy of a Modern-Day Lynching: The Relationship Between Hate Crimes Against Latina/os and the Debate Over Immigration Reform*, 91 N.C. L. REV. 1613 (2013). Rebecca Sharpless criticizes the strategy of immigrant rights activists to use the slogan, “I am a worker, not a criminal,” arguing that doing so reinforces the racist practices of mass incarceration. See Rebecca Sharpless, *“Immigrants Are Not Criminals”: Respectability, Immigration Reform, and Mass Incarceration*, __ HOUSTON LAW REV. __ (forthcoming 2015).

an ideology of “hyper-liberalism,”³¹ characterized by antagonism to the very concept of “society,”³² and the promotion of policies that privatize government functions, glorify “markets,” promote the unfettered movement of global capital, and diminish the welfare state.³³ Increasing economic inequality is one of several serious negative consequences of neoliberal policies.³⁴

B. The U.S. Movement to End Domestic Violence and the Criminalization Agenda.

This historical context allows us a perspective on the current moment in the movement to end domestic violence. As Beth Richie³⁵ and Mimi Kim³⁶ describe in this volume, this growth in criminalization occurred during the same time period as significant public gains were made in understanding violence against women as a national priority. Feminists had long argued that a false public-private distinction served to insulate “private” violence from public interdiction.³⁷ To underscore the public nature of the violence—and hence the rationale for public action—feminist activists turned to both criminalization rhetoric and policy. “Domestic violence is a crime” was intended to mark the violence as serious and worthy of public attention. Many activists were frustrated at the pernicious sexism and racism that shaped police response to domestic violence and sexual assault and saw “policing the police” as critical to progress for women’s civil and human rights.³⁸ To be clear, criminal

³¹ Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 1017 (2014) (Neoliberalism may be described as “hyper-liberalism [in which] . . . the conception of individuals as autonomous economic actors is . . . a moral paradigm.”).

³² We refer, of course, to the famous statement by Margaret Thatcher: “There is no such thing as society.” See Jessica Elgot, *Margaret Thatcher Dead: The Former Prime Minister’s Most Controversial Moments*, HUFFINGTON POST UK (Aug. 8, 2013), http://www.huffingtonpost.co.uk/2013/04/08/margaret-thatcher-dead-controversial_n_3037335.html (quoting Thatcher’s remarks to WOMEN’S OWN magazine).

³³ See generally DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005). Neoliberalism terminology arises from adherents’ stated commitment to ideal of personal freedom—hence the “liberal”—combined with their adherence to free market principles associated with neo-classical economics—hence “neo.” *Id.* at 20.

³⁴ See WACQUANT, *supra* note 25.

³⁵ Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 257 (2015).

³⁶ See Mimi Kim’s remarks in Mimi Kim et al., *Plenary 3—Harms of Criminalization and Promising Alternatives*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 369 (2015).

³⁷ See ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000).

³⁸ G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237 (2005).

justice responses were never the only subject of feminist activism. Activists argued for services and economic opportunities as well, but the focus on changing the criminal justice response, unlike claims for social goods, resonated with the bi-partisan congressional support for “tough on crime” legislation.³⁹

The Violence Against Women Act (VAWA) of 1994, re-authorized and amended in 2000, 2005, and 2013,⁴⁰ grew directly from this criminal framing. Most of VAWA funding is focused on improving the criminal justice response and much of the change in law made by VAWA has been to advance criminal penalties.⁴¹ VAWA was part of the 1994 Violent Crime Control and Law Enforcement Bill (“Crime Bill”) of the Clinton administration. This legislation did much to ratchet up hyper-incarceration: allocating nearly ten billion dollars for new prison construction, expanding the death penalty, adding mandatory life sentences for federal offenders with three violent priors, requiring states to maintain sex offender registries or risk losing federal dollars, and making admissible evidence of prior sex abuse to prove a defendant’s character in both criminal and civil cases involving charges of sex abuse.⁴²

³⁹ See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801 (2001). This is not to say that feminist ideology did not play an important role in the development of the crime-centered response to domestic violence. As Deborah Weissman describes, feminism’s move from an intersectional focus on structural inequality to an identity focus on “women,” unburdened by class or race oppression, was the bridge to law-and-order feminism. Deborah Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL’Y 221, 230–232 (2003).

⁴⁰ See LISA N. SACCO, CONGRESSIONAL RESEARCH SERVICE, *THE VIOLENCE AGAINST WOMEN ACT: OVERVIEW, LEGISLATION, AND FEDERAL FUNDING* (March 6, 2014), available at <https://fas.org/sgp/crs/misc/R42499.pdf>. In 2000, the House passed the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) with a 371-1 vote and the Senate unanimously passed the bill. In 2005, the House passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) with a 415-4 vote, and the Senate again unanimously passed the bill. In 2013, the Senate passed the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) with a 78-22 vote, and the House passed the bill with a 286-138 vote.

⁴¹ More than 50% of the funding is allocated to the criminal justice response and a significant number of the federal law changes were to create new criminal laws and penalties. See Caroline Bettinger-Lopez, Donna Coker, Julie Goldscheid, Leigh Goodmark, Val Kalei Kanuha, James Ptacek, & Deborah Weissman, *VAWA is Not Enough: Academics Speak Out About VAWA*, FEMINIST LAW PROFESSORS (Feb. 27, 2012), www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/ (describing the funding breakdown in VAWA 2013 bill).

⁴² H.R. 3355, 103rd Cong. (1994) (sections 6001-22 expanded the death penalty, sections 60023-7002 added mandatory life sentences to federal offenders with three violent priors, section 170101 required states to keep registries, and section 320935 added Fed. R. Evid. 413-15). Subsequent VAWA legislation continued to expand the reach of

Framing violence against women as a criminal issue rather than, for example, a civil rights, human rights, or public health issue, inevitably narrows the framework for understanding the scope, causes, consequences, and remedies for violence against women. A crime-centered frame focuses on interpersonal (individualistic) violence – a perpetrator harms a victim.⁴³ It makes invisible the ways in which structural inequalities—many of which are the product of state action – make some women and men more vulnerable to violence and some more likely to use violence.⁴⁴ Further, violence perpetrated by the state is hidden when “violence against women” is made co-extensive with intimate partner violence, sexual assault, and stalking – as is the case with VAWA.⁴⁵

C. The Anti-Domestic Violence Movement Response to Neoliberal Policies

In the face of increasingly anti-poor and anti-immigrant policies and dramatic cuts in human services and public assistance, service providers and advocates for victims of domestic violence have employed two prevailing strategies. The first is to carve out exceptions for victims of domestic violence, such as occurred in the changes to the welfare reform bill.⁴⁶ While benefitting some victims, this “exceptionalizing” of domestic violence victims may harden a distinction between “deserving” domestic violence victims, who should receive protection from harsh policies, in contrast to the mass of presumed “undeserving” poor, many of whom are equally trapped by circumstance

To some extent, the very success of the political effort on behalf of domestic violence victims is dependent on maintaining the boundaries of

the criminal justice system including, for example, the DNA Fingerprint Act of 2005, 42 U.S.C. § 14135a (2014). See Weissman *supra* 12.

⁴³ Madelaine Adelman, *The Battering State: Towards a Political Economy of Domestic Violence*, 8 J. POVERTY 45, 49 (2004) (“the criminalization model has carved out a deviant rather than normative stance toward battering—it is something criminals do, not otherwise respectable citizens”).

⁴⁴ See Weissman, *supra* note 39, at 223 (“When proponents of VAWA address structural theories, the discourse has been limited principally to the failure of law enforcement agencies to arrest and of the courts to punish perpetrators[,]” rather than to address structural inequalities such as class.)

⁴⁵ As Andrea Smith writes, the state is “not simply. . . flawed in its ability to redress violence, but [is]. . . a primary perpetrator of violence against women.” Andrea Smith, *Beyond Restorative Justice: Radical Organizing Against Violence*, in RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN 255, 261 (James Ptacek ed., 2009).

⁴⁶ Personal Responsibility & Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 408(a)(7)(C)(i), 110 Stat. 2105, 2137-2138 (1996) (allowing states to waive certain program requirements, including time limits, for those individuals identified as having a history of domestic violence).

the category, “violence against women.”⁴⁷ Efforts to expand the category to include, for example, shackling incarcerated women while they are giving birth,⁴⁸ threaten the political gains in the response to a more narrowly defined “violence against women” agenda. The result, when coupled with the need to draw bi-partisan support for services at the state and national level, has been to conservatize the movement and its claims.⁴⁹ Anti-domestic violence service providers have found it necessary to distance themselves from justice concerns such as abortion rights and racial equality in housing and education that would alienate right wing legislators who would otherwise support funding for shelters and services.⁵⁰ Similarly, the domestic violence movement has been largely silent in the work to end hyper-incarceration.⁵¹

The second strategy employed to resist the harsh consequences of neoliberal policies has been to incorporate within VAWA increasing attention to structural inequality.⁵² Each iteration of VAWA has included provisions that respond to structural inequalities, beginning with

⁴⁷ See, e.g., RICHIE, *supra* note 22 at 160 (“it could be argued that the very success of the anti-violence movement is predicated on its adoption of conservative positions within a growing conservative state”); JOSHUA M. PRICE, *STRUCTURAL VIOLENCE: HIDDEN BRUTALITY IN THE LIVES OF WOMEN* (2012) (describing the ways that mainstream responses to “violence against women” hide structural violence and violence perpetrated by the state, particularly against “social outsiders” including “[w]omen who work as prostitutes, lesbians, women racialized as nonwhite, immigrant, undocumented, and working-class”).

⁴⁸ See INTERNATIONAL HUMAN RIGHTS CLINIC UNIVERSITY OF CHICAGO SCHOOL OF LAW ET AL., *THE SHACKLING OF INCARCERATED PREGNANT WOMEN: A HUMAN RIGHTS VIOLATION COMMITTED REGULARLY IN THE UNITED STATES* (2013), <https://ihrclinic.uchicago.edu/sites/ihrclinic.uchicago.edu/files/uploads/Report%20-%20Shackling%20of%20Pregnant%20Prisoners%20in%20the%20US.pdf>.

⁴⁹ See, e.g., Miccio, *supra* note 38, at 282.

⁵⁰ Private conversations of one of the authors with domestic violence service providers (arguing against the state coalition against domestic violence publicly opposing anti-abortion legislation because it would antagonize conservative legislators who support shelters and service programs).

⁵¹ See Weissman *supra* 12 (criticizing anti-domestic violence advocates support for the DNA Fingerprint Act and the failure to be involved in other litigation efforts against racist police practices); Richie, *supra* note 35 (criticizing the movement against domestic violence for supporting criminalizing practices).

⁵² See Marcia Olivo & Kelly Miller, *VAWA@20: Raising the Visibility of the Margins and the Responsibility of Mainstream*, CUNY L. REV. (Dec. 8, 2014), <http://www.cunylawreview.org/vawa-20-raising-the-visibility-of-the-margins-and-the-responsibility-of-mainstream-by-marcia-olivo-and-kelly-miller/> (arguing that each VAWA reauthorization “broadened the law to reach more communities” and that the 2013 VAWA was a “critical course correction” because of its provisions assisting Native American women, immigrant women, and prohibiting discrimination on the basis of sexual orientation or sexual identity).

protections for immigrant victims in the first VAWA,⁵³ and including most recently the expansion of Tribal Court jurisdiction in domestic violence cases.⁵⁴ VAWA grants include money targeted to assist “underserved” populations, a term expanded in VAWA 2013 to include individuals who may experience discrimination on the basis of religion, sexual orientation, or gender identity.⁵⁵ VAWA 2013 also enacted anti-discrimination language that prevents service providers who receive VAWA funds from discriminating on the basis of sexual identity or sexual orientation.⁵⁶ While some of these provisions have been with the express purpose to ease criminal prosecution,⁵⁷ others improve access to services or to civil or immigration remedies without regard to criminal prosecution. For the first time, the most recent VAWA legislation includes a specific provision that addresses *state* violence, requiring that immigration detention facilities adopt the national standards to prevent prison rape that currently apply to other custodial settings, and providing other protections against sexual assault in custody.⁵⁸

⁵³ See Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 1370-13726c (2012); Title IV, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, § 40701 (1994) (allowing an abused spouse of a citizen or lawful permanent resident to self-petition); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107, 1513 (2000) (Section 107 created the T-Visa, which allows victims of human trafficking to stay in the United States, and Section 1513 created the U-Visa, which allows victims of mental or physical abuse to live in the United States; however, both visas require the victim to cooperate with law enforcement in the investigation or prosecution of the crime.).

⁵⁴ SACCO, *supra* note 40; see Sarah Deer’s remarks in Sarah Deer et al., *Panel on Colonization, Culture, and Resistance*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 325 (2015).

⁵⁵ Before the amendment, “underserved” was defined as “populations underserved because of geographic location, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.” 42 U.S.C. §13925 (2012) (current version at 42 U.S.C. §13925 (2013)). See Terra Slavin’s remarks in Caroline Bettinger-Lopez et al., *Plenary 4—Mobilization*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 487 (2015).

⁵⁶ See Terra Slavin’s remarks in Bettinger-Lopez et al., *Plenary 4—Mobilization*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 487 (2015) (describing the activism around having LGBT included in the list of “underserved” and the inclusion of the anti-discrimination language in VAWA 2013).

⁵⁷ See, e.g., Violent Crime Control and Law Enforcement Act of 1994, *supra* note 53 (providing the statutory basis for the U Visa and T Visa).

⁵⁸ The provisions of the Prison Rape Elimination Act of 2003 are codified at 42 U.S.C. § 15607 (2013) (mandating that immigration detention facilities must meet the same standards for preventing, detecting, and responding to sexual abuse in custody as are required for all other custodial relationships).

The strategy of expanding VAWA's reach may be reaching a political limit. In the fight for the latest reauthorization of VAWA, supporters held strong against right wing House Republican's fierce opposition to the provisions that addressed structural inequalities – increased protections for Native American, undocumented immigrant victims, and lesbian, gay, bi-sexual, and trans individuals.⁵⁹ Though the bill passed, 138 House Republicans voted against it,⁶⁰ making this first time that VAWA received significant partisan opposition.

If the extreme right continues to assert significant political influence, we are likely to see even greater resistance to the current strategies of exceptionalizing domestic violence victims from punitive systems of welfare, criminal justice, child welfare, and immigration, or expanding responses to structural inequalities through otherwise crime-focused legislation such as VAWA. We argue that what is needed, now more than ever, is a broad-based coalition that understands gender violence as deeply connected to structural inequalities of race, class, immigration status, homophobia, and other oppressions.⁶¹ This requires coalitions across social justice movements of the range involved in CONVERGE!, including the prison abolition movement⁶² and other work to stop hyper-incarceration.

As one example of re-focused priorities, we argue that activists opposing gender violence should make the end of hyper-incarceration a central part of their platform. To make the case, we focus on one aspect of gender violence—domestic violence.⁶³ Our focus on domestic

⁵⁹ The vote for the 2013 VAWA was 78-22 in the Senate and 268-138 in the House. This compares with the votes in prior years: in 2000, VAWA passed by 371-1 in the House and by a unanimous Senate vote; in 2005, it passed the House 415-4 and the Senate unanimously. SACCO, *supra* note 40, at n.51.

⁶⁰ OFFICE OF THE CLERK OF THE HOUSE OF REPRESENTATIVES, *Final Vote Results for Roll Call 55* (Feb. 28, 2013, 11:56 AM), <http://clerk.house.gov/evs/2013/roll055.xml> (last visited Apr. 11, 2015). The House passed the Senate version of the Bill, containing the benefits for Native American, immigrant, and LGBTQ victims with a vote of 286-138, with 100% of Democrats voting for the Bill and only 87 Republicans voting for it. *Id.*

⁶¹ As Angela Harris writes, “anti-violence theorizing and advocacy must take an integrated approach, understanding the interplay of race, sexuality, class, and gender and taking into account of the places where, and the means by which, gender violence is perpetrated.” Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J. L. & POL’Y 13 (2011).

⁶² Richie, *supra* note 35.

⁶³ We use the term “domestic violence” to refer to violence between sexual or former sexual intimates. We choose to use the term “domestic violence” rather than “intimate partner violence” both because it is the more common term used to describe the U.S. movement that originated in the 1970s and because it remains the term used in law. We recognize that “intimate partner violence” may be a preferred term because “domestic” may seem relegated to those who live or who have lived together or understood to include all familial or household violence, and because “domestic violence” has come to

violence is not because we believe that domestic violence is coextensive with “violence against women.” As described above, some of the most significant forms of violence against women are perpetrated by state actors and much of the state perpetrated violence occurs in the criminal justice system. Furthermore, we ascribe to a broad definition of “gender violence” that includes both state and interpersonal violence that is directed at maintaining gender hierarchy and punishing gender non-conforming behavior.⁶⁴

Our choice to focus on domestic violence arises because it is in the U.S. responses to domestic violence that we see the most significant law and service infrastructure, the most significant networks, and the most well-organized and (relatively) well-funded federal and state response. There are many advocates, service providers, and lawyers whose work is focused exclusively, or nearly so, on assisting victims of domestic violence.

II. HARMS OF HYPER-INCARCERATION

In this section, we describe the harms of hyper-incarceration on individuals, on family members of those who are directly targeted, and on entire communities.⁶⁵ The term “hyper-incarceration” highlights that the tremendous growth in incarceration is concentrated in particular geographic locations (low-income neighborhoods of color) and has concentrated effects felt disproportionately by African Americans. We include within our definition the related problem of hyper-surveillance—that is, the targeted surveillance that occurs primarily in communities of color, much of it focused on drug interdiction, but also includes the hyper-surveillance that purports to be a part of “broken-windows”

be associated with heterosexual relationships. See Julie Goldscheid, *Gender Neutrality and the “Violence Against Women” Frame*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 307 (2015).

⁶⁴ As Angela Harris describes, gender violence includes not only male violence against women, but also “violence motivated by the desire to protect, defend, or enhance the actor’s gender identity, typically masculinity.” Angela P. Harris, *Beyond the Monster Factory: Gender Violence, Race, and the Liberatory Potential of Restorative Justice*, 25 BERKELEY J. GENDER L. & JUST. 199, 207 (2010). See Andrea Ritchie’s remarks in Andrea Ritchie et al., *Plenary 2—Redefining Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 289 (2015).

⁶⁵ For a thorough review of the harms of mass incarceration, see NATIONAL RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING THE CAUSES AND CONSEQUENCES* (Jeremy Travis, Bruce Western & Steve Redburn eds. 2014) [hereafter “NRC”].

policing⁶⁶—that is, that focuses arrest on low-level offenses such as was the case in the death of Eric Garner when an officer arrested him for selling untaxed cigarettes.⁶⁷ Hyper-incarceration is also felt in the myriad other ways in which criminalization has become a standard method of control of poor communities, mostly communities of color,⁶⁸ and in the unprecedented number of people held in immigration detention. We describe four of the harms associated with hyper-incarceration: collateral consequences of conviction to the individual; trauma experienced by those incarcerated in inhumane prison conditions; effects of parental incarceration on families, especially children; and effects of hyper-incarceration on neighborhoods. Social science research demonstrates that many of the negative results of hyper-incarceration are linked to increased risks for domestic violence. In Part III, we describe three mechanisms by which hyper-incarceration likely increases the risk for domestic violence: (1) hyper-incarceration dramatically decreases the economic well-being of the incarcerated individual as well as his or her family, results that are linked to a substantially increased risk for domestic violence; (2) the trauma experienced by significant numbers of incarcerated men creates or worsens mental health problems including posttraumatic stress disorder (“PTSD”), results that are linked to worsening economic prospects and to an increase in the use of violence; and (3) hyper-incarceration decreases neighborhood social controls and weakens support systems, creating neighborhood disorganization that is linked to higher risks for domestic violence.

⁶⁶ See Bernard Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, The Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291 (1998); Lipsitz, *supra* note 18 at 1762 (The adoption of zero tolerance policies for petty crimes was not accompanied by similar efforts to arrest “the predatory lenders, slum landlords, or environmental polluters responsible for . . . broken people and communities.”).

⁶⁷ See Andrew Siff, Jonathan Dienst, & Jennifer Millman, *Grand Jury Declines to Indict NYPD Officer in Eric Garner Chokehold Death*, NBC N.Y. (Dec. 4, 2014, 1:59 PM), <http://www.nbcnewyork.com/news/local/Grand-Jury-Decision-Eric-Garner-Statens-Island-Chokehold-Death-NYPD-284595921.html>. For a description of the ways in which hyper-surveillance is an invasion of privacy, see Kimberly D. Bailey, *Watching Me: The War on Crime, Privacy, and the State*, 47 U.C. DAVIS L. REV. 1539 (2014).

⁶⁸ For example, Kaaryn Gustafson’s research regarding the increasing use of criminal fraud prosecutions for violations of welfare rules found that many of those prosecuted did not realize they were violating the law, while others did so out of necessity or for morally compelling reasons such as a mother providing housing to the unemployed father of her child. KAARYN S. GUSTAFSON, *CHEATING WELFARE* 165 (2011). See also LOIC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009).

A. Collateral Consequences

One result of hyper-incarceration is that the United States now has an unprecedented number of men and women with criminal convictions who are therefore subject to a laundry list of collateral consequences. For example, those convicted of a drug crime may be ineligible for financial aid for school, ineligible for food stamps, and barred from public housing.⁶⁹ Even a misdemeanor conviction can make a person ineligible to get certain professional licenses in a number of states.⁷⁰ In many states, a criminal conviction results in a significant loss of civil rights. The National Research Council notes that in 2010, nearly six million people had lost their right to vote because of a felony conviction.⁷¹ In three states, the result is that more than one-fifth of African Americans are disenfranchised, and in two states, 9 to 10% of Latino citizens are disenfranchised.⁷² Those who are on probation or parole lose their Fourth Amendment protections against unreasonable searches.⁷³ Some states do not allow former felons to sit on juries or even to get a driver's license.⁷⁴ Non-citizens may face deportation as a result of their conviction,⁷⁵ risking separation from family and work.

Those with children who are fortunate enough to have not had their parental rights terminated,⁷⁶ are likely to leave prison with considerable child support debt⁷⁷—a debt that cannot be discharged in bankruptcy and was not tolled while they were in prison. Many are burdened with

⁶⁹ ALEXANDER, *supra* note 4, at 94.

⁷⁰ NRC, *supra* note 65, at 306 (states bar former prisoners receiving professional licenses in a range of professions including plumbing, food catering, and haircutting.) The American Bar Association Criminal Justice Section database identifies 38,000 punitive provisions that apply to those convicted of a crime. American Bar Association Criminal Justice Section (2011). ABA NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <http://www.abacollateralconsequences.org/map/>.

⁷¹ NRC, *supra* note 65, at 308 (“As of 2010, nearly 6 million people were disenfranchised because of a felony conviction . . . represent[ing] about 2.5 percent of the total U.S. voting-age population, or 1 in 40 adults.”).

⁷² *Id.*

⁷³ ALEXANDER, *supra* note 4, at 94. It is also difficult to pursue an education while behind bars. Federal law prohibits inmates from receiving Pell grants and there have been deep cuts in budgets for prison education programs. NRC, *supra* note 65, at 190.

⁷⁴ NRC, *supra* note 65, at 306.

⁷⁵ 8 U.S.C. 1227(a) (2) (A) (i) & (ii) (certain aliens convicted for a crime involving moral turpitude or an aggravated felony are rendered deportable).

⁷⁶ Roberts, *supra* note 26 (describing the barriers incarcerated parents face to retaining child custody). Incarcerated mothers are more likely to have their children placed in foster care than are incarcerated fathers. MEDA CHESNEY-LIND & LISA PASKO, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* 136 (3rd ed. 2013).

⁷⁷ See Ann Cammett, *Deadbeats, Deadbroke, and Prisoners*, 18 GEO. J. POVERTY L. & POL’Y 127 (2011).

significant court fines.⁷⁸ Parole and probation requirements that require no contact with other ex-felons may limit the reach of support systems of friends and families as do public housing rules that make families risk eviction if they allow an ex-offender relative to visit.⁷⁹ Those who are convicted of a sex offense—offenses that may include consensual sex between teenagers and other non-violent offenses⁸⁰—face particular barriers. They may be prohibited from living near a school, resulting in homelessness.⁸¹ Indeed, the social isolation and limited employment opportunities created by sex offender registries are likely to increase the risk of re-offending.⁸²

In addition to these collateral consequences enacted by law, ex-felons face a number of negative social consequences, including high levels of job discrimination,⁸³ an increased risk for wrongful conviction,⁸⁴ and potential exclusion from college.⁸⁵ In addition to

⁷⁸ See Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, 15 LOY. J. PUB. INT. L. 319 (2014).

⁷⁹ Lipsitz, *supra* note 18, at 1776.

⁸⁰ Amy E. Halbrook, *Juvenile Pariahs*, 65 HASTINGS L.J. 1, 18–50 (2013) (detailing states who require juveniles to register as sex offenders for having consensual sex as minors).

⁸¹ See Wendy Koch, *Many Sex Offenders Are Often Homeless*, USA TODAY (Nov. 19, 2007, 7:46 AM), http://usatoday30.usatoday.com/news/nation/2007-11-18-homeless-offenders_N.htm; see, e.g., Greg Allen, *ACLU Challenges Miami Law on Behalf of Homeless Sex Offenders*, NPR (Oct. 23, 2014, 5:29 PM) <http://www.npr.org/2014/10/23/358354377/aclu-challenges-miami-law-on-behalf-of-homeless-sex-offenders>.

⁸² See Allegra McLeod, *Regulating Sexual Harm: Strangers, Intimates, and Social Institutional Reform*, 102 CALIF. L. REV. 1553, 1556 (2014) (Sex crime offender registries and restrictions on housing create social isolation and limit employment prospects despite “the substantial body of sociological and criminological scholarship that suggests that social engagement and institutional involvement. . . reduce[s] criminal offending.”).

⁸³ See, e.g., HOLZER, HARRY J., STEPHEN RAPHAEL & MICHAEL A. STOLL, THE EFFECT OF AN APPLICANT’S CRIMINAL HISTORY ON EMPLOYER HIRING DECISIONS AND SCREENING PRACTICES: EVIDENCE FROM LOS ANGELES, THE NAT’L POVERTY CTR. (2004), <http://www.npc.umich.edu/publications/workingpaper04/paper15/04-15.pdf> (in a study of 3,000 employers in Atlanta, Boston, Detroit and Los Angeles, respondents self-reported being less than half as likely (about 40% versus 80 to 90%) to hire people with criminal records as people with other stigmatizing characteristics, such as little recent work experience); DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION (2007) (in-person audit study of entry-level job hiring at multiple sites found a 30 to 60% reduction in callbacks for applicants with a criminal record, an impact that was much more significant for African American applicants).

⁸⁴ See discussion *infra* pp. 608–09.

⁸⁵ See CENTER FOR COMMUNITY ALTERNATIVES: INNOVATIVE SOLUTIONS FOR JUSTICE, THE USE OF CRIMINAL HISTORY RECORDS IN COLLEGE ADMISSIONS RECONSIDERED (2010), <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf> (The majority of colleges surveyed reported that they ask applicants to

prompting job discrimination, a history of incarceration may diminish the skills required to hold a job. The combination of lost human capital and market discrimination results in ex-offender unemployment so pervasive that it lowers the national employment rate for males by 1.5 to 1.7%.⁸⁶

B. Prison Violence, Mental Health, and Destructive Masculinities

For decades, incarceration has wrought violence and trauma on those within its walls. Prisoners in U.S. prisons and jails experience a significant level of deprivation and violence, including sexual assault. A national survey of recently released prisoners conducted by the Bureau of Justice Statistics found that nearly 10% reported they were sexually victimized while incarcerated.⁸⁷ In men's prisons, those identified as gay or bisexual suffer rates of sexual assault 10 times that of other men.⁸⁸ Incarcerated women suffer higher rates of sexual abuse than do men.⁸⁹ Women are more likely to report that sex with staff was coerced than are male inmates and women report significantly higher rates of sexual victimization by other inmates than do male inmates.⁹⁰

Sexual victimization has severe health consequences, both psychological and physical.⁹¹ Common reactions include somatic problems, interrupted eating and sleeping patterns, and increased risks of

disclose criminal convictions, a practice that discourages some from even applying to college and that prevents others from attendance.).

⁸⁶ See John Schmitt & Kris Warner, *Ex-offenders and the Labor Market*, 14 WORKINGUSA 87, 88 (2011). While many prisoners struggled to find work before conviction, incarceration can further reduce their capacity through diminishing human capital, including education, experience, and skills and simultaneously replace their social networks with ones less likely to help them find employment and more likely to engender criminal activity.

⁸⁷ See ALLEN J. BECK & CANDACE JOHNSON, SEXUAL VICTIMIZATION REPORTED BY FORMER STATE PRISONERS, 2008, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS 8 (2012) (5.4% of prisoners were sexually victimized by inmates and overlapping with 5.3% reported staff sexual misconduct during their most recent period of incarceration.).

⁸⁸ *Id.* at 226.

⁸⁹ NRC, *supra* note 65, at 225.

⁹⁰ *Id.* (citing research findings that 82% of women who reported sex with male staff said they were coerced compared to 55% of men, and 14% of women inmates reported being sexually assaulted by an inmate compared to only 4% of male inmates). Kim Shayo Buchanan argues that prison rape scholars fail to acknowledge the number of male prisoners sexually abused by female guards and the high rates of female-on-female inmate sexual abuse because these facts contravene gender expectations. Kim Shayo Buchanan, *Engendering Rape*, 59 UCLA L. REV. 1630 (2012).

⁹¹ See Tess Neal & Carl B. Clements, *Prison Rape and Psychological Sequelae: A Call for Research*, 16 PSYCHOL. PUB. POL'Y & L. 284, 287 (2010).

depression and suicidality.⁹² Sexually victimized prisoners have roughly double the rate of HIV infection compared to those who have not been victimized.⁹³ Sexual victimization rates increase with the length of time an inmate serves, and with the number of facilities an inmate serves in,⁹⁴ two factors which make long, mandatory-minimum sentences all the more destructive.

U.S. prisons also have significantly high levels of physical violence. Estimates based on inmate reports find that 10% to 20% of inmates report being the victim of physical abuse.⁹⁵ Research finds that incarcerated men and women suffer significantly higher rates of assault. In one study of 14 prisons, male inmates reported assault rates that were eighteen times higher than that of the general male population and incarcerated women had rates twenty-seven times higher.⁹⁶ Not only do survivors of assault experience trauma, *witnesses* to assault report trauma symptoms, as well. As one former prisoner describes:

I can still see the murders I witnessed. I still see the image of a person being hit at the base of his skull with a baseball bat on a warm, sunny afternoon during recreation hours He is smashed in the back of his head, crumbles, and falls to the ground. While he lays helpless on the ground, his head is smashed again and again until the sight of blood seems to satisfy his attacker. I watch as the perpetrator then calmly returns the baseball bat to the location where he had retrieved it and just walks away as if nothing had happened, while others entering the yard area walk around the lifeless body.⁹⁷

⁹² *Id.* at 288.

⁹³ See BECK & JOHNSON, *supra* note 87, at 33.

⁹⁴ *Id.* at 18; see also Tawandra L. Rowell-Cunsolo, Roderick J. Harrison & Rahwa Haile, *Exposure to Prison Sexual Assault Among Incarcerated Black Men*, 18 J. AFR. AM. STUD. 54, 54–62 (2014).

⁹⁵ See Nancy Wolff et al., *Physical Violence Inside Prisons: Rates of Victimization*, 34 CRIM. JUST. & BEHAV. 588, 589 (2007).

⁹⁶ *Id.* at 595. The researchers found significant differences in self-reported assault rates between the different prisons studied, pointing to the importance of institutional factors. Assault rates in poor communities from which most prisoners come are higher than in more affluent communities, but even when researchers control for demographic factors associated with higher assault rates, prison rates remain much higher with adjusted rates of ten times higher in prison. *Id.*

⁹⁷ Mika'il DeVaux, *The Trauma of the Incarceration Experience*, 48 HARV. CIV. RIGHTS-CIV. LIBERTIES L. REV. 257, 265 (2013).

In addition to experiencing and witnessing violence, solitary confinement and inhumane physical conditions can have devastating effects on the mental well-being of prisoners.⁹⁸

The impact of living in a climate of violence is evident in inmates' fear and reactive behaviors, including being constantly on guard to minimize their risk for assault, and carrying improvised self-defense weapons.⁹⁹ Prison life is redolent with powerful psychological stressors including high levels of interpersonal uncertainty, danger, and fear, amidst a nearly total absence of personal privacy.¹⁰⁰

Male prisons can become a hyper-masculine space where a brutal form of masculinity (inside) echoes the dominant forms of masculinity (outside).¹⁰¹ Both guards and inmates construct a "hyper" masculinity whose degradation of those men identified as the "wives" or "boys" of other men echoes the larger societal degradation of women who are deemed to be "[t]he receptacle of violence, . . . a degraded subject."¹⁰²

Those imprisoned are more likely to have suffered serious trauma *before* incarceration.¹⁰³ The exposure to repeated trauma—both inside and outside prison—increases their likelihood of experiencing PTSD and other psychological disorders.¹⁰⁴ Prisoners are two to three times more likely to suffer from serious mental health problems than are community

⁹⁸ See Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & LAW 104 (2010).

⁹⁹ Nancy Wolff et al., *supra* note 95, at 219–20.

¹⁰⁰ See NRC, *supra* note 65, at 174–175.

¹⁰¹ Spearlt, *Gender Violence in Prison & Hyper-Masculinities in the 'Hood: Cycles of Destructive Masculinity*, 37 WASH. U.J. L. & POL'Y 89 (2011) [hereafter *Destructive Masculinity*]. See also, Spearlt's remarks in Andrea Ritchie et al., *Plenary 2—Redefining Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 289 (2015). It should be remembered that women suffer higher rates of sexual assault and that much of that assault is by other female inmates. See Buchanan, *supra* note 90.

¹⁰² Spearlt, *Destructive Masculinity*, *supra* note 101, at 106. As Angela Harris describes, the dominant form of masculinity is defined by "two negative identities—not being a woman, and not being gay." Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in A Prison Nation*, 37 WASH. U. J. L. & POL'Y 13, 16 (2011).

¹⁰³ Nancy Wolff, Jessica Huening, Jing Shi & B. Christopher Fruehy, *Trauma Exposure and Posttraumatic Stress Disorder Among Incarcerated Men*, 91 J. URB. HEALTH 707, 717 (2014) (lifetime assaultive rate for a large random sample of adult male prisoners was 96%; the lifetime rape rate was 15% compared to 1% to 3% in the general population).

¹⁰⁴ See Sharai Suliman, Siyabulela G. Mkabile, Dylan S. Fincham, Rashid Ahmed, Dan J. Stein & Soraya Seedat, *Cumulative Effect of Multiple Trauma on Symptoms of Posttraumatic Stress Disorder, Anxiety, and Depression in Adolescents*, 50 COMPREHENSIVE PSYCHIATRY 121 (2009).

members,¹⁰⁵ and prison treatment for these conditions is often inadequate.¹⁰⁶ Men who have been in prison are much more likely to suffer from severe PTSD than men who have not been incarcerated.¹⁰⁷ One study of a large random sample of incarcerated men found that 30% to 60% had current PTSD symptoms and had received a diagnosis of PTSD at some point in their lives, as compared with only 3% to 6.3% in the general male population.¹⁰⁸

In addition to PTSD, some social scientists believe that some prisoners suffer from Post-Incarceration Syndrome (PICS), a subset of PTSD that results from prolonged incarceration. This unique cluster of psychosocial problems experienced by incarcerated and released prisoners includes personality traits such as distrust, social disorientation, and alienation.¹⁰⁹

Given the criminal justice focus on drug enforcement, it should not be surprising that a significant number of prisoners enter prison with a substance abuse problem.¹¹⁰ Indeed, the National Research Council concludes that “drug dependence remains left largely in the hands of the criminal justice system instead of the health care system.”¹¹¹ The overwhelming bulk of prisoners who need drug or alcohol treatment do

¹⁰⁵ Some studies estimate 10 to 25% of prisoners suffer from serious mental health problems compared with an estimated 5% of the general population. *See* NRC, *supra* note 65, at 205. In a national study in 1995, both jails and state prisons had estimated incidents (6 month and lifetime, respectively) that ranged much higher than the population at large for all six mental diseases examined, including Schizophrenia/Psychosis, Major Depression, Bipolar (Manic), Dysthymia, PTSD, and (other) Anxiety. For example, PTSD prevalence (6 month) in jails was 4.0 to 8.3% versus 3.4% in the total US population, and in state penitentiaries was 6.2 to 11.7% compared to 7.2%, and anxiety was 22.0 to 30.1% (same measure not available for population at-large). *See* NAT’L COMM’N ON CORR. HEALTH CARE, HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES VOL. 1 24–31 (2002).

¹⁰⁶ NRC, *supra* note 65, at 22.

¹⁰⁷ *See* Wolff et al., *supra* note 103, at 715–18 (where only 5% of men in community samples have experienced PTSD, 33% of male former prisoners had severe PTSD symptoms, and another 27% had moderate PTSD symptoms.)

¹⁰⁸ *See id.* at 715.

¹⁰⁹ *See* Marieke Liem & Maarten Kunst, *Is There a Recognizable Post-incarceration Syndrome Among Released “Lifers”?*, 36 INT’L J.L. & PSYCHIATRY 333 (2013) (in study of 25 released homicide offenders who served an average of nineteen years in Massachusetts State Prisons, narrative analysis revealed PICS as a specific cluster of mental health symptoms).

¹¹⁰ NRC, *supra* note 65, at 206 (citing research findings that upwards to 68% of jail inmates are drug or alcohol dependent, with somewhat lower rates in prison populations).

¹¹¹ *Id.* at 206; Robert J. White, Edward W. Gondolf, Donald U. Robertson, Beverly J. Goodwin, & L. Eduardo Caraveo, *Extent and Characteristics of Woman Batterers Among Federal Inmates*, 46 INT’L J. OFFENDER THERAPY & COMPARATIVE CRIMINOLOGY 412, 416–17 (2002) (sample of U.S. federal inmates in a low-security prison found 61% tested positive for alcoholism and 27% had elevated scores on a drug dependence scale).

not receive it,¹¹² with one study finding that fewer than 10% of inmates have access to a drug treatment program.¹¹³

The circumstances for released prisoners may be even worse. Mental health services, including substance abuse treatment, are largely absent.¹¹⁴ Rather than suspend enrollment while a person is incarcerated, many states terminate Medicaid enrollment, thus ensuring a substantial delay in coverage when a prisoner is released.¹¹⁵ While the situation is improving, the majority of state prisoners who need discharge planning upon their release do not receive it.¹¹⁶

C. Harms to Families

The incarceration of a family member, especially a parent, can create a dramatic emotional and economic strain on family members. The loss of the incarcerated person's wages, the court costs and legal fees incurred, coupled with the cost of maintaining a relationship with someone locked up in a distant location, can have devastating financial effects.¹¹⁷

Incarceration has gender-specific impacts on the economic and social well-being of family members. Most incarcerated fathers report having been the primary earner in the family prior to incarceration,¹¹⁸ thus it is not surprising that children with incarcerated fathers, more than 80% of whom live with their mothers,¹¹⁹ suffer increased rates of homelessness

¹¹² NRC, *supra* note 65, at 217 ("By one estimate, 70 to 85% of state prisoners were in need of drug treatment, while only 13 percent received care.").

¹¹³ *Id.*

¹¹⁴ *Id.* at 227.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 228 (citing one estimate that only 10% of state prisoners in need of discharge planning receive it, but noting that a number of newer programs may be improving the situation).

¹¹⁷ See Phillip M. Genty, *Damage To Family Relationships As A Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L.J. 1671 (2003); see also, NRC, *supra* note 65, at 267. It is extremely difficult for an incarcerated parent to maintain regular contact with her or his children as many prisons are in remote rural locations, far from the urban homes of most prisoners, and frequent phone calls can be prohibitively expensive because of exorbitant collect call fees. CHRISTOPHER MUMOLA, U.S. DEP'T OF JUSTICE, BJS, NCJ 182335, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: INCARCERATED PARENTS AND THEIR CHILDREN (2002), <http://www.bjs.gov/content/pub/pdf/iptc.pdf>.

¹¹⁸ See LAUREN E. GLAZE & LAURA M. MARUSCHAK, U.S. DEP'T OF JUSTICE, BJS, NCJ 222984, BUREAU OF JUSTICE STATISTICS, DEP'T OF JUSTICE, SPECIAL REPORT: PARENTS IN PRISON AND THEIR MINOR CHILDREN 1-2 (2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

¹¹⁹ *Id.* at 5.

and are more likely to require public assistance.¹²⁰ Most incarcerated women are mothers¹²¹ and they are more likely than incarcerated fathers to have been the primary caretaker of their children prior to incarceration.¹²² When a mother is imprisoned, care for children is often passed onto female family members or friends rather than to the children's father.¹²³ Incarcerated mothers are much more likely to lose their children to foster care than are incarcerated fathers.¹²⁴

Children with a parent in prison experience increased rates of depression, anxiety, problems in school, and feelings of rejection, shame, anger, and guilt.¹²⁵ Parental imprisonment is associated with a 20% increase in the odds a child will later be convicted of a crime, especially if at the time of the parent's incarceration the child is under twelve or if it is the mother who is incarcerated.¹²⁶ More than 70% of children with an incarcerated parent are children of color,¹²⁷ many of whom end up in foster care.¹²⁸

Children's prospects may continue to suffer once a parent is released as the economic and psychological harms to the parent of incarceration affect the child's well-being. For example, those who serve long prison sentences suffer reduced marriage rates, hampered job prospects,

¹²⁰ NRC, *supra* note 65, 267–68 (reviewing several studies that find that families of incarcerated men are at increased risk of experiencing homelessness and other types of housing insecurity and that a father's incarceration increases the likelihood that the mother will receive public assistance.)

¹²¹ NRC, *supra* note 65, at 171 (In 2004, 62% of female state and federal inmates were mothers, while only 51 percent of male inmates were fathers.)

¹²² GLAZE & MARUSCHAK, *supra* note 118, at 5.

¹²³ See, e.g., Holly Foster & John Hagan, *Supportive Ties in The Lives Of Incarcerated Women: Gender, Race/Ethnicity, And Children's Human Rights*, 17 J. GENDER RACE & JUST. 257 (2014) (Study examining the support networks of women prisoners, found that most of the support persons were women and that a common form of support was assisting with childrearing and child visitation.); see also Roberts, *supra* note 26, at 1481–82. About 37% of the children whose mothers are incarcerated live with their father, while about 45% live with a grandparent. See GLAZE & MARUSCHAK, *supra* note 118, at 5. Approximately 2.3% of all U.S. children have a parent in prison. *Id.* at 2.

¹²⁴ CHESNEY-LIND & PASKO, *supra* note 76, at 137.

¹²⁵ See Roberts, *supra* note 26, at 1481.

¹²⁶ See NRC, *supra* note 65, at 272–74.

¹²⁷ See SARAH SCHIRMER ET AL., THE SENTENCING PROJECT, INCARCERATED PARENTS AND THEIR CHILDREN: TRENDS 1991–2007 2 (2009), available at http://www.sentencingproject.org/doc/publications/inc_incarceratedparents.pdf.

¹²⁸ Roberts describes the ways in which systems of foster care, criminal justice, and child welfare intersect to create reinforcing controls in the lives of Black women. See Roberts, *supra* note 26, at 1477.

increased economic strain, damaging school prospects, and are at an increased risk for suffering mental illness.¹²⁹

D. Harms to Communities

The geographic concentration of hyper-incarceration is a geography “contingent on race and concentrated poverty, with poor African American communities bearing the brunt of high rates of imprisonment.”¹³⁰ As noted previously, much of the acceleration in incarceration rates is directly tied to drug enforcement focused in communities of color. In fact, drug arrests are the single largest contributor to the growth in incarceration rates for African Americans.¹³¹ The racial differences in drug arrests and convictions are not explained by differences in offending: African Americans do not have higher rates of drug use or drug dealing than do whites.¹³² Further, contrary to popular belief, drug arrests are not focused primarily on violent “kingpins,” but rather are focused on low-level users and sellers.¹³³ The truth is that illegal drug use is ubiquitous, therefore whether someone is arrested for a drug crime is highly contingent on police practice: *drug crimes are wherever police choose to focus enforcement*.¹³⁴ The choice to focus law enforcement in urban, low-income communities of color is therefore a *political* choice. In addition to racial differences in the focus of drug enforcement, racial bias throughout the system—in judge’s decisions to grant warrants or allow pre-trial release; in prosecutors’ plea-bargain offers and charging decisions; in jury decision making¹³⁵—contributes to the disproportionate conviction and sentencing of African Americans.

The geographic/class/racial nature of hyper-incarceration is critical to understanding the effects on neighborhoods. The communities that are targeted for hyper-incarceration are communities that already have “high rates of poverty, unemployment, and racial segregation.”¹³⁶ Thus it is difficult for researchers to tease out the *relative* importance of hyper-incarceration to negative neighborhood outcomes as compared to the

¹²⁹ See Todd R. Clear, *The Effects of High Imprisonment Rates on Communities*, 37 CRIME & JUST. 97 (2008); see also TODD R. CLEAR ET AL., PREDICTING CRIME THROUGH INCARCERATION: THE IMPACT OF RATES OF PRISON CYCLING ON RATES OF CRIME IN COMMUNITIES (2014).

¹³⁰ NRC, *supra* note 65, at 283.

¹³¹ ALEXANDER, *supra* note 4, at 102.

¹³² *Id.* at 99 (describing research on illegal drug use and dealing that finds that “[p]eople of all races use and sell illegal drugs at remarkably similar rates”).

¹³³ *Id.*

¹³⁴ Coker, *supra* note 20; ALEXANDER, *supra* note 4, at 104.

¹³⁵ See, e.g., Coker, *supra* note 20.

¹³⁶ NRC, *supra* note 65 at 283.

many other forms of discrimination and subordination suffered by residents of the same neighborhood.¹³⁷ Nonetheless, a significant body of research finds that concentrated incarceration weakens social controls in a neighborhood, threatens social ties, and depresses the overall economic vitality of a neighborhood.

When significant numbers of people who are in the prime years for child-raising and income-production are removed from a neighborhood, the economic and social consequences are felt throughout the neighborhood.¹³⁸ Less income is generated in the community. The concentration of the formerly incarcerated “further stigmatize[s] areas and deters businesses from hiring locally or locating in such areas,”¹³⁹ spreading economic harms to the larger community.

The responsibility for caretaking and economic support for children and other vulnerable family members is spread to an ever-thinning group of individuals. Social networks that might otherwise provide a buffer against extreme poverty and loss become more frayed.¹⁴⁰ “[Poor] mothers rely on regular, substantial financial help from people in their personal networks, because neither welfare nor low-paying jobs provide sufficient income to cover expenses.”¹⁴¹ The removal of significant numbers of people from the small, thinly resourced networks through mass incarceration makes those fragile networks even less dependable.

There is a diminishment in the social controls for children, especially adolescents, as single-parents or grandparents take on increasing responsibilities.¹⁴² As Dorothy Roberts writes, “The mass movement of adults between the neighborhood and prison impedes the ability of families and other socializing groups, such as churches, social clubs, and neighborhood associations, to enforce informal social norms.”¹⁴³ The

¹³⁷ *Id.* at 282. (concluding that despite contrary findings of some researchers, there are as yet “no reliable statistical estimates of the unique effect of the spatial concentration of incarceration on the continuing or worsening social and economic problems” of the targeted neighborhoods.)

¹³⁸ See, e.g., Jeffrey Fagan, Valerie West & Jan Holland, *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 FORDHAM URB. L.J. 1551 (2002); TODD R. CLEAR, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE* (2007).

¹³⁹ Fagan et al., *supra* note 138, at 1591.

¹⁴⁰ CLEAR, *supra* note 138; GUSTAFSON, *supra* note 68, at 160. The diminishment of social networks through mass incarceration makes those fragile networks even less dependable.

¹⁴¹ CLEAR, *supra* note 138, at 149.

¹⁴² Fagan et al., *supra* note 138, at 27; Dorothy Roberts describes the “normalization of prison in community life,” which renders incarceration as a “rite of passage” for some African American adolescents. Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1288 (2004).

¹⁴³ *Id.* at 1275–76.

transience created when a significant number of people have unstable housing, infrequent employment, and fewer social supports, likely weakens other social controls, as well.¹⁴⁴ People are less likely to monitor or interfere with others. Hyper-incarceration likely leads to more criminal offending. As Michelle Alexander notes,

What a growing number of sociologists have found ought to be common sense: by locking up millions of people out of the mainstream legal economy; by making it difficult or impossible for people to find housing or feed themselves; and by destroying family bonds by warehousing millions for minor crimes, we make crime more—not less—likely in the most vulnerable communities.¹⁴⁵

But what may be more surprising is that hyper-incarceration leads to more arrests that are not related to actual increases in actual criminal conduct. In this way, hyper-incarceration becomes a one-way ratchet. As more arrests occur and as more ex-felons return to their home neighborhoods, police are further incentivized to engage in ever-increasing invasive surveillance of the neighborhood, thus ensuring that yet more drug arrests will follow. Parole and probation conditions that require, for example, frequent meetings with a parole officer or no contact with other ex-felons, criminalize categories of otherwise non-criminal conduct, broadening the opportunities for further incarceration.¹⁴⁶

In addition, hyper-incarceration (and racial bias in policing) results in the conviction of innocent people.¹⁴⁷ State allocations for public defenders have in no way kept pace with the sheer volume of cases, with dire effects on the quality of legal representation. Furthermore, simply being arrested once—even if not convicted—makes it more likely that an individual's face will show up in a photo lineup for a subsequent crime. The Innocence Project finds that mistaken eyewitness identification, a particular problem for cross-racial identification, is the leading cause of wrongful conviction, playing a role in 75% of convictions overturned as

¹⁴⁴ CLEAR, *supra* note 138.

¹⁴⁵ ALEXANDER, *supra* note 4, at 237.

¹⁴⁶ *Id.* at 94.

¹⁴⁷ See Bryan A. Stevenson, *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, 41 HARV. C.R.-C.L. L. REV. 339 (2006) (describing the negative impact of mass incarceration on adequate public defender representation).

a result of DNA testing.¹⁴⁸ Finally, as Michelle Alexander describes, harsh sentencing for drug crimes encourages innocent people to accept a plea bargain rather than risk a lengthy jail sentence.¹⁴⁹

III. THE CONNECTIONS: HOW HYPER-INCARCERATION INCREASES THE RISK FOR DOMESTIC VIOLENCE

A. *The Economic and Neighborhood Connection*

As we have described, hyper-incarceration creates devastating economic consequences at the individual, family, and community level. A significant body of research finds that economic deprivation and subjectively perceived economic strain is strongly correlated with increases in a male-to-female domestic violence. As Deborah Weissman notes, “[s]imply put, the likelihood of partner violence increases in structurally disadvantaged households and communities.”¹⁵⁰

Poor women suffer significantly higher rates of domestic violence. Data from the National Crime Victimization Survey finds, for example, that women with annual household incomes of less than \$7,500 suffer nearly seven times higher rates of domestic violence than do households with incomes of \$75,000 or greater.¹⁵¹ This relationship holds at every income level. For example, a review of 2008 to 2012 data finds domestic

¹⁴⁸ See *Eyewitness Misidentification*, THE INNOCENCE PROJECT, <http://www.innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification> (last visited Apr. 11, 2015).

¹⁴⁹ ALEXANDER *supra* note 4, at 88.

¹⁵⁰ Weissman, *supra* note 39, at 235.

¹⁵¹ CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP’T OF JUSTICE, BJS, NCJ 178247, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: INTIMATE PARTNER VIOLENCE (May 2000, rev. Jan. 31, 2002), http://www.popcenter.org/problems/domestic_violence/PDFs/Rennison%26Welchans_2000.pdf. The study found no relationship between household income and intimate partner violence directed at *men*. *Id.* at 4. Other research finds similar disparities for intimate partner violence against women. See, e.g., NAT’L CTR. FOR INJURY PREVENTION AND CONTROL ET AL., INTIMATE PARTNER VIOLENCE IN THE UNITED STATES—2010 32 (2014), http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf (9.7% of women in households making less than \$25,000 annual income, and 5.9% of those with \$25,000 to \$50,000 income, reported intimate partner violence compared to 2.8% of women in households making over \$75,000); SHANNAN CATALANO, U.S. DEP’T OF JUSTICE, BJS, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES (2007), *available at* <http://www.bjs.gov/content/pub/pdf/ipvus.pdf> (drawing from National Crime Victimization Survey (NCVS) data for 2001-2005, intimate partner violence rates for women increased significantly with negative changes in household income. Households with \$7,500 annual income having significantly higher rates). NCVS measures rates of intimate partner violence defined as relationships between spouses, boyfriends, or girlfriends, including same sex relationships.

violence rates for those living at or below the federal poverty level (FPL) to be nearly *double* the rates of those living at 101% to 200% of FPL, just one rung higher, while mid-income households (201% to 400% of FPL) and high income households (401% of FPL) had rates of 2.1 and 2.8, respectively.¹⁵² Relatedly, research finds that women with less than a high school education have rates of domestic violence six times that of those with a college education.¹⁵³

Michael Benson and Greer Fox's review of National Families and Households data for heterosexual households found that male-on-female domestic violence rates were linked to unstable male employment: the more occurrences of male unemployment, the higher the domestic violence rates.¹⁵⁴ Men who experienced a single episode of unemployment during the years studied had domestic violence rates of 7.5%, compared to a 4.7% rate for those who remained steadily employed. With two or more periods of unemployment, the rate jumped to 12.3%.¹⁵⁵ Further, couples who reported that they felt high levels of financial strain had levels of domestic violence more than three times higher than did other couples.¹⁵⁶

Household measures of economic well-being may not tell the complete story. A number of researchers find significantly higher rates of domestic violence in neighborhoods that are characterized by "concentrated disadvantage."¹⁵⁷ These neighborhood differences are not

¹⁵² ERIKA HARRELL ET AL., U.S. DEP'T OF JUSTICE, BJS, NCJ 248384, HOUSEHOLD POVERTY AND NONFATAL VIOLENT VICTIMIZATION, 2008-2010 3 (2014), <http://www.bjs.gov/content/pub/pdf/hpnnv0812.pdf>; see also CATALANO, *supra* note 151.

¹⁵³ See, e.g., Shelley D. Golden, Krista M. Perreira & Christine Piette Durrance, *Troubled Times, Troubled Relationships: How Economic Resources, Gender Beliefs, and Neighborhood Disadvantage Influence Intimate Partner Violence*, 28 J. INTERPERSONAL VIOLENCE 2134, 2142 (2013) (women with less than a high school education were 9.8 times more likely than college-educated women to experience intimate physical assault, 18.5 times more likely to experience intimate emotional abuse, and 6.2 times more likely to experience intimate coercion.).

¹⁵⁴ Michael L. Benson & Greer L. Fox, NCJ 199709, *Concentrated Disadvantage, Economic Distress, and Violence Against Women in Intimate Relationships* II-3-5 (2004).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at II-3-6.

¹⁵⁷ See, e.g., *id.* at II-3-5 (finding rates of 8.7% in disadvantaged neighborhoods compared to only 4.3% in advantaged neighborhoods); Judy A. Van Wyk, Michael L. Benson, Greer Litton Fox, & Alfred DeMaris, *Detangling Individual-, Partner-, and Community-Level Correlates of Partner Violence*, 49 CRIME & DELINQUENCY 412, 426 (2003) (finding male-to-female partner violence was lowest for couples in less disadvantaged neighborhoods (3.5%), higher in neighborhoods in the middle on disadvantage (4.9%), and much higher in highly disadvantaged neighborhoods (7.9%)); Christopher R. Browning, *The Span of Collective Efficacy: Extending Social Disorganization Theory to Partner Violence*, 64 J. MARRIAGE & FAMILY 833, 843-47 (2002) (concentrated disadvantage is associated with higher rates of intimate partner

explained by neighborhood composition: the effects remain after controlling for individual variables known to be correlated to rates of domestic violence.¹⁵⁸ Relying on social disorganization theories,¹⁵⁹ researchers believe that these differences are a product of the loss of social controls in a community and the weakening of social ties.¹⁶⁰ When residents have weak ties with their neighbors, they are unlikely to effectively shape social norms in the neighborhood.¹⁶¹

The worsening of neighborhood economic conditions and the terrible economic consequences to individuals and families of hyper-incarceration increase risks for domestic violence. The weakening of social supports and community cohesion creates the very conditions that the social disorganization research finds to be strongly correlated with increased rates of domestic violence.

B. The Trauma and Mental Health Connection

It is likely that many of the outcomes of prison trauma deepen the risk of male violence against women. As described above, significant numbers of prisoners are exposed to traumatic events while in prison, increasing their risk for PTSD and other major psychological disorders. This is particularly true for those who enter prison having already been exposed to trauma. PTSD is strongly correlated with increased risks for the perpetration of domestic violence. A significant body of research on military veterans finds, for example, that those who suffer from PTSD perpetuate more frequent and more severe domestic violence than do other veterans.¹⁶² Similarly, studies in the general population have

homicide as well as intimate partner non-homicidal violence); Emily M. Wright, *The Relationship Between Social Support and Intimate Partner Violence in Neighborhood Context*, XX CRIME & DELINQUENCY 1, 16 (2012) (“higher levels of concentrated disadvantage were associated with higher prevalence and frequency rates of partner violence against women”).

¹⁵⁸ See, e.g., Benson & Fox, *supra* note 154.

¹⁵⁹ See, e.g., Browning, *supra* note 157; Benson and Fox, *supra* note 154.

¹⁶⁰ Benson and Fox define disadvantage as percentage of single parents, percentage nonwhite, percentage unemployed, percentage of families on public assistance, and percentage below the poverty line. Benson and Fox, *supra* note 154, at II-3-5. Van Wyk et al. measures the similar concept “social disorganization” as the combination of the percentage of overcrowded households, percentage of single parent households, percentage non-white, racial heterogeneity, percentage with low education, percentage on public assistance, percentage below the poverty line, percentage unemployed, high residential mobility, vacant buildings, urbanization, percentage young men, and number of visible street people. Van Wyk et al., *supra* note 157, at 421.

¹⁶¹ Van Wyk et al., *supra* note 157.

¹⁶² See, e.g., Christina A. Byrne and David S. Riggs, *The Cycle of Trauma: Relationship Aggression in Male Vietnam Veterans with Symptoms of Posttraumatic Stress Disorder*, 11 VIOLENCE & VICTIMS 213 (1996) (in sample of veterans suffering

consistently found that PTSD is associated with high levels of intimate relationship problems, physical aggression, and psychological aggression.¹⁶³

A significant number of prisoners suffer from substance abuse—a condition largely left untreated. Substance abuse is also strongly correlated with the perpetration of domestic violence¹⁶⁴ and some research finds that men who suffer from *both* PTSD and substance abuse have significantly higher rates of using physical violence against intimate

from PTSD, 42% had engaged in physical aggression against their partner by their own or their partner's report); Michelle D. Sherman, Fred Sautter, M. Hope Jackson, Judy A. Lyons & Xiaotong Han, *Domestic Violence in Veterans with Posttraumatic Stress Disorder Who Seek Couples Therapy*, 32 J. MARITAL & FAMILY THERAPY 479 (2006) (comparison of violence rates between couples where the veteran member had a PTSD diagnosis with those where the veteran was diagnosed as depressed or with partner relational problem found much higher rates of domestic violence perpetration in the PTSD group, with 80% having committed at least one act of domestic violence within the prior year and 50% having committed severe violence); B. Kathleen Jordan, Charles R. Marmar, John A. Fairbank & William E. Schlenger, Richard A. Kulka, Richard L. Hough & Daniel S. Weiss, *Problems in Families of Male Vietnam Veterans with Posttraumatic Stress Disorder* 60(6) J. CONSULTING & CLINICAL PSYCHOL. 916 (1992) (based on self-reports of veterans and spouse, the mean score for family violence for veterans with PTSD was 2.08 compared to 0.54 for veterans without PTSD; the mean number of violent acts committed in the last year by veterans with PTSD was 4.86 compared to only 1.32 for veterans without PTSD.)

¹⁶³ A meta-analysis of nineteen military and twelve civilian studies found PTSD was positively associated with intimate relationship discord, relationship physical aggression, and intimate relationship psychological aggression. See Casey T. Taft et al., *Posttraumatic Stress Disorder and Intimate Relationship Problems: A Meta-Analysis*, 79 J. CONSULTING & CLINICAL PSYCHOL. 22 (2011).

¹⁶⁴ See, e.g., Edward W. Gondolf, *Characteristics of Court-Mandated Batterers in Four Cities: Diversity and Dichotomies*, 5(11) VIOLENCE AGAINST WOMEN 1277 (1999) (over half of the sample of men in batterer's treatment programs had alcoholic tendencies); Caroline Easton, Suzanne Swan & Rajita Sinha, *Motivation to Change Substance Use Among Offenders of Domestic Violence*, 19 J. SUBSTANCE ABUSE TREATMENT 1 (2000) (substance dependence among domestic violence offenders ranges from 33 to 50%, while substance abuse ranges from 60 to 75%).

partners.¹⁶⁵ Despite these risks, few prisoner rehabilitation programs¹⁶⁶ and few reentry programs address domestic violence.¹⁶⁷

“Criminologists have long maintained that men who are victimized by sexual assault in prison often leave more violent and anti-social than when they went inside.”¹⁶⁸ But the harms of rape, degradation, and violence in men’s prisons are not limited to those who are the direct recipients of prison violence. As we describe above, prison culture reinforces a destructive masculinity that creates a violent place “inside” and likely increases in violence against women “outside.” Nor are the direct harms of prison violence limited to male prisoners. The harms of imprisonment are equally – perhaps *especially* – felt by women prisoners who are physically and sexually victimized in higher numbers, who may be forced to give birth in shackles, and who are more likely to lose their children to foster care.

IV. CONCLUSION: HOPEFUL SIGNS AND NEXT STEPS

There are numerous opportunities for anti-domestic violence service providers and activists to be a part of the movement to end hyper-incarceration. The last few years have seen significant sentencing reform, albeit focused nearly exclusively on “low-level non-violent” offenders. In November, 2014, California became the latest state to join a growing number of states to lessen penalties and provide alternative sentencing for low-level non-violent offenders. “The Safe Neighborhood and Schools Act” (Proposition 47), adopted by California voters, requires that “non-serious, non-violent property and drug crimes” be made misdemeanors rather than felonies, permits re-sentencing for anyone

¹⁶⁵ Gina P. Owens, Philip Held, Laura Blackburn, John S. Auerbach, Allison A. Clark, Catherine J. Herrera, Jerome Cook & Gregory L. Stuart, *Differences in Relationship Conflict, Attachment, and Depression in Treatment-Seeking Veterans with Hazardous Substance Use, PTSD, or PTSD and Hazardous Substance Use*, 29(7) J. INTERPERSONAL VIOLENCE 1318, 1327 (2014).

¹⁶⁶ In addition, research indicates that a significant number of incarcerated men have committed domestic violence against a female partner. *See* White, et al., *supra* note 111 (sample of male federal prisoners in low-security prison found that 33% reported that they recently used violence against an intimate female partner and 10% acknowledged the recent use of severe violence against a female partner; these rates are considerably higher than is true of the general population, 16% and 6%, respectively).

¹⁶⁷ *See*, Mike Bobbitt, Robin Campbell, & Gloria L. Tate, *Safe Return: Working Toward Preventing Domestic Violence When Men Return from Prison*, available at www.safereturn.info. The Safe Return project is a collaboration between the DOJ Office on Violence Against Women and the Institute on Domestic Violence in the African Community.

¹⁶⁸ M. Dyan McGuire, *The Impact of Prison Rape on Public Health*, 3 CAL. J. HEALTH PROMOTION 72, 76 (2005).

serving a prison sentence for an offense that the initiative reduces to a misdemeanor, and creates a Safe Neighborhoods and Schools Fund from the savings generated by the initiative to be used for education programs, victim services, and drug/mental health treatment. The measure had bipartisan and far-ranging support including from prosecutors; victims/survivors organizations; labor unions; religious organizations; notable individuals such as Jay Z, Michelle Alexander, and Olivia Wilde; and Republican leaders, Senator Rand Paul and Newt Gingrich. The California Legislative Analyst's Office projects an ongoing reduction in state prison populations of several thousand a year and a savings of \$100-\$200 million a year beginning in 2016 to 2017.¹⁶⁹

There are some hopeful signs at the federal level, as well. In 2014, former Attorney General Eric Holder established new federal prosecution guidelines requiring that prosecutors decline to charge drug crimes at the quantity level required to trigger mandatory minimum sentences if the accused was a low-level non-violent offender with no significant criminal history or ties to a large-scale drug trafficking organization. The Smarter Sentencing Act (SSA), introduced with bi-partisan sponsors in 2013, 2014, and again in 2015,¹⁷⁰ would direct federal courts to disregard statutory minimum sentence requirements for defendants who have less significant criminal histories, allow courts to lower sentences for those convicted of crack cocaine charges prior to changes that made penalties for crack possession and sale commensurate with penalties for powder cocaine, and reduce mandatory minimums for certain drug charges. The Act has drawn significant opposition, including from former top federal law enforcement officials.¹⁷¹

The Smarter Sentencing Act is supported by two important national anti-domestic violence organizations—The National Task Force to End Sexual and Domestic Violence Against Women (NTF)¹⁷² and the

¹⁶⁹ Mac Taylor, *The 2015-16 Budget: Implementation of Proposition 47*, LEGISLATIVE ANALYST'S OFFICE 3 & 9 (Feb. 2015), <http://www.lao.ca.gov/Publications/Detail/3175>.

¹⁷⁰ H.R. 920, 114th Cong. (2015).

¹⁷¹ GOTTSCHALK, *infra* note 175, at 263.

¹⁷² See Letter from National Task Force to End Sexual and Domestic Violence Against Women, to Senators Leahy, Durbin, and Lee, in support of the Smarter Sentencing Act (Dec. 11, 2013), available at <http://famm.org/wp-content/uploads/2013/07/NTF-SSA-letter.pdf> [hereinafter Letter Supporting Smarter Sentencing]. The support letter regards the identical legislation first introduced in 2013. For a description of NTF, see *About NTF*, <http://4vawa.org/about/> (NTF is “focused on the development, passage and implementation of effective public policy to address domestic violence, dating violence, sexual assault and stalking. The full membership of the NTF is comprised of a large and diverse group of national, tribal, state, territorial and local organizations, as well as individuals, committed to securing an end to violence against women. Included are civil rights organizations, labor unions, advocates for children and youth, anti-poverty groups,

National Network to End Domestic Violence (NNEDV).¹⁷³ Their support centers on the need to free up federal funding for more criminal justice responses to address domestic violence, sexual assault, and stalking, particularly on Tribal lands, and to replace funding cuts in victim services,¹⁷⁴ but they also note the harms of mandatory drug sentencing policies on communities of color. In 2014, NTF *opposed* an amendment to SSA that would have added new mandatory minimums for domestic violence, sex crimes, and terrorism.¹⁷⁵

There have been a number of successful private prison divestment campaigns.¹⁷⁶ A number of communities are working to get rid of felon disenfranchisement laws,¹⁷⁷ to adopt “ban the box” legislation to curb

immigrant and refugee rights organizations, women’s rights leaders, education groups, and others focusing on a wide range of social, economic and racial justice issues.”).

¹⁷³ For a description of NNEDV, see <http://nnedv.org/news/4444-25th-anniv.html> (describing of NNEDV as “The National Network to End Domestic Violence (NNEDV) was the ambitious idea of a small but mighty group of state domestic violence coalition leaders who identified the need for a national, unified voice for survivors of domestic violence and their advocates.”).

¹⁷⁴ See Letter Supporting Smarter Sentencing, *supra* note 172.

¹⁷⁵ MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 263 (2014) (describing the amendments as last ditch efforts to win sufficient Republican support for passage and NTF’s opposition to the amendments). NTF has also been a strong supporter of comprehensive immigration reform, noting that expanded immigration detention makes immigrant victims of violence “more vulnerable to abuse and exploitation.” *Id.* See also Letter from 301 organizations “committed to ending domestic violence, sexual assault and human trafficking” to John A. Boehner, Speaker of the House, Eric Cantor, House Majority Leader, and Kevin McCarthy, House Majority Leader Elect (June 27, 2014), <http://origin.library.constantcontact.com/download/get/file/1102350617540-408/National+DV-SA+sign-on+LTR+in+support+of+Immigration+Reform-6-27-14.pdf> (urging the adoption of comprehensive immigration reform because it will “significantly enhance prevention and intervention efforts, by providing an opportunity for millions of immigrants to pursue a pathway to safety, stability, and economic self-sufficiency”); Letter Opposing the Gandy bill and similar measures that would expand local and state participation in the enforcement of immigration laws (Mar. 3, 2015), <http://www.nationallatinonetwork.org/images/NTFGowdyHR1148letter332015FINAL.pdf>.

¹⁷⁶ See, e.g., ENLACE: ORGANIZING FOR RACIAL AND ECONOMIC JUSTICE, <http://www.enlaceintl.org/#!/prison-divestment/cq8g>; Cealia Brannan & Sarah Pruzansky, *Faculty Senate Votes on Resolution Opposing FAU Stadium Rename*, UNIVERSITY PRESS: FAU’S FINEST NEWS SOURCE (4/2/2013), <http://www.upressonline.com/2013/04/faculty-senate-votes-on-a-resolution-opposing-fau-stadium-rename/> (students and faculty opposed naming the FAU stadium after the GEO group, a corporation that runs private prisons).

¹⁷⁷ See, e.g., FLORIDA RIGHTS RESTORATION COALITION, <http://www.restorerights.org/>

employment discrimination against ex-felons,¹⁷⁸ and on increasing funding for prisoner reentry programs that address domestic violence.¹⁷⁹

Michelle Alexander's book, *THE NEW JIM CROW*,¹⁸⁰ popularized an understanding of the racist character of hyper-incarceration. Those themes were echoed in the former Attorney General Eric Holder's memorable speech to the American Bar Association denouncing racial disparities in sentencing.¹⁸¹ The horrifying police killings of unarmed African American men Michael Brown,¹⁸² Eric Garner,¹⁸³ Freddie Gray,¹⁸⁴ and Walter Scott¹⁸⁵ have broadened awareness of police violence to African American men and the *#BlackLivesMatter*¹⁸⁶ campaign has reached a large audience. While much of this national focus has been on African American men, organizations such as FREE MARISSA NOW!¹⁸⁷ and INCITE!¹⁸⁸ emphasize the intersection of the violent victimization of women of color and their disproportionate incarceration. Organizations such as New York City's Anti-Violence Project, which "empowers lesbian, gay, bisexual, transgender, queer, and HIV-affected communities

¹⁷⁸ See, e.g., BAN THE BOX CAMPAIGN, <http://bantheboxcampaign.org/>.

¹⁷⁹ See, e.g., MIKE BOBBITT, GLORIA TATE, AND MITCHELL DAVIS, *DOMESTIC VIOLENCE AND PRISONER REENTRY: EXPERIENCES OF AFRICAN AMERICAN WOMEN AND MEN* (2006), <http://www.idvaac.org/media/pubs/SafeReturnDomesticViolenceAndPrisonReentry.pdf> (research with African American returning male prisoners and women whose partners/former male partners were returning from prison indicate the need for additional attention to the risks for domestic violence).

¹⁸⁰ ALEXANDER, *supra* note 4.

¹⁸¹ Eric Holder, Att'y Gen., U.S. DOJ, *Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates* (Aug. 12, 2013), available at <http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations>.

¹⁸² See Davey, *supra* note 9.

¹⁸³ J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES, Dec. 3, 2014, http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html?_r=0.

¹⁸⁴ Alan Blinder & Richard Pérez-Peña, *6 Baltimore Police Officers Charged in Freddie Gray Death*, N.Y. TIMES, May 1, 2015, <http://www.nytimes.com/2015/05/02/us/freddie-gray-autopsy-report-given-to-baltimore-prosecutors.html>.

¹⁸⁵ Mark Berman, Wesley Lowery & Kimberly Kindy, *South Carolina Police Officer Charged with Murder After Shooting Man During Traffic Stop*, WASH. POST, Apr. 7, 2015, <http://www.washingtonpost.com/news/post-nation/wp/2015/04/07/south-carolina-police-officer-will-be-charged-with-murder-after-shooting/>.

¹⁸⁶ See *#BLACKLIVESMATTER*, <http://blacklivesmatter.com/> (last visited May 17, 2015).

¹⁸⁷ See FREE MARISSA NOW, <http://www.freemarissanow.org/October-action.html> (last visited May 17, 2015).

¹⁸⁸ See INCITE!, *About INCITE!*, <http://www.incite-national.org/page/about-incite> (last visited Jan. 31, 2015) ("INCITE! Women, Gender Non-Conforming, and Trans people of Color Against Violence is a national activist organization of radical feminists of color advancing a movement to end violence against women of color and their communities through direct action, critical dialogue and grassroots organizing.").

and allies to end all forms of violence,” focus on the violence of police as well as intimate partner violence and hate violence.¹⁸⁹

With some notable exceptions, anti-domestic violence activists and service providers have not been at the forefront of the work to stop hyper-incarceration. As Deborah Weissman describes, they have been absent from challenges to racial profiling and, in some instances, been *supporters* of draconian extensions of police power.¹⁹⁰ This needs to change. Anti-domestic violence activists and service providers have a unique opportunity to make the connection for the public and for policy makers between the devastating violence of mass incarceration and the interpersonal violence that affects so many.

The time to act is now.

¹⁸⁹ See ANTI-VIOLENCE PROJECT, *Mission, Vision, & Goals*, <http://www.avp.org/about-avp/mission-vision-a-goals>; See Andrea Ritchie’s remarks in Andrea Ritchie et al., *Plenary 2—Redefining Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 289 (2015).

¹⁹⁰ See Weissman *supra* note 12 (describing the support of domestic violence and sexual assault organizations for the DNA Fingerprint Act).

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on Campus and Youth Respond to Gender Violence

UNIVERSITY OF MIAMI SCHOOL OF LAW

Laura Dunn^{*}
Mary Anne Franks
Rebecca Wyss[†]
Jessica Williams

WILLIAMS: This presentation focuses on a study conducted in Baltimore, Maryland with seventh grade students as part of a dating violence prevention project. Specifically, this presentation examines dating violence in general, its relationship to another form of violence called relational aggression, and the health outcomes of these, focusing on the role of gender. There is a lot of different terminology that is used for adolescent dating violence such as dating violence, relationship violence, relationship abuse and so on. For purposes of this project it was defined it as actions carried out in a dating relationship with the intent to threaten or inflict physical and/or emotional harm. So we are really looking at the physical and emotional aspects of violence which do not

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted.

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have to be actual, they can also be intentional. Adolescence dating violence data show that it is pretty common. Perpetration rates range from twenty-six to forty-six and victimization from nine to twenty-three.¹ Research also shows a significant association between dating violence and adverse health outcomes. Youth, regardless of whether they are perpetrators or victims, can experience things like depression, eating disorders, suicidal ideation, sexually transmitted diseases, and unplanned pregnancy as well as, engagement in future violent behaviors.² When we look at gender differences, we see, somewhat surprisingly, that research consistently reports higher levels of dating violence among females compared to males.³ There are many theories for why we see higher rates of perpetration among females and some of these are the differences in the types of violence that are being perpetrated, physical, emotional, sexual violence, the intent of the violence, such as self-defense, as well as the outcomes of the violence.⁴ Research on risk factors for adolescent dating violence indicates that exposure to violence at the individual, community, and family levels are important.⁵ Important to note, many of

¹ See Nina Glass et al., *Adolescent Dating Violence: Prevalence, Risk Factors, Health Outcomes, and Implications for Clinical Practice*, 32 J. OBSTETRIC GYNECOLOGIC & NEONATAL NURSING 227 (2003); Laura J. Hickman et al., *Dating Violence among Adolescents: Prevalence, Gender Distribution, and Prevention Program Effectiveness*, 5 TRAUMA VIOLENCE & ABUSE 123 (2004).

² See Danice K. Eaton et al., *Associations of Dating Violence Victimization with Lifetime Participation, Co-occurrence, and Early Initiation of Risk Behaviors among U.S. High School Students*, 22 J. INTERPERSONAL VIOLENCE 585 (2007); Timothy A. Roberts et al., *Intimate Partner Abuse and the Reproductive Health of Sexually Active Female Adolescents*, 36 J. ADOLESCENT HEALTH 380 (2005); Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 JAMA 572 (2001).

³ See Ximena B. Arriaga & Vangie A. Foshee, *Adolescent Dating Violence: Do Adolescents Follow in Their Friends', Or Their Parents', Footsteps?*, 19 J. INTERPERSONAL VIOLENCE 162 (2004); Hickman et al., *supra* note 1; Marina J. Muñoz-Rivas et al., *Aggression in Adolescent Dating Relationships: Prevalence, Justification, and Health Consequences*, 40 J. ADOLESCENT HEALTH 298 (2007); Heather A. Sears et al., *The Co-occurrence of Adolescent Boys' and Girls' Use of Psychologically, Physically, and Sexually Abusive Behaviours in Their Dating Relationship*, 30 J. ADOLESCENCE 487 (2007).

⁴ See Vangie A. Foshee, *Gender Differences in Adolescent Dating Abuse Prevalence, Types and Injuries*, 11 HEALTH EDUC. RES. 275 (1996); Maura O'Keefe, *Predictors of Dating Violence Among High School Students*, 12 J. INTERPERSONAL VIOLENCE 546 (1997); Hickman et al., *supra* note 1.

⁵ See Kenneth A. Chase et al., *Characteristics of High-Risk Adolescent Dating Violence*, 17 J. INTERPERSONAL VIOLENCE 33 (2002); Kristen M. Kinsfogel & John H. Grych, *Interparental Conflict and Adolescent Dating Relationships: Integrating Cognitive, Emotional, and Peer Influences*, 18 J. FAMILY PSYCHOL. 505 (2004); Maura O'Keefe, *Posttraumatic Stress Disorder Among Incarcerated Battered Women: A*

the models used predict risk factors for dating violence have been more salient for males, so less is known about what predicts risk for experiencing dating violence among females. To help determine potential risks for dating violence among females, this study looked at the association between dating violence and relational aggression. Relational aggression refers to a set of manipulative behaviors that are used to inflict harm in another through damage to relationships.⁶ It is often conceptualized as the kind of aggression characteristic of girls, such as threatening to turn friends against friends and using social standing as tool for manipulation. The prevalence is about 8.7 to 16% for perpetration⁷ and about 8% for victimization.⁸ Even though relational aggression is associated more as behavior among girls, there are mixed results in the literature about gender differences. Some studies find that girls perpetrate more and that girls are more often victims,⁹ whereas others find that boys are equally victimized or use this type of aggression just as often.¹⁰ An important difference is that when females do engage in relational aggression, they are more likely to experience adverse health

Comparison of Battered Women Who Killed Their Abusers and Those Incarcerated for Other Offenses, 11 J. TRAUMATIC STRESS 71 (1998).

⁶ See Nicki R. Crick et al., *Toward A More Comprehensive Understanding of Peer Maltreatment: Studies of Relational Victimization*, 11 CURRENT DIRECTIONS PSYCHOL. SCI. 98 (2002).

⁷ See Nicki R. Crick et al., *Engagement In Gender Normative Versus Gender Non-Normative Forms of Aggression: Links to Social-Psychological Adjustment*, 67 DEVELOPMENTAL PSYCHOL. 2317(1997); Nicki R. Crick et al., *A Longitudinal Study of Relational Aggression, Physical Aggression, and Children's Social-Psychological Adjustment*, 34 J. ABNORMAL CHILD PSYCHOL. 131(2006).

⁸ See Nicki A. Crick & Maureen A. Bigbee, *Relational and Overt Forms of Peer Victimization: A Multiinformant Approach*, 66 J. CONSULTING & CLINICAL PSYCHOL. 337 (1998); Nicki R. Crick & Jennifer K. Grotpeter, *Children's Treatment by Peers: Victims of Relational and Overt Aggression*, 8 DEVELOPMENT & PSYCHOPATHOLOGY 367 (1996).

⁹ See Nicki R. Crick & Jennifer K. Grotpeter, *Relational Aggression, Gender, and Socialpsychological Adjustment*, 66 CHILD DEVELOPMENT 710 (1995); Nicki R. Crick & Jennifer K. Grotpeter, *Relationally and Physically Aggressive Children's Intent Attributions and Feelings of Distress for Relational and Instrumental Peer Provocations*, 73 CHILD DEVELOPMENT 1134 (2003); See Nicki R. Crick et al., *Toward A More Comprehensive Understanding of Peer Maltreatment: Studies of Relational Victimization*, 11 CURRENT DIRECTIONS PSYCHOL. SCI. 98 (2002); Marlene M. Moretti et al., *Self-Other Representations and Relational and Overt Aggression In Adolescent Girls and Boys*, 19 BEHAV. SCI. & L. 109 (2001).

¹⁰ See Nicki R. Crick & Jennifer K. Grotpeter, *Children's Treatment by Peers: Victims of Relational and Overt Aggression*, 8 DEVELOPMENT & PSYCHOPATHOLOGY 367 (1996); Julie A. Paquette & Marion K. Underwood, *Gender Differences In Young Adolescents' Experiences of Peer Victimization: Social and Physical Aggression*, 45 MERRILL-PALMER Q. 242 (1999).

outcomes.¹¹ For this study, we surveyed 194 students in four middle schools in Baltimore, Maryland with about 60% female. Ages ranged from twelve to fifteen with a mean age of thirteen and most were African American. Students in the study had a lot of past experience with violence; 99.4% had experienced some kind of violence in the community; 72% reported family violence; and 50% reported some kind of personal violence. 87% of the entire sample reported having a boyfriend or girlfriend. When we look at dating violence perpetration, we also see high rates with approximately 40% reporting this. When we look at differences by gender, we see, consistent with the literature, that females reported perpetrating more physical violence than males. When we look at victimization, again, we see pretty high rates with about 30% reporting this. But, when we look at gender differences, we see males are reporting more victimization, particularly, emotional types of dating violence victimization. For relational aggression, the perpetration rate was 16.8% and victimization was 18.4%. Males reported more victimization which is contrary to what we think about with relational aggression being more characteristic of girls. When we looked at the relationship between dating violence and relational aggression we found, for girls, perpetrating emotional dating violence was associated with experiencing relational aggression and victimization. For boys, we did not see any kind of relationship between these two forms of violence. Dating violence and relational aggression were both related to different health outcomes. For girls, experiences of violence, both dating violence and relational aggression were associated with poor health outcomes. These included things like externalizing behavior (acting out types of behavior, disciplinary issues, substance abuse), internalizing behavior (low self-esteem, depressive symptoms) as well as attention problems (difficulty with attention in the classroom and personal life). Boys, on the other hand, did not experience any kind of adverse health outcomes from experiencing dating violence. They did, however, experience these adverse outcomes with regard to relational aggression. There are several theories and hypotheses for why people experience adverse health outcomes when exposed to violence and one possible factor is related to how normal the behavior or experience is. The thought is that the more abnormal the experience, the more likely one is to experience adverse

¹¹ See Nicki R. Crick & Jennifer K. Grotpeter, *Children's Treatment by Peers: Victims of Relational and Overt Aggression*, 8 DEVELOPMENT & PSYCHOPATHOLOGY 367 (1996); Sara E. Goldstein & Marie S. Tisak, *Adolescents' Outcome Expectancies About Relational Aggression Within Acquaintanceships, Friendships, and Dating Relationships*, 27 J. ADOLESCENCE 283 (2003); Julie A. Paquette & Marion K. Underwood, *Gender Differences In Young Adolescents' Experiences of Peer Victimization: Social and Physical Aggression*, 45 MERRILL-PALMER Q. 242 (1999).

health outcomes from it. This helps to explain the findings for boys because dating violence could be considered a normal behavior among boys and as such would be less likely to experience adverse health outcomes as a result. Relational aggression, on the other hand, is conceptualized as a characteristic behavior among girls so when boys experience it, they may be more likely to experience adverse health outcomes from it because it is a less normal type of aggression. There are a couple of implications for this when we talk about how school systems and health care centers respond to violence among youth, particularly this type of relationship violence. There are some indications for focusing prevention efforts earlier. Most dating violence prevention programs target high school students, however, this study was conducted among seventh graders demonstrating that this is an important issue even for this younger age group. It is also important that we tailor prevention programs so that they are gender sensitive; that we talk about violence occurring among males and among females and tailor our strategies to best address these differences. At the same time, we need to be cautious about how violence is characterized based on gender and stereotypes because a lot of our prevention programs for relational aggression are targeted toward girls, even though we see that boys are also experiencing and engaging in this type of behavior and it is associated with adverse consequences. Finally, we need to target multiple types of violence not just physical violence, which is traditionally what is focused on, and also recognize the co-occurrence of perpetration and victimization. This study found high rates of this kind of bi-directional violence and it is important that we understand the nuances and address both sides of that equation.

FRANKS: I am also speaking of unhealthy relationships. What I will be talking about is a phenomenon that has been popularly referred to as revenge porn. I just want to get a show of hands as to how many people have heard this term and have some sense of what it means. If you asked this question six months ago you would not have gotten the same response—that is I guess both encouraging and discouraging. Revenge porn is a popular term for non-consensual disclosure of sexually intimate images. It is a misleading term because it is not always done for revenge and it is not strictly speaking always porn, but we will talk about that in a minute.

I think it is more helpful to think of the category of conduct here as non-consensual pornography. That is to say, it is not necessarily the case that someone would do this as a way of hurting the other partner. There is this interesting intersection between what we might think of as intimate partner violence and profit. There are websites dedicated to these types of images. There are people who are making quite a lot of money off of these images, so it is an industry in addition to being what

we might think of as personal violence. In addition to those cold-eyed monetized motivations and really vicious ex-partners who are determined to ruin the lives of the people that they are no longer with, there is also a category of opportunistic or possibly even ignorant perpetrators. This relates a little bit to some of the previous presentation—so much of what’s happening in this form of conduct is that it is being perpetrated by younger and younger people, some of whom may not understand the consequences of putting an image out there. And when I say putting an image out there, I mean the person who has chosen to take that image and disclose it beyond the context of the relationship. But there may be some unawareness on the part of the perpetrator that this could have, and almost always does have, devastating and in some cases irremediable effects. So it is a thorny problem because on the one hand it is familiar in many respects because of the dynamics of control, the dynamics of sexual shaming, the dynamics of thoughtless compulsive behavior intersecting with a profitable industry. To be clear, the forms that this kind of behavior can take are not limited to the Internet. There was a case in 2007 involving a man who was upset because his girlfriend decided to end the relationship. He took DVDs he had made of them having sex, that she did not know about, and he made hundreds of copies and put them on the car windshields of every car in her neighborhood. So it is not just an Internet phenomenon but we can all probably understand and appreciate how easy it is for someone to disseminate this kind of image on the Internet. There are particular protections that Internet activity gets; some of you may be familiar with Section 230 of the Communications Decency Act. It says that there is more protection for people who provide web platforms for other people’s conduct and content than you would normally have as if you were doing something directly yourself. So imagine that that’s why FACEBOOK isn’t responsible for every awful thing that gets put on FACEBOOK; YOUTUBE is not responsible for every awful thing uploaded to YOUTUBE. What that means, is you could in theory, this has happened, have a revenge porn website and your defense could be, “Hey, I’m just providing a space for people to get back at their girlfriends. I’ve got nothing to do with this, I’m just giving them some place where they can roam free with their aggression.” That has worked up to a certain point. There are different difficulties in trying to address this from a legal perspective. One is that you can create a flourishing trade in this type of conduct and be immunized to some extent but also you are creating more demand. So this is becoming, the newest, most interesting, and edgy form of pornography. That means there is going to be a lot more demand for this type of content. Many of these websites actively solicit this type of

content—they say come send us all the pictures of your exes because that is what we do here.

In the cases you may have heard about, the more high profile cases of Hunter Moore and Kevin Bollaert—who are two of the people who have actually been brought up on charges for running these types of sites—it turns out that what they’re alleged to have done is paid other people to hack into the emails and other types of accounts of the women whose pictures they wanted. These are not situations where you have someone who trusted a partner and gave it to them and they then took revenge; it is actually where someone’s computer or email account was broken into and these images were retrieved. That is part of the reason why these are two revenge porn site operators are getting charged with something because it is illegal to hack into somebody’s email, even if it may not be illegal to run a revenge porn site; so it is a little bit like getting Al Capone on tax evasion, but we will take it for now.

So what does this all mean? It means that we are dealing with something slightly new, slightly old, and the problems that are created by are many. There is a technical problem because many times when victims call the police—it is interesting that they call the police when they discover that these images of them are on a revenge porn site or have been sent to their boss or their family and say “this is a horrible thing that has happened and I know it is my ex who did it,” the police will tell them “there is nothing we can do for you.” And that can be of saying, “close your computer and it won’t hurt you anymore”, which I think many of you in this room understand why that is not an appropriate response. It can be an outright form of victim blaming: “You should not have given him the picture,” something that affects women and girls more and more seriously than it does boys and men. Even though men and women, boys and girls, tend to exchange sexually explicit images at about the same rate. In fact, men actually exchange them slightly more often (as anybody who has ever received unsolicited pictures may be able to tell you), but for some reason that does not mean that they are victimized as often as are women. Women and girls are more likely to have this happen to them even though they do not send more pictures of themselves than do boys and men. Men and boys are primarily the perpetrators. If it is not clear to anyone in the room, the consequences of this behavior can be very very serious. What has happened to most victims is that they immediately receive propositions from people that they do not know. Some of them are physically stalked. Many of them are threatened with rape and sexual assault. Something along the lines of, “I saw your picture, you whore, and there are certain things that I will do to you, because I know you’re such a whore.” In addition, these images are often sent to parents, brothers, fellow students, teachers, to everybody

that the person works with. There have been victims who have lost their jobs because of this. There are people who are forced to move from the town they love because they are recognized everywhere they go. They go to Starbucks and someone says, "Hey, I saw your picture," and that means they can't actually escape this. We have heard a little bit of this before, this is not so different from what victims describe in terms of stalking and harassment that are not revenge porn related, but it is hard to ever escape it, it doesn't end, it doesn't have a vanishing point. It can infiltrate every aspect of a person's life. They cannot get away from it. And I do not want to belabor the point, but I do want us to think about what it is like from the perspective of the victim who has to look around her and know that her mother has seen these pictures, her father has seen these pictures, every friend that she knows has seen these pictures. If she is a lawyer and stands up in the courtroom, she thinks that they have all seen her pictures too. Just to imagine to the depths to which you would be surrounded by the fact that you have been exposed in your most intimate moment, possibly at a moment of trust, the whole world can see and punish you for.

So, why is it happening I think is one of the questions we always have to ask ourselves as we are trying to craft responses to this type of behavior. There is really no way to craft a response without asking the question why do people do it. Why are we tolerating it and why are there no specific laws, or very few specific laws that are aimed at this type of behavior? Because a part of what the police officers say to some of these victims that it is not a crime is actually true. It is not illegal to do this unless you live in New Jersey or in California or Alaska. So move to those states. What we are seeing is a continuation in many respects of things that we have always seen . . . the trivialization of violence against women, the trivialization of the harassment of women, the inability of law enforcement, and society, generally to take this seriously and to respond. The response is "it is just a picture" or "you deserved it."

I came to this issue because I had been studying cyber harassment for some years and I published an article about the effects of cyber harassment especially on women titled *Unwilling Avatars*¹². A victim who had experienced revenge porn in Florida came across the article and realized we were in the same city and decided to make an appointment with me to tell me her story. At the end of her story she said I want your help in changing the laws in this country. I said, "I'm an academic; I don't do that, you've come to the wrong place," but she convinced me because her story was so compelling. I find appalling the idea that we

¹² Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, Colum. J. Gender & L. 224 (2011).

can have an entire industry that is built on the shaming of women, on the idea that women can be humiliated for engaging in sexual activity and the response to it is “its your own fault” or “it’s not that big a deal”. The law has not caught up but when you try to argue for legal reform the most common response is “we already have laws that take care of this kind of thing”. But the idea that you can get a police officer to take a stalking claim or harassment claim seriously or for that matter a sexual assault claim or domestic violence claim seriously— is a fantasy. Now we are going to add to this the fact that the damage can be so instantaneous and in many cases irremediable. It is really just the kind of combination of factors that cries out for some sort of solution.

What I’ve tried as one of the solutions is to craft laws that could be targeted at this type of conduct so that we can deter people. There are all sorts of interesting conversations to be had especially in the context of this conference about whether it is good to have more criminal laws. I certainly heard the objections that we shouldn’t have any more laws, we have too many already. I do not think that I can’t put much store by that particular objection. I can understand that some people might believe that the criminal response is not the ideal one but if we are serious about saying this is something that needs to not happen—It is not enough to say we are going to do the right thing afterwards because you cannot actually make somebody whole after this.

The question really has to be, how do you build a society in which this does not happen; where you raise boys and men who are willing to say that kind of behavior is unacceptable? How do you build a society where nobody will be willing to say, “Hey you know you really shouldn’t have taken that picture” as opposed to “I can’t believe someone violated your consent”. As long as we are having this conversation about how these girls should not have done this we are repeating all of the bad old stories we’ve been trying really hard to get out from underneath. We have to stop the idea that it is about women having to change their behavior, the idea that you should be allowed to punish women for their trust, the idea that you should punish women for being sexual with anybody and or to just tell them, “hey you need to expect the consequences of engaging in sex,” as if that even made any sense. So, it is a challenge because even if we do get good laws on the books, even if we do manage to lock up the people who do this, there is no guarantee that the pictures will ever go away. There is no guarantee that we will create a society in which this doesn’t happen, and if it does happen, that it won’t ruin a woman’s life. So one thing I am trying to learn from conferences like this is how do we try to make a world in which this does not happen. We are given this opportunity to have a conversation about norms, and about consent, and about the fact that

everybody is entitled to a world in which consenting to one thing does not mean they consent to something else. How do we get to that world, how much does the law play a role in that, how much should technology be playing a role in that? But I think the most haunting question for me is why don't most people care enough make sure this becomes a priority?

DUNN: I am going to talk about campus-based activism taking it from the campus level and bringing it national. I myself am a survivor. I ended up having to fight the system that didn't protect me. I filed a Title IX complaint, but the United States Department of Education said, "Your school actually didn't do anything wrong." I just gave up until 2010 when a journalist decided to investigate and I decided to be very public about everything I went through. As a result, in 2011, the Vice President and the United States Department of Education worked together to improve Title IX. They came out with a very strong guidance saying, "You cannot do this to victims any more" and "We are not going to rubber stamp what you do any more." To me it was justice. Since then, I have tried to improve the laws. I know a lot of people have talked about getting past legal systems, well I believe that if there is a structure that is oppressive you must change that structure.

I am going to quickly talk about the laws. We are going to talk a little bit about Title IX and the Clery Act. Title IX prevents sex-based discrimination. It was originally passed in 1972 to make sure that women were not kept out of professional schools, but over time the United States Supreme Court said, "Whoa, it is not just sex discrimination that keeps women out of institutions, once women are there if you are harassing them or abusing them or if you are making them do sexual favors or feeling threatened to even be there, that is sex discrimination." There is also a guidance called "The Dear Colleague Letter" ("DCL"). I put up information on KNOW YOUR IX,¹³ which is an amazing student-based organization that took all the law and all the details and broke it down simple and easy.

Another law is the Clery Act. I always want to start with talking about who it is named after—Jeanne Clery. She was raped and murdered in her dorm room by a fellow student back when college crime was never talked about. Because of the work of Jeanne's family, campus crime is now reported. Campuses have an independent responsibility to report campus crime, and this is important, since a lot of campuses have their own police forces. Over time the Clery Act expanded to require education. Campuses had to talk about sexual assaults and rape and make sure that people know that there is a process for reporting and what your rights are as a victim. It also requires timely warnings. When The

¹³ KNOW YOUR IX, *About Know Your IX*, <http://knowyourix.org/about-ky9/>.

Virginia Tech shooting happened, there were no timely warning and the university got fined. People's lives would have been saved had students known that there was an ongoing risk. Timely warnings are actually part of Clery Act. If there is an ongoing risk, people must be made aware.

Finally, the most recent law the Campus SAVE Act in the 2013 Violence Against Women Act Reauthorization expanded all these Clery Act requirements, to require reporting beyond sexual assault to recognize the spectrum of gender violence: domestic violence, stalking, and dating violence. It made the requirements for education on sexual assault more explicit. Universities have to talk about bystander intervention and consent. They must have ongoing education for staff, students, and everyone. It also improved rights; making sure that if survivors use the process it is an equal and fair process. That is just a brief overview of those two laws. There is a lot more detail to them. Go to KNOW YOUR IX's website, because they have it in a simple format.

So let's talk a little bit about activism. The IX Network organized a protest at the United States Department of Education, armed with over a 100,000 signatures from survivors across the country who flew in and mobilized together. We wanted proactive enforcement. We told the Department, "Do not wait for survivors to know their rights. When you know that there is a problem, you see that report in the media, you come in yourself." We also wanted timely investigations. My complaint took two years to investigate, and I know someone whose took 4 years. We also wanted transparency. No one knows how many Title IX complaints have been filed. Nobody knows where they are in the process. Lastly, we wanted guidance on cultural competency. We do not talk about same sex violence; we do not talk about LGBTQ violence. We had those survivors saying, "Campuses do not recognize violence against me and this needs to change." So that IX Network protest demands were adopted by the President is very empowering.

I will describe some areas of activism both on the campus and the National level. On Campus we are not seeing policies that address every aspect of gender violence. It is very much stuck in the heterosexual norm. Policies also need to be simple and accessible. You can let people know about their rights. Get faculty involved. We have had more and more faculty start putting information on their syllabi or having discussions in their class raising awareness. At the national level, help us protest the United States Department of Education. As much as we are working with the President, we are very much critical. To date, *no one has ever* been sanctioned by the Department of Education. There have been zero consequences after all these Title IX complaints. We are also looking at how we can work with military academies. Right now Title IX specifically does not apply to military academies. This occurred because

military was a sexist organization and they were allowed to discriminate, but well now they are not. So why doesn't Title IX apply? That's the next step in our movement is to combine that effort.

In Clery activism there are lots of critiques of Clery. One problem is that universities only have to report crimes if they learn about them, which gives campuses an incentive to not learn about them. So right now there is a push to have victimization surveys. You have to know all the crimes that are happening on campus, and then you can compare the number with the ones that were reported. That gap in between is your culture; that is what you have to change.

TRANSCRIPT[°]

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE SYMPOSIUM:

Panel on Social Justice Pedagogy and Academy-Community Collaboration

UNIVERSITY OF MIAMI SCHOOL OF LAW

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GONZALEZ-GUARDA: Good morning everyone. Thank you so much for the opportunity to be here. My name is Rosa Gonzalez-Guarda. I am an Assistant Professor here at the University of Miami School of

[°] This transcript has been edited from its original transcription for clarity.

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[†] Original remarks from the CONVERGE! conference omitted. Professor Deborah M. Weissman's remarks were redacted as she contributed to the following article: Deborah M. Weissman, *Rethinking a New Domestic Violence Pedagogy*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 635 (2015).

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Nursing and Health Studies. I think it is also important for you to know my background. My background is in nursing and if any of you are close to a nurse, you understand that nurses go into nursing because they really want to be next to their patients. They want to be at their bedside providing the best care for them. And so one of the things I would like to do is break the stereotype that research separates you from the patient. I see research and being in this role in an academic institution as giving me an opportunity to become closer to patients, understanding their needs and the type of care they need, and developing interventions that are going to be more effective. I have had the wonderful fortune to have great mentors who have introduced me to wonderful community partners that I have the pleasure, honor, and privilege of working with. I want to thank Etiony Aldarondo who married us, who put us together in matching some of our interests and needs and resources. And I will hand this over to Ivon who can introduce herself.

MESA: Hi, good morning to all of you. My name is Ivon Mesa and I am the Director of the Violence Prevention and Intervention Division of Miami-Dade County. It is a pleasure for me to be here. I also feel the same way Dr. Rosa Guarda does in that I feel that the fact that we were able to meet and work together through Dr. Aldarondo has really made an impact on the programs that I oversee for the County. I think we have found that we have a perfect marriage because we can work with each other. I have elements that she needs and she has elements that I need, so basically it is a win-win situation for both entities. Miami-Dade County opened what is known as a Family Justice Center. The Family Justice Center that we have here in Miami is called the Coordinated Victim Assistance Center ("CVAC"), which is the only Family Justice Center in the state of Florida. CVAC is a one-stop center where victims of domestic violence, sexual assault, and human trafficking can come with their dependents and receive wraparound services. We have gathered professionals from different types of disciplines including therapists, attorneys, nurses, psychologists, among others. We conducted a community assessment among the service providers and clients and came up with some ideal partners that we should have at the Center. We have thirty five on-site partners that come on a periodic basis to provide services to the clients. Instead of having to go to twenty different places, a victim can come to only one place and develop a relationship with the Center, have a specific advocate assigned to her, and be connected with all these on-site partners.

I am big on conducting surveys and always trying to find out what it is that our victims are missing and with that information, I go out and find whatever services are needed. CVAC services range from financial literacy classes to self-defense classes to yoga classes. One of

our newest partners is the Cuban American Bar Association (“CABA”) who assists with mortgage foreclosure defense.

GONZALEZ-GUARDA: The processes that Ivon described she uses to bring together the partners at CVAC are processes we used to bring together partnerships to address prevention of domestic violence and its consequences through evidence based solutions, and we define evidence based very broadly. We came together in 2009.

The model we used for the project is really a circular model, as opposed to linear one. At the very beginning of this partnership is community engagement and community engagement occurred at various levels. First, there was community engagement between the academic and the community partner. There was also community engagement with the victims or the general population that we want to serve. There was also community engagement with the service providers and other leaders and experts in the field. After we did that, we conducted a formal community assessment to assess what the needs, opportunities, strengths and preferences were for domestic violence prevention. We looked specifically at the Hispanic community, but since then we have expanded to assess the needs of other communities in Miami-Dade County. Based on that assessment, we identified some priority areas for action. This process entailed us presenting our preliminary results of the community assessment to the community and having the community identify priorities from those results. So, for example, in our community assessment we found that there were a number of priority targeted groups that the community wanted to address including immigrant women, adolescents, and the elderly. We presented our findings in a community forum and asked the community to rank their priorities. The community prioritized addressing youth in the area of dating violence prevention. So we moved into developing a culturally tailored program for Hispanic adolescents, their families, and the school personnel where they went to school that addressed dating violence prevention. Right now that program is called JOVEN¹ and we are currently evaluating the effects of that program to see if there is any evidence of it working or not. The ultimate idea in our partnership is to create some solutions, programs, and strategies that could be disseminated to other communities or to other specific populations with similar issues.

We have developed five projects, focused on different areas, moving from identifying issues to address, to trying to address those issues, and then evaluate. We are going to talk briefly about two examples of this

¹ See JOVEN (JUNTOS OPUESTOS A LA VIOLENCIA ENTRE NOVIOS/TOGETHER AGAINST DATING VIOLENCE), www.miami.edu/sonhs/index.php/elcentro/research/studies/joven/ (last visited May 22, 2015).

partnership. One of the projects that resulted was funded by the Robert Wood Johnson Foundation. We are developing, implementing, and evaluating a dating violence prevention program in a local high school here in Miami-Dade County. Ivon is going to talk about another initiative funded by an Office of Violence Against Women grant.

MESA: Last year the Office of Violence Against Women created a new category of revenue for service providers that is geared towards reducing domestic violence homicides. The Miami-Dade County Community Action and Human Services Department applied for a grant and we received funding to evaluate the practices that we are utilizing here in Miami-Dade County. OVW proposed that we utilize two different models. One is called a Domestic Violence High Risk Team and the other one is called a Lethality Assessment Program. The domestic violence hybrid model is a model that is geared towards creating a multidisciplinary review panel that will be the decision making group that will be speaking directly to a victim of domestic violence who is facing a certain level of danger. If we receive the additional funding, we will be able to have that type of program here in Miami. In other words, we will have a roundtable that will include all kind of disciplines—from the court system, from the mental health system, from the legal standpoint, from immigration, from the Department of Children and Families. These individuals will be able to assist the victim and if the victim has a situation that she has not been able to overcome, these individuals will be able to help her do that. We also have another model which is the Lethality Assessment model. This is more of a law enforcement model. We will be told in September if Miami-Dade County will receive the second part of this grant. If we do receive the grant, we will be getting approximately \$600,000 to implement these two models.

GONZALEZ-GUARDA: One of the wonderful things, I think, about this project is that traditionally grant money has been given to academic institutions for research and evaluation and the academics then reach out to the community partners for partnership. In this case, the community partners were asked to reach out to an academic in the local community to partner with them. It is a great example of how when we are talking about community-academic partnerships, we need to look at the systemic issues that have been a theme in the CONVERGE! conference. One of the systemic issues that facilitate or hinder academic-community partnerships is that the grant mechanisms for funding are not equitable between academic and community systems. So, I think that is an issue that we need to address as we try to promote and facilitate more academic-community partnerships.

Rethinking a New Domestic Violence Pedagogy

Deborah M. Weissman*

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I. INTRODUCTION

It has been several decades since a cohort of academics and advocates have articulated their concerns about the emerging patterns of response to gender-based violence that failed to serve adequately the needs of communities of color, the poor, immigrants, the disabled, and LGBTQ persons. The question of why the criminal justice system fails to work for many victims of domestic violence has been raised by many thoughtful scholars.¹ Most commonly, Blacks, Latino/as, and poor people from communities with a history of abusive encounters with the criminal justice system are often loathe to seek criminal remedies.² Undocumented immigrants who are victims of domestic violence are likewise disinclined to expose their immigration status by contacting the

¹ See generally Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991) (noting that women of color choose not to call the police for fear of suffering the reaction of a hostile police force); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 852 (2001) (noting that African-American women, Latinas, and poor women have difficulty in obtaining an adequate police response due to unequal treatment by the police); Angela Davis, *The Color of Violence Against Women*, COLORLINES NEWS FOR ACTION (Oct. 10, 2000, 12:00 AM) http://colorlines.com/archives/2000/10/the_color_of_violence_against_women.html (observing that criminalization process identified with domestic violence responses “further bolsters the racism of the courts and prisons”); Barbara Fedders, *Lobbying for Mandatory-Arrest Policies: Race, Class, and the Politics of the Battered Women’s Movement*, 23 N.Y.U. REV. L. & SOC. CHANGE 281, 287 (1997) (describing the process of essentializing battered women across race and class lines); Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 23 (2004); Adele M. Morrison, *Changing The Domestic Violence (Dis)Course: Moving From White Victim to Multicultural Survivor*, 39 U.C. DAVIS L. REV. 1063, 1090–91 (2006) (noting the ways in which “strained relationships between the law and communities of color” disadvantages battered women of color); Adele M. Morrison, *Queering Domestic Violence to “Straighten Out” Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law’s Conventional Responses to Domestic Violence*, 13 S. CAL. REV. L. & WOMEN’S STUD. 81, 138 (2003) (noting that the criminal justice system “impose[s] heteronormative sexist demands on lesbians”); Doug Jones, *Domestic Violence Against Women With Disabilities: A Feminist Legal Theory Analysis*, 2 FLA. A & M U. L. REV. 207, 224 (2007) (describing challenges that domestic violence victims who are disabled face when dealing with law enforcement); see also ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 185–86 (2000); BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE AND AMERICA’S PRISON NATION 2 (2013) (critiquing the “white feminist anti-violence movement . . . that argued gender inequality was the main factor that motivated violence against women—almost to the exclusion of other factors.”).

² Crenshaw, *supra* note 1, at 1257.

police.³ Lesbians, gay men, and transgendered victims of battery may similarly fear discriminatory treatment by police, prosecutors, and the courts, and hence are disinclined to endure the harsh treatment and sensationalism frequently visited on same-sex couples.⁴ Much ink has been spilled acknowledging the intersectionality of oppressions that battered persons experience.⁵

Social justice advocates have observed that domestic violence law reform has resulted in an expanded oppressive police presence that “decimate[s] poor communities and communities of color,” increased the rate of incarceration, and further impaired the ability of communities to develop internal means of social control.⁶ Recently, advocates for trafficking victims have assailed the routinely circulated and unsubstantiated claims made by law enforcement warning of a surge in sex trafficking during the Super Bowl as fear-mongering and justification for increased policing to the detriment of victims.⁷ The resort to arrests, prosecution, and punishment as a means to respond to domestic violence has largely ignored the problem of racism and abusive practices emblematic of the criminal justice system.

In fact, many anti-gender violence activists have distanced themselves from the criminal justice system, if not the legal system generally.⁸ They have questioned the efficacy of domestic violence programs, many of which have developed into apolitical service delivery

³ See Leslye E. Orloff et al., *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13 UCLA WOMEN’S L.J. 43, 68, 77–79 (2005) (noting that this is particularly true if they are dependent on the abuser for their lawful residency or if she likely willing to risk deportation of the abuser if he is similarly undocumented and they have children together).

⁴ See generally Lisi Lord et al., *Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence*, 29 FORDHAM URB. L.J. 121 (2001).

⁵ Crenshaw, *supra* note 1, at 1257.

⁶ *Safety and Justice for All: Examining the Relationship Between the Women’s Anti-Violence Movement and the Criminal Legal System*, MS. FOUNDATION FOR WOMEN, 1, 15 (2003), available at http://files.praxisinternational.org/safety_justice.pdf [hereinafter *Safety and Justice*].

⁷ Kate Mogulescu, Op-Ed., *The Super Bowl and Sex Trafficking*, N.Y. TIMES, Feb. 1, 2014, at A23 (including the fact that such hyped up policing actually harms victims of sex trafficking).

⁸ There is a rich debate among scholars and activists about whether to “divest” from or “dismantle” the criminal justice system, that is to say, whether the anti-domestic violence movement should abandon advocacy within or about the criminal justice system. This essay does not address that debate, except to note that the likelihood is that the phenomenon of domestic violence will be associated with criminal law for the foreseeable future. See Goodmark, *supra* note 1, at 23 (observing the dangers of the legal system for women); *Safety and Justice*, *supra* note 6.

models unmoored from social justice movements.⁹ At the same time, some have sought to encourage new models of prevention, remedy, and relief in order to counter over (or any) reliance on the state. New genres of justice—restorative, transformative, and therapeutic—have made their way into the realms of advocacy as alternative methods to end the epidemic of intimate partner violence. Some activists have established domestic violence programs to serve the needs of communities marginalized by difference and who may not readily fit the “prototype” beneficiary of shelter and other domestic violence-related services.¹⁰

This essay seeks to contribute to the rethinking of paradigms of responses to domestic violence. It argues for the need to reconsider the pedagogy of domestic violence and expand the curricular content and advocacy skills as a matter of domestic violence law, that is, to reconsider what legal skills and knowledge are required of the “domestic violence bar.” The obligation to restructure domestic violence law curricula serves to address the failure of domestic violence lawyers to join with civil rights groups who have engaged in legal challenges to some of the most onerous practices related to the criminal justice system—practices that diminish the usefulness of such system for victims of gender-based violence.

In keeping with social justice principles that were and ought to remain the core of domestic violence work, advocates must contest the oppressive nature of the criminal justice system, most notably to challenge biased and punitive police and prosecutorial practices. They must develop expertise in those civil rights laws that provide protections to battered persons who are denied access to domestic violence-related programs and services because of discriminatory practices.

Law teachers and lawyers must go beyond identifying barriers that prevent recourse to legal remedies for victims of gender-based violence. They must commit to new forms of legal advocacy beyond domestic law “per se” but are nonetheless inextricably related to making such laws meaningful and useful. In other words, domestic violence advocates must act to dismantle identified barriers that prevent victims of domestic

⁹ *Safety and Justice*, *supra* note 6; see *Transformative Justice*, GENERATION FIVE, <http://www.generationfive.org/the-issue/transformative-justice/> (last visited May 22, 2015).

¹⁰ See, e.g., Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Domestic Violence Against Marginalized Women in Diverse Communities*, 11 VIOLENCE AGAINST WOMEN 38, 49–50 (2005) (describing the emergence of South Asian women’s organizations that can comfortably address the intersecting oppressions experienced by South Asian victims of domestic violence).

violence from seeking remedies and services in ways that shift the paradigm of what it means to “do” domestic violence law.

This essay focuses on particular strategies by which to redirect domestic violence law practice, without which the now well-developed critique about the barriers to legal remedies will be rendered ineffectual. It argues that domestic violence law must incorporate challenges to racist and exclusionary practices that occur both within and beyond the context of specific incidents of gender-based violence. Lawyers concerned with mitigating domestic violence are obligated to contest such rights violations regardless of whether they are committed by the state or nonprofit organizations. Domestic violence lawyers should include in their arsenal of legal tools, legal strategies to end racial profiling and challenge the failure of the courts as well as domestic violence programs to comply with the Americans with Disability Act, Title VI, and other civil rights laws. When victims of domestic violence are excluded from or otherwise treated discriminatorily at shelter programs because of practices that violate their civil rights, domestic violence lawyers must be disposed to redress such grievances.¹¹ Law students and lawyers planning to practice domestic violence law must become experts in these fields, in addition to developing a thorough foundation in the basic field of domestic violence law.

II. ANTI-RACIAL PROFILING LITIGATION AND CAMPAIGNS

Civil rights activists have often condemned law enforcement and criminal justice practices illegal and the ensuring consequences on communities of color and poor people. This section focuses on recent developments related to racial profiling and argues that attention to these issues is appropriate for domestic violence courses.¹² It contends, further, that domestic violence lawyers should develop familiarity with such subjects and develop the skills necessary to litigate or support litigation to end racist law enforcement practices. Domestic violence advocates have long observed that discriminatory policing practices act to discourage minority victims from seeking remedy from the criminal

¹¹ Lisa M. Martinson, *An Analysis Of Racism And Resources for African-American Female Victims of Domestic Violence in Wisconsin*, 16 WIS. WOMEN'S L.J. 259, 269–70 (2001); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 54 (1998).

¹² Patrice A. Fulcher, *Hustle And Flow: Prison Privatization Fueling the Prison Industrial Complex*, 51 WASHBURN L.J. 589, 596 n.59 (2012) (racial profiling refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion, or national origin).

justice system.¹³ Yet commenting on racist practices and their consequences, without acting to dismantle them may be insufficient. Domestic violence advocates are needed to contribute to this task.

In recent years, there have been noteworthy efforts to challenge racial profiling. These initiatives include litigation as well as legislative initiatives. An examination of these developments serves to illuminate critical themes that underscore the need to expand the scope of domestic violence law. Examples of current legal challenges to racial profiling demonstrate the failure of domestic violence advocates to join in coalition efforts to contest “the racially disparate exercise of police discretion in the decision to stop, investigate and arrest individuals.”¹⁴ Domestic violence groups have been absent from these coalitions and have failed to participate in legal challenges notwithstanding the barriers they present to the client community they assist. Legal instruction in order to “skill up” on these issues is needed and should be introduced in law school domestic violence courses as the ensemble of lawyering skills domestic violence attorneys must develop.

A. Domestic Violence, Racial Profiling, Genetic Privacy, and the DNA Fingerprint Act

The 1994 Violence Against Women’s Act (VAWA), a landmark piece of legislation has been recognized as the most comprehensive federal effort to address gender-based crimes. It is, however, possessed of a history that has linked it to the “crime-and- punishment” paradigm. VAWA was originally enacted as Title IV of the Violent Crime Control and Law Enforcement Act and part of an Omnibus Crime bill,¹⁵ the largest crime bill in United States history,¹⁶ described by some scholars as “draconian.”¹⁷ The purpose of the 2000 VAWA reauthorization was to strengthen prosecutorial tools and add new domestic violence-related crimes even while including important new remedies for immigrant

¹³ Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN’S L.J. 303, 323 (2005).

¹⁴ Trevor Gardner II & Aarti Kohli, CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY & DIVERSITY, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* (2009), available at www.law.berkeley.edu/files/policybrief_irving_FINA_L.pdf (defining domestic violence).

¹⁵ Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1902 (1994).

¹⁶ Mayte Santacruz Benavidez, *Learning from the Recent Interpretation of INA Section 245(a): Factors to Consider When Interpreting Immigration LAW*, 96 CAL. L. REV. 1603, 1605 (2008).

¹⁷ Marie Gottschalk, *Dismantling the Carceral State: The Future Of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1721 (2006).

victims.¹⁸ The 2005 Violence Against Women Act reauthorization bill once again introduced additional law enforcement tools, including the DNA Fingerprint Act (the Act), described as a “stunning extension of government power.”¹⁹ Scholars observed that the Act would have particular implications for poor men and especially men of color who are likely to be disproportionately “catalogued” as a result of wrongful intrusion by the state.²⁰

In 2008, as the federal government sought to promulgate regulations for the implementation of the Act, civil rights groups mobilized in opposition. The Center on Constitutional Rights (CCR), concerned that implementation of this law would “have a dramatic impact on communities of color and further the assault on the rights of immigrants” called for Congressional hearings on the law which had been added to the VAWA reauthorization without prior legislative deliberations.²¹ The CCR also argued that the DNA collected private and sensitive information well beyond the scope of fingerprints, and that the collection of such materials, including from persons determined to be innocent, would allow for abuse of genetic privacy and exacerbate existing racial disparities in the system.²²

Advocates had the opportunity to litigate these issues in a case that ultimately went before the U.S Supreme Court. In *Maryland v. King* the Court was asked to consider whether the states could require individuals in police custody who were not yet convicted to give DNA samples to law enforcement without violating their Fourth Amendment rights to be free from unreasonable search and seizure.²³ Maryland law enforcement took a DNA sample from the defendant, Alonzo J. King, Jr. upon his arrested for felony assault although they did not require DNA to connect

¹⁸ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, § 1513(a), 114 Stat. 1464, 1533 (2000); 42 U.S.C. § 3796gg-7 (2013) (identifying funding for training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women).

¹⁹ Dorothy Roberts, *Collateral Consequences, Genetic Surveillance, and the New Biopolitics of Race*, 54 How. L.J. 567, 571–72 (2011).

²⁰ See *Safety and Justice*, *supra* note 6, at 13.

²¹ Press Release, Center for Constitutional Rights, New Database Threatens Privacy, Targets Immigrants, People of Color and Peaceful Demonstrators (May 19, 2008); *Oppose a Sweeping New Federal DNA Database! Say NO to the DNA Fingerprint Act!*, CNTR. FOR CONST. RIGHTS, <http://ccrjustice.org/get-involved/action/oppose-sweeping-new-federal-dna-database!-say-no-dna-fingerprint-act!> (last visited May 22, 2015) [hereinafter *Oppose a Sweeping New Federal DNA Database!*].

²² See *Oppose a Sweeping New Federal DNA Database!*, *supra* note 21.

²³ *Maryland v. King*, 133 S. Ct. 1958 (2012).

him to the assault charge.²⁴ The sample was then matched to an unsolved 2003 rape for which King was then charged and convicted.²⁵ The case garnered widespread national attention and implicated more than half of the states' statutory schemes as well as the federal DNA act.²⁶ In fact, during oral arguments, Justice Alito observed that the Court would be deciding "perhaps the most important criminal procedure case that [the] Court has heard in decades."²⁷

Amicus briefs were filed by a score of civil rights groups, public defenders, electronic privacy and technical experts, geneticists, and a veteran's organization, all of which challenged the constitutionality of the law.²⁸ These groups identified compelling concerns regarding the DNA fingerprint statute on its face and as applied. The consortium of amici argued that the capture and analysis of DNA materials from an individual who has been arrested, but not convicted, including cases where a district attorney determined there were insufficient grounds to proceed with a prosecution, violated the Fourth Amendment.²⁹ They further argued that these sorts of identification policies that appear to be neutral on their face have been used disproportionately as investigatory tools against minority populations and are otherwise implemented in racially biased manner.³⁰ They cited to studies demonstrating the depth of information contained in DNA samples that endanger the privacy of

²⁴ Brandon L. Garrett & Erin Murphy, *Too Much Information*, THE SLATE GROUP, (Feb. 12, 2013, 8:22 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2013/02/dna_collection_at_the_supreme_court_maryland_v_king.html.

²⁵ *King*, 133 S. Ct. at 1966.

²⁶ Keagan D. Buchanan, *The Twenty-First Century Fingerprint, Previewing Maryland v. King*, 4 CALIF. L. REV. 38, 39 (Apr. 2013) (observing that *Maryland v. King* has gained widespread national media attention).

²⁷ Martinson, *supra* note 11, at 39.

²⁸ The following amici curiae briefs were filed in *Maryland v. King*, 133 S. Ct. 1958 (2013). Brief of Amici Curiae Am. Civil Liberties Union et al. Supporting Respondent, 2013 WL 476702; Brief for the Howard Univ. Sch. of Law Civil Rights Clinic as Amicus Curiae in Support of Respondent, 2013 WL 417725; Brief of Amicus Curiae Pub. Defender Serv. For D.C. in Support of Respondent, 2013 WL 417726; Brief for the Nat'l Ass'n of Fed. Defenders as Amicus Curiae Supporting Respondent, 2013 WL 417727; Brief for Veterans for Common Sense as Amicus Curiae Supporting Respondent, 2013 WL 432944; Brief of Amici Curiae Elec. Privacy Info. Ctr. And Twenty-Six Technical Experts and Legal Scholars in Support of Respondent, 2013 WL 432946; Brief of Council for Responsible Genetics as Amicus Curiae in Support of Respondent, 2013 WL 432947; Brief for the Nat'l Ass'n of Criminal Defense Lawyers as Amicus Curiae Supporting Respondent, 2013 WL 432948; Brief of 14 Scholars of Forensic Evidence as Amici Curiae Supporting Respondent, 2013 WL 476046; Brief of Amicus Curiae Elec. Frontier Foundation in Support of Respondent, 2013 WL 476047.

²⁹ See e.g., Brief of Amici Curiae Am. Civil Liberties Union et al. Supporting Respondent, *supra* note 28, at 3.

³⁰ See Brief for the Howard Univ. Sch. of Law Civil Rights Clinic as Amicus Curiae in Support of Respondent, *supra* note 28, at 3-4, 18-26.

individuals beyond those who are arrested, the misuse of DNA samples for non-law enforcement purposes, and especially studies that reveal racial disparities in DNA data banks.³¹ Concerns were expressed also that the statute could provide an incentive for pretextual and race-based stops, arrests for the purpose of DNA sampling, and would otherwise infringe on civil liberties.³² In sum, opposition to the DNA fingerprint statute served to identify many of the very concerns that marginalized victims of domestic violence have expressed as to why they refuse to avail themselves of criminal justice-related remedies.

Domestic violence and sexual assault organizations did in fact participate in the Supreme Court litigation as *amicus*.³³ Their appearance in the case, however, was to argue for upholding the statute. The roster of amicus agencies are limited to state-based organizations and “federally recognized state sexual assault coalitions” but do not include domestic violence programs that focus on serving particular racial or ethnic identity-based groups.³⁴ These agencies aligned with amici representing law enforcement agencies, district attorneys’ offices, and a host of crime victim-related organizations.³⁵ The amicus brief submitted by domestic violence and sexual assault groups offers alarming data about rape

³¹ The following amici curiae briefs were filed in support of the respondent in *Maryland v. King*: Brief of Amici Curiae Am. Civil Liberties Union et al. Supporting Respondent, American Civil Liberties Union, ACLU of Maryland, and ACLU of Northern California, Brief of Amici Curiae, *supra* note 28; Electronic Privacy Information Center and Twenty-Six Technical Experts and Legal Scholars in Support of Respondent; Brief of 14 Scholars of Forensic Evidence as Amici Curiae Supporting Respondent, *supra* note 28, at 9. Other concerns relate to the fact that the DNA samples will be kept indefinitely, and not related to the profiles developed by law enforcement; see Valerie Ross, *Forget Fingerprints, Law Enforcement DNA Databases Poised To Expand*, PBS (Jan. 2, 2014) <http://www.pbs.org/wgbh/nova/next/body/dna-databases/>.

³² Brief of Amici Curiae Elec. Privacy Info. Ctr. and Twenty-Six Technical Experts and Legal Scholars in Support of Respondent, *supra* note 28, at 10.

³³ Brief for Amici Curiae Md. Coal. Against Sexual Assault in Support of Petitioner, *supra* note 28.

³⁴ *Id.*

³⁵ The following amici curiae briefs were filed in *Maryland v. King*, 133 S. Ct. 1958 (2013) [hereinafter *Amici Curiae Briefs*]: Brief Of Md. Chiefs Of Police Ass’n, Inc. et al. as Amici Curiae in Support Of Petitioner, 2013 WL 179942; Brief for the United States As Amicus Curiae Supporting Petitioner, 2013 WL 50686; Brief for the Md. Crime Victims’ Res. Ctr. Inc. et al. in Support of Petitioner, 2013 WL 51933; Amicus Curiae Brief in Support of Petitioner, the State of Md., By the L.A. Cnty. Dist. Attorney on Behalf of L.A. Cnty., 2013 WL 51935; Brief for Amici Curiae DNA Saves, Bring BRI Justice Found., Keep Ga. Safe, The Rape, Abuse & Incest Nat’l Network, and The Surviving Parent Coal. in Support of Petitioner, 2013 WL 51936; Brief of the Nat’l Governors Ass’n et al. as Amici Curiae in Support of Petitioner, 2013 WL 51937; Brief of Susana Martinez, Governor of the State of N.M., as Amicus Curiae in Support of Petitioner, 2013 WL 98696; Brief of Amicus Curiae Nat’l Dist. Attorneys Ass’n in Support of Petitioner, 2013 WL 6762584.

statistics and sexual assault sequelae and note that “[r]ape victim/survivors are in a singular position to provide critical evidence (the DNA of their attackers) to assist the State in solving crime, prosecuting rapists, and preventing the rape of other citizens.”³⁶ They argued that the State’s interest in solving crimes outweighed privacy concerns, and that the accumulation of DNA data would not only solve crimes but would help prevent them.³⁷ More particularly, they observed that “solving crimes ‘helps bring closure to countless victims of crime who long have languished in the knowledge that perpetrators remain at large,’” and reminded the court that rape victims bear excruciating invasions of privacy by virtue of sexual assault exams alone.³⁸

There is, to be sure, no gainsaying that domestic violence and sexual assault amici have a compelling argument that DNA evidence facilitates rape prosecutions. The anecdotal information provided details the horrendous acts of perpetrators and the permanent scars borne by victims, their families, and communities and serves to demonstrate the particular difficulties with rape prosecutions, not the least of which may be related to gender-bias.³⁹ Indeed, four years of legislative hearings in support of the enactment of the now defunct 1994 Domestic Violence Civil Rights Act demonstrated the revictimization of rape victims during rape prosecutions.⁴⁰ Nor would there be much of a basis to challenge their position if King’s DNA sample was taken after his conviction for the felony assault charge.⁴¹ However, domestic violence and sexual assault amici failed to address, as experts have noted, that “[p]utting DNA from arrestees into databanks also exposes more innocent people to the risk of false accusation or conviction” and further, that “cross-contamination and accidental sample switches have occurred in labs across the country.”⁴² Perhaps more significantly, nowhere in their brief, did the domestic violence and sexual assault agencies address the “as applied aspect” of the statute. They did not express any concerns about

³⁶ *Amici Curiae Briefs*, *supra* note 35.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; see also Deborah M. Weissman, *Gender-Based Violence As Judicial Anomaly: Between “The Truly National and the Truly Local*, 42 B.C. L. REV. 1081, 1091–93 (2001) (reviewing the 1994 VAWA legislative history documenting abusive criminal justice practices visited upon women who were victims of gender-based crime).

⁴⁰ *Amici Curiae Briefs*, *supra* note 35; see also Weissman, *supra* note 39.

⁴¹ Brandon L. Garrett & Erin Murphy, *Too Much Information*, THE SLATE GROUP, (Feb. 12, 2013, 8:22 AM), http://www.slate.com/articles/news_and_politics/jurisprudence/2013/02/dna_collection_at_the_supreme_court_maryland_v_king.html (observing that courts have all upheld the collection of DNA from felons on the ground that convicts forfeit some of their privacy rights).

⁴² *Id.*

the well-documented problem of racial profiling practices or advocate for the law to be implemented in a racially neutral way, although they could have done so without weakening their position in support of upholding the statute.⁴³

Ultimately, the Court upheld the Maryland statute, notwithstanding the widespread opposition of a broad cross-section of interests and entities that raised issues about the “vast genetic treasure map” embedded in a DNA swab and the fact that DNA samples would be disproportionately wrested from poor people of color. The Court’s dissent warned that the decision violated Fourth Amendment rights: “[m]ake no mistake about it: As an entirely predictable consequence of today’s decision, your DNA can be taken and entered into a national DNA database if you are ever arrested, rightly or wrongly, and for whatever reason.”⁴⁴ Moreover, as observed by Professor Alan Michaels, the decision in *Maryland v. King* was issued the very same day as the release of a report that found that “all else equal African-Americans are four times as likely as whites to be arrested for marijuana,” an irony that can only contribute to concerns relating to the racist impact of the Court’s decision.⁴⁵

As a result of the Court’s decision, more and more states have enacted DNA capture statutes and along with the federal DNA statute, the volume of samples sent to DNA data bases has expanded so dramatically that law enforcement are unable to make timely use of the information.⁴⁶ As one researcher put it, “[i]f you’re arrested for having a dog off a leash in a federal park, you have to give a sample,”⁴⁷ suggesting that as a result of the increasing promulgation of DNA statutes, the number of collected samples is likely to increase, further complicating the claims of DNA capture proponents that the statute will help solve crimes. Beyond the questionable efficacy of their claims, the domestic violence and sexual assault groups that failed to address the racist application of the DNA statute have undermined their very goal, that is, to assist *all* victims in making use of the criminal justice system

⁴³ With regard to the usefulness of DNA in determining guilt or innocence, a recent report found that DNA results were diminishing as a source of exonerations suggesting the need to reconsider how useful a tool it may be. See Timothy Williams, *Study Puts Exonerations at Record Level in U.S.*, N.Y. TIMES, Feb. 4, 2014, at A12.

⁴⁴ *Maryland v. King*, 133 S. Ct. 1958 (2013) (Scalia, J. dissenting).

⁴⁵ See Douglas A. Berman, *Some More Thoughtful Thoughts About DNA Collection and Maryland v. King*, SENTENCING LAW AND POLICY (June 6, 2013, 9:53 AM) http://sentencing.typepad.com/sentencing_law_and_policy/2013/06/some-more-thoughts-on-dna-collection-and-maryland-v-king.html.

⁴⁶ Ross, *supra* note 31; Garrett & Murphy, *supra* note 41.

⁴⁷ *Id.* (observing that courts have all upheld the collection of DNA from felons on the ground that convicts forfeit some of their privacy rights).

as a means for preventing and remedying gender-based violence. Just as importantly, the divide between civil rights groups on the one side of this case, and mainstream domestic violence and sexual assault programs on the other is emblematic of a larger crisis facing the anti-domestic violence movement.⁴⁸

B. Domestic Violence Advocacy, Racial Profiling, and “Stop and Frisk”

Studies have demonstrated the adverse consequences attending racial profiling, particularly on communities of color.⁴⁹ The Center on Constitutional Rights examined the ever expanding and aggressive stop-and-frisk police practices, and through a series of interviews documented “widespread civil and human rights abuses, including illegal profiling, improper arrests, inappropriate touching, sexual harassment, humiliation and violence at the hands of police officers.”⁵⁰ The report concluded that “[t]he effects of these abuses can be devastating and often leave behind lasting emotional, psychological, social, and economic harm.”⁵¹

Individuals and communities targeted by stop and frisk practices report that they are “living under siege” in neighborhoods where “police have borrowed from military tactics” as a mode to patrol the streets.⁵² Rather than benefit from police protection, many residents contend that they require protection from the police.⁵³

The nature of police abuse is also often gendered. Women, especially transgender women and sex workers are frequent targets of stop and frisk practices, and often suffer sexual and physical assault by police deploying these tactics.⁵⁴ Notwithstanding the fact that as a result of stop and frisk practices, domestic violence victims within the targeted communities are unable or unwilling to call the police for assistance when they are being battered by an intimate partner, the domestic

⁴⁸ See e.g., Evan Stark, *Insults, Injury, and Injustice: Rethinking State Intervention in Domestic Violence Cases*, 10 VIOLENCE AGAINST WOMEN 1302, 1305 (2004) (noting that domestic violence advocates have been alienated from “potential allies in other facets of the justice struggle”).

⁴⁹ N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK REPORT 2011, 2 (2012) available at http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf; CNTR. FOR CONST. RIGHTS, STOP AND FRISK: THE HUMAN IMPACT (2012) available at <http://stopandfrisk.org/the-human-impact-report.pdf>.

⁵⁰ STOP AND FRISK: THE HUMAN IMPACT, *supra* note 49, at 1.

⁵¹ *Id.*

⁵² *Id.* at 19–20.

⁵³ *Id.* at 20.

⁵⁴ *Id.* at 12; see Hope Lewis, “Culturing” Survival: Afro-Caribbean Migrant Culture and the Human Rights of Women Under Globalization, 93 AM. SOC’Y INT’L L. PROC. 374 (1999).

violence community has yet to fully engage with other civil rights groups to put an end to these unlawful police tactics.

1. Litigation

In March 2012, New York residents and organizations concerned with ongoing abusive police practices filed a class action entitled *Ligon v. City of New York* against New York City.⁵⁵ The suit challenged “Operation Clean Halls” a program that authorized the New York City police department (NYPD) to patrol thousands of private apartment buildings across the city.⁵⁶ Plaintiffs argued that the NYPD engaged in unconstitutional stops, abusive and pretextual questioning, searches, wrongful citations, and unlawful arrest policies.

Operation Clean Halls was implemented in New York buildings where residents were disproportionately Black and Latino. Tenants and their visitors were regularly stopped, interrogated, frisked or fully searched, detained, and arrested upon entering or exiting a building, while checking their mail, or taking out garbage, notwithstanding the lack of any individualized suspicion pertaining to their behavior or presence. The complaint alleged that the New York “stop and frisk” program had “significant disparate impact on Blacks and Latinos in their enjoyment of housing and in their receipt of municipal services connected with housing as compared to whites.”⁵⁷ These policies, the plaintiffs argued, violated the United States and New York Constitutions, the Fair Housing Act, and New York common law.⁵⁸ The suit was successful. A federal court enjoined the city from further implementation of the program, finding, among other points, that the police were “deliberately indifferent to the discriminatory application of stop and frisk.”⁵⁹

Ligon was one of three cases together with *Floyd v. City of New York* and *Davis v. City of New York* that challenged NYPD’s stop and frisk policies and alleged racial profiling through federal court litigation.⁶⁰ The three lawsuits had the support of Communities United for Police Reform (CUPR), a coalition organization that, as observed by the *New York Times*, has “strong ties in communities throughout the city” and

⁵⁵ Complaint at 6, *Ligon v. City of New York*, 925 F. Supp. 2d 478 (S.D.N.Y. 2013) (No. 12 Civ. 2274).

⁵⁶ *Id.*

⁵⁷ *Id.* at 4.

⁵⁸ *Id.*

⁵⁹ *Ligon v. City of New York*, 925 F. Supp. 2d 478 (S.D.N.Y. 2013) (No. 12 Civ. 2274).

⁶⁰ See *Floyd v. City of New York*, 283 F.R.D. 153, 159 (S.D.N.Y. 2012); *Davis v. City of New York*, 902 F. Supp.2d 405 (S.D.N.Y.2012).

“successfully reframed the debate over stop-and-frisk policy.”⁶¹ At least twenty-four civil rights organizations comprised CUPR and along with thirty-nine additional organizational supporters, CUPR represented the broad and intersecting concerns of Blacks, Asians, Latino/as, Muslims, LGBTQs, working families fighting for social and economic justice, youth activists, immigrant rights groups, and health workers.⁶² With the exception of an organization called the Turning Point, a community based organization addressing the needs of Muslim women and children, no domestic violence or sexual assault organization had joined CUPR in the litigation effort to end racial profiling practices in the city of New York.

The *Ligon* and *Floyd* cases resulted in a favorable ruling by a federal court judge who found the New York defendants guilty of violating plaintiffs’ Fourth and Fourteenth Amendment rights.⁶³ The judge entered a permanent injunction and appointed an independent monitor to oversee implementation of the ordered reforms to police practices. Notably the court stated that the monitor was required to serve the interests of the stakeholders to the litigation, to work in consultation with the parties to effect the ruling, and to obtain community input, including holding “town hall” type meetings:

community input is perhaps an even more vital part of a sustainable remedy in this case. The communities most affected by the NYPD’s use of “stop and frisk” have a distinct perspective that is highly relevant to crafting effective reforms. No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety.⁶⁴

In January 2014, New York City’s mayor Bill de Blasio announced that agreement had been reached with plaintiffs’ lawyers and further agreed to forego appeal and stated that the city would implement the court’s ruling in *Ligon* and *Floyd*.⁶⁵

Vincent Warren, executive director of the Center for Constitutional Rights, and lawyer for the plaintiffs in *Floyd* stated, “[t]his is where the

⁶¹ J. David Goodman, *As Critics United, Stalled Battle Against Frisking Tactic Took Off*, N.Y. TIMES, Aug. 13, 2013, at A1.

⁶² *Campaign Members*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/campaign/intro-members> (last visited May 22, 2015).

⁶³ *Floyd*, 959 F. Supp. 2d at 671; *Ligon*, 925 F. Supp. 2d at 478.

⁶⁴ *Id.* at 686.

⁶⁵ Benjamin Weisner & Joseph Goldstein, *Mayor Says New York City Will Settle Suits on Stop-and-Frisk Tactics*, N.Y. TIMES, Jan. 30, 2014, at A1.

real work begins.”⁶⁶ These developments have created an important opportunity for coalition members to influence criminal justice reforms. Civil and human rights associations, community groups, labor organizations, and other allies who have appeared as amici and otherwise demonstrated their support for the challenges to the NYPD’s stop and frisk program the reform process will have the opportunity to shape the reforms and monitor their implementation.⁶⁷ At present, with the exception of Turning Point and its constituents, there is no indication that domestic violence and sexual assault advocates will participate in these important reform efforts. They will stand outside of collective action and thus undermine their own ability to be “catalysts of social change.”⁶⁸

2. Stop and Frisk Legislative Initiatives

In addition to litigation to challenge racist police practices, civil rights groups have engaged in other campaigns designed to combat discriminatory policing. At the federal and municipal level, legislative initiatives have been introduced to prohibit racial profiling and hold the police accountable for constitutional violations.⁶⁹ These proposals are designed to prohibit the use of profiling on the basis of race, ethnicity, national origin or religion by law enforcement agencies.⁷⁰ Such legislative initiatives benefit women in targeted communities who are victimized by racial profiling police practices in general. More specifically they benefit victims of domestic violence who are often unable or unwilling to seek law enforcement protection from agencies that racially profile, even when they are being assaulted by an intimate partner.

a. S. 1038, The Federal End Racial Profiling Act

The End Racial Profiling Act (ERPA) of 2013 seeks to prohibit law enforcement agents from employing racial profiling tools, and would

⁶⁶ *Id.*

⁶⁷ *Timeline: Floyd v. City of New York, Stop and Frisk: The Human Impact*, CNTR. FOR CONST. RIGHTS (July 2012) http://www.ccrjustice.org/files/Floyd_Timeline-20150204.pdf.

⁶⁸ Alan Greig, *Political Connections: Men, Gender, and Violence*, UNITED NATIONS INTERNATIONAL RESEARCH AND TRAINING INSTITUTE FOR THE ADVANCEMENT OF WOMEN (2002) <http://www.menstoppingviolence.org/docs/PartnersInChangepp1-37.pdf> (critiquing the failure of anti-domestic violence programs to contribute to meaningful change).

⁶⁹ See *The Community Safety Act: Legislation to Combat Discriminatory Policing and Hold the NYPD Accountable*, COMMUNITIES UNITED FOR POLICE REFORM, <http://change.thenypd.org/about-community-safety-act> (last visited May 22, 2015) (information on New York City’s Community Safety Act).

⁷⁰ End Racial Profiling Act, S. Res. 1038, 113th Cong. (2013) (enacted).

further authorize both the United States and individuals subjected to racial profiling the right to seek declaratory or injunctive relief.⁷¹ Federal law enforcement agencies would be required to develop appropriate policies and procedures to eliminate such practices.⁷² Governmental entities and law enforcement agencies seeking certain federal grants would be required to certify that they have adopted policies and procedures to eliminate racial profiling.⁷³ ERPA would also authorize the Department of Justice to support the collection of data relating to racial profiling and to issue regulations regarding data compilation for purposes of implementation of the Act.⁷⁴

Civil rights groups have uniformly supported the bill. The Leadership Conference on Civil and Human Rights was one of several groups to organize a campaign to support the federal End Racial Profiling Act of 2011 and served as an umbrella organization for community interests. An estimated sixty civil and human rights organizations signed in support of the Act in 2011, none of which included domestic violence or sexual assault groups.⁷⁵ In 2012, the campaign expanded to more than 120 national, state, and local organizations and included only one sexual assault group: the National Organization of Sisters of Color Ending Sexual Assault (SCESA). Notably, SCESA was formed to “address the multiple layers of discrimination that are faced by Women of Color and Communities of Color.”⁷⁶

In 2013, in the wake of the travesty of the Trayvon Martin murder, the ERPA was once again introduced; the campaign was reinvigorated and included approximately 140 organizations and in addition to SCESA, one additional group focused on youth dating violence joined in support.⁷⁷ No state domestic violence or sexual assault coalitions or other domestic violence program signed on to the campaign in support for ERPA.

⁷¹ Grieg, *supra* note 68.

⁷² End Racial Profiling Act, *supra* note 70.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Letter from The Leadership Conference on Civil and Human Rights, to the United States House of Representatives (Dec. 13, 2011) (Cosponsor the End Racial Profiling Act of 2011 H.R. 3618).

⁷⁶ *Who We Are*, THE NATIONAL ORGANIZATION OF SISTERS OF COLOR ENDING SEXUAL ASSAULT (SCESA), <http://sisterslead.org/who-are-we-oct-2014/> (last visited May 22, 2015) (the stated intention of the organization is to “reclaim our leadership and ensure inclusion of our experiences in systems-wide responses and social change initiatives related to sexual assault”).

⁷⁷ The Leadership Conference, *supra* note 75.

b. The Community Safety Act

In New York City, the CUPR has organized a campaign to support a “landmark police reform legislative package” known as the Community Safety Act (CSA) to prohibit racial profiling and other discriminatory police practices.⁷⁸ The campaign was a success; the law expanded the categories of persons protected from racial profiling to include, notably among other characteristics, gender, gender expression, gender identity, or sexual orientation.⁷⁹ It also established independent oversight of the NYPD.⁸⁰ Community organizing has continued to assure the successful implementation of the legislation.⁸¹

Like the federal ERPA Act, the CSA was unvaryingly supported by civil rights and community groups. At least 120 organizations have endorsed and promoted the legislation. The interests represented are broad by any description and include anti-racist organizations, religious groups, economic justice activists, immigrant support groups, health advocacy organizations, labor entities, housing and homelessness advocates, public defenders, legal aid, and more. Of these organizations, only three are involved with domestic violence-related issues: the Turning Point (focusing on Muslim women and girls), A CALL TO MEN, (focusing on domestic violence related education for men, boys) and Day One (focused on teen violence).⁸² No mainstream domestic violence or sexual assault coalitions added their names to support the legislation.

As others have noted, “[t]he centerpiece of the CSA [was] the creation of an Inspector General to monitor the NYPD, a proposal that shows not only the dire need for independent oversight and police accountability, but also, implicitly, the lack of public faith in the criminal court’s ability and willingness to fulfill that role.”⁸³ These concerns, of course, are relevant to victims of domestic violence who suffer police abuses, including racial profiling, as individuals harmed by intimate partner violence and as members of their community.⁸⁴ Yet, as with the

⁷⁸ *Support the Community Safety Act*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/sites/default/files/docs/Community%20Safety%20Act%20BASICS%209-2-2013.pdf> (last visited May 22, 2015).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Take Action: The Community Safety Act*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/take-action-community-safety-act> (last visited May 22, 2015).

⁸² *About the Community Safety Act*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/about-community-safety-act> (last visited Sep. 7, 2014).

⁸³ Steven Zeidman, *Whither the Criminal Court: Confronting Stops-and-Frisks*, 76 ALB. L. REV. 1182, 1208, n.127 (2013).

⁸⁴ See Alexandra Grant, *Intersectional Discrimination in U Visa Certification Denials: An Irremediable Violation of Equal Protection?* 3 COLUM. J. RACE & L. 253, 262 (2013).

consortium of amici, mainstream domestic violence programs and coalitions appear to have abdicated their obligation to oppose racist criminal justice practices and have foregone the opportunity to participate qua domestic violence entities to reform criminal justice mechanisms.⁸⁵ By leaving the task of eliminating racial profiling to others, they have failed to engage to stop racial profiling under the banner of anti-domestic violence and thereby improve domestic violence outcomes.

III. DISCRIMINATORY DOMESTIC VIOLENCE PROGRAM PRACTICES

A. *Exclusionary Practices; Discriminatory Impact*

Just as law enforcement practices have rendered the criminal justice system unavailable to many victims of domestic violence, so too have domestic violence programs excluded certain individuals from securing access to their services.⁸⁶ Not all victims of domestic violence are

(noting how immigrant women suffer a number of abusive police practices, from racial profiling to refusal to treat domestic violence seriously in the first place); see also Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent*, 32 B.C. J.L. & SOC. JUST. 185, 209 (2012) (noting concerns that immigrant victims of domestic violence may be subjected to racial profiling and as a consequence placed in removal proceedings).

⁸⁵ It can be assumed that individuals associated with civil rights groups that are involved in the ERPA campaign do anti-domestic violence work; however, no organizations identified with domestic violence other than as noted above have joined the coalition or campaign.

⁸⁶ Coker, *supra* note 1, at 848–49 (observing that some battered women’s organizations fail to assist women of color, ethnic minorities, and other marginalized women, and often fail to employ diverse staff); SUSAN SCHECTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT*, 271–81 (1982) (quoting a White woman who described the racism within the battered women’s movements: “Our idea of including women of color was to send out notices. We never came to the business table as equals. Women of color join us on our terms”); Martinson, *supra* note 11, at 269 (noting the discomfort that many African-American women experience due to the perception that “shelters and institutions established to help battered women are only for the needs of white women.”); Valerie B. et al., *Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence*, 29 FORDHAM URB. L.J. 121, 147 (2001) (describing the inability of many gay, lesbian, and transgender victims to access domestic violence shelters); Dena Hassounch & Nancy Glass, *The Influence of Gender Role Stereotyping on Women’s Experience of Female Same-Sex Intimate Partner Violence*, 14 VIOLENCE AGAINST WOMEN, 310, 318 (2008) (noting the discomfort and alienation experienced by LGBTQ victims in shelters); *Domestic Violence Programs and Women with Disabilities*, FPG CHILD DEVELOPMENT INSTITUTE, May 1, 2004, <http://projects.fpg.unc.edu/~images/pdfs/snapshots/nap15.pdf> (noting that programs failed to sufficiently accommodate the needs of persons with disabilities, choosing, instead to prioritize funding for “more general services”).

afforded equal access to program assistance.⁸⁷ Certainly, resource-starved programs continue to this condition; staff is underpaid and program stability often suffers from the uncertainty of philanthropy-driven budgets. Recent funding cuts, moreover, have resulted in a reduction of services.⁸⁸ But the issues of inadequate services involves more than resources. Discriminatory attitudes within some organizations have made it impossible for many victims to obtain services. Scholars have noted that African-American women face difficulties in obtaining domestic violence resources as a function of racism within the domestic violence movement.⁸⁹ As one scholar has observed, “[m]any domestic violence shelters in this country state that they are ‘colorblind.’ However, the codes of most shelters have been set by and for white women. Therefore, the statement, ‘we treat everyone the same’ in actuality can only mean ‘we treat everyone as though she or he is white.’”⁹⁰

Researchers have found that homophobia “has permeated the atmosphere in domestic violence services such as battered women’s shelters to such a degree that some women felt the need to keep their sexual orientation a secret.”⁹¹ LGBTQ victims often report that they feel vulnerable while in domestic violence shelters.⁹² They may be denied access to services on the basis that their presence will be “disruptive.”⁹³ Transgendered victims often have no access to shelters and have expressed concerns that they would be revictimized not only by residents but by staff as well.⁹⁴ Women with disabilities are similarly disinclined to use shelter services because of “the low level of access and awareness of disabled women’s needs within these communities.”⁹⁵ Domestic violence shelters often are not readily accessible to those with physical disabilities and lack the interests and/or the means to accommodate the needs of deaf or speech-impaired individuals.⁹⁶ In one survey in North Carolina, the shelter staff admitted that it prioritized services that would

⁸⁷ Child Development Institute, *supra* note 86.

⁸⁸ MARY KAY, MARY KAY TRUTH ABOUT ABUSE SURVEY REPORT (2012) *available at* <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>.

⁸⁹ Martinson, *supra* note 11, at 2.

⁹⁰ Shamita Das Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1379 (2002).

⁹¹ Hassounch & Glass, *supra* note 86, at 318.

⁹² *Id.*

⁹³ Shannon Little, *Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence*, 19 HASTINGS WOMEN’S L.J. 259 (2008).

⁹⁴ Valerie B. et al., *supra* note 4.

⁹⁵ Marsha Saxton et al., “Bring My Scooter So I Can Leave You”: A Study of Disabled Women Handling Abuse by Personal Assistance Providers, 7 VIOLENCE AGAINST WOMEN 393, 408 (2001).

⁹⁶ Jones, *supra* note 1, at 208.

not be available to women with disabilities because ‘they did not constitute a large proportion of their clients.’⁹⁷ In some circumstances, they may lack access to transportation by which to reach a shelter.⁹⁸

Non-English speakers are frequently disadvantaged and have criticized domestic violence programs for failing to provide linguistic adequate access to services and for the staff’s discriminatory and disrespectful attitudes.⁹⁹ Non-English speakers have been refused services in favor of English-speaking victims based on the belief of shelter staff that “English-speaking women will make better use of their services.”¹⁰⁰ Certain religious groups cannot avail themselves of shelter programs because food purchases and other rules do not provide accommodation for minority groups.¹⁰¹ Others have observed that some shelters invoke cultural differences to justify discriminatory practices, a claim that serves to “erase the racism of agencies and entities that fail to provide appropriate services to battered women by hiring diverse staff who speak relevant languages or translate materials.”¹⁰²

IV. NEED TO REVISE DOMESTIC VIOLENCE CURRICULUM AND EXPAND LEGAL SKILLS

A. Racism, the Criminal Justice System and the Domestic Violence Curriculum

The issues addressed above are of significant legal concern and bear directly on the ability of victims of gender-based violence to use the criminal justice system. Short of completely turning away from state remedies, domestic violence advocates must gain more than passing familiarity with the legal issues that bear on unconstitutional criminal justice practices so that they might offer support to civil rights groups addressing these matters.

⁹⁷ Child Development Institute, *supra* note 86.

⁹⁸ See e.g., Vicki Smith, *New State Transportation Plan Fails to Help People With Disabilities*, NC POL’Y WATCH, Feb. 5, 2014, <http://www.ncpolicywatch.com/2014/02/05/new-state-transportation-plan-fails-to-include-people-with-disabilities/>.

⁹⁹ Gina Szeto, *The Asian American Domestic Violence Movement*, in DOMESTIC VIOLENCE LAW 115, 117 (4th ed. 2013) (noting that non-English speaking victims have been assumed to be liars simply because they are misunderstood or unable to communicate with shelter staff).

¹⁰⁰ *Id.*; see also Michelle Decasas, *Protecting Hispanic Women: The Inadequacy Of Domestic Violence Policy*, 24 CHICANO–LATINO L. REV. 56 (2003).

¹⁰¹ Nooria Faizi, *Domestic Violence in the Muslim Community*, 10 TEX. J. OF WOMEN & L. 209 (2001); Stacey A. Guthartz, *Domestic Violence and the Jewish Community* 11 MICH. J. OF GENDER & L. 27 (2004).

¹⁰² Leti Volpp, *On Culture, Difference, and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 393, 398 (2003).

For teachers of domestic violence law, this implies the need to include readings and transition-to-practice exercises that fall within the realm of Fourth Amendment doctrine and Supreme Court jurisprudence, including search and seizure and privacy concerns, and related civil rights statutes. In order to teach these issues within context, a law teacher might assign as readings the Supreme Court briefs of the parties filed in cases that address the issues of concern to domestic violence victims. Students could select one brief and review those issues that fall outside of the realm of traditional domestic violence law, engage in moot court-style discussions, and tie the constitutional and criminal justice issues to domestic violence concerns.

Domestic violence professors might supplement their own assignments and lectures with guest speakers with expertise in constitutional and civil rights law. Students could be introduced to practicing law sources and other practice guides, which provide regularly updated treatises and forms on civil rights matters. Teachers could stream podcasts of oral arguments before the Supreme Court.

Similarly lawyers practicing domestic violence should incorporate continuing legal education programs that would enable them to engage in or otherwise support litigation or legislative campaigns of the sort described above. They can observe, second-chair, and co-counsel in civil rights matters as a means to developing the skill set necessary to represent the interests of victims of gender-based violence. These skills will also help them to counsel clients who are desirous of engaging the legal system to obtain relief from domestic violence but are unable to make use of legal remedies because of the oppressive nature of the criminal justice system.

These suggestions are offered as a way to consider how best to close the gap between critique and action. They must be further developed through dialogue and debate about how to reframe our understanding of domestic violence law. These recommendations do not imply the supplanting of traditional domestic violence law curricula or the body of domestic violence law as it is presently understood. However, without supplementing students' and lawyer's knowledge about matters that will allow them to participate with other civil rights organizations to challenge discriminatory practices, domestic violence law will be constrained and relegated to a politics that has strayed far from its origins.¹⁰³ To state it otherwise, by expanding the type of legal claims and issues associated with domestic violence law, advocates can reconstruct a socio-legal reality and integrate domestic violence law

¹⁰³ See Deborah M. Weissman, *The Personal Is Political-And Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 393 (2007).

within the broader themes of social justice. By redefining the contours of domestic violence law, teachers may also shift from the dominant of domestic violence as one of perpetrator and victim to include a fuller understanding of its structural circumstances.¹⁰⁴ Perhaps most importantly, this approach allows for the possibility that domestic violence clients have meaningful options to make use of the criminal justice system.

B. Domestic Violence Law: Including the Legal Tools to Address Discrimination in Services.

Education and non-legal advocacy would best serve the domestic violence community as a means to obtain compliance with non-discrimination laws applicable to domestic violence programs. Most programs receive federal funding, and as public accommodations are subject to the requirements of federal statutes and regulations that prohibit discrimination based race, national origin, religion, disability, and most recently, sexual orientation.¹⁰⁵ These entities thus have an affirmative obligation to assure equal access to services.

Domestic violence law courses could provide the legal foundation about these legal obligations to enable domestic violence lawyers to advise domestic violence programs and to bring suit as may be necessary to ensure non-discrimination. The curriculum should include class instruction on Title VI of the Civil Rights Act of 1964, including statutory provisions, regulations, relevant Executive Orders¹⁰⁶ the Americans with Disability Act,¹⁰⁷ and their state counterparts. The Department of Justice hosts legal materials related to Title VI obligations¹⁰⁸ and videos that provide a basic overview with examples of

¹⁰⁴ *Id.* at 411–24.

¹⁰⁵ The Civil Rights Act of 1964, 28 C.F.R. § 42.104(b); *see also* Deborah A. Morgan, *Access Denied: Barriers to Remedies Under the Violence Against Women Act for Limited English Proficient Battered Immigrant Women* 54 AM. U. L. REV. 485, 500(2004) (observing that victims denied a challenge to a domestic violence shelter that received federal funding for failing to provide linguistic access and translated materials); Act to Reauthorize the Violence Against Women Act of 1994, Pub. L. No. 113-4 (2013) (The 2013 reauthorization of the Violence Against Women Act recently prohibited discrimination based on sexual orientation).

¹⁰⁶ 42 U.S.C. §§ 2000d-2000d-7 (2006) (The Act authorizes federal agencies to implement Title VI by issuing their own rules and regulations); *see also* Exec. Order No. 13,166, 3 C.F.R. § 13166 (2000).

¹⁰⁷ 42 U.S.C. §§ 12101-12213 (2006).

¹⁰⁸ *See Overview of Title VI of the Civil Rights Act of 1964*, U.S. DEP'T OF JUSTICE, July 30, 2014, <http://www.justice.gov/crt/about/cor/coord/titlevi.php>.

compliance concerns.¹⁰⁹ Similarly, the Department of Justice hosts website information and materials on the Americans with Disabilities Act with links to the statute and regulations.¹¹⁰ Other materials set forth ADA applicability and obligations of public and private attorneys.¹¹¹ Students should develop familiarity with federal and state standards regarding linguistic access, and gain practical skills with regard to working with foreign language interpreters.¹¹² They should be cognizant of issues in their localities that deny disabled people access to transportation.¹¹³ Concerns with regard to litigating these issues, notwithstanding, domestic violence advocates are obliged to consider such strategies when shelter programs and other service providers refuse to change their discriminatory practices.¹¹⁴ Litigation practice should be included in the overview of instruction.

The aforementioned course materials are clearly not a complete list of resources with regard to the nondiscrimination obligations of domestic violence programs. They are not meant to subsume the traditional domestic violence curriculum nor will they alone provide sufficient training to produce legal experts in particular civil rights matters. But such a shift begins the process of informing civil rights strategies on behalf of victims of gender-based violence and creates the possibility to end discriminatory practices that deny victims access to publicly funded and otherwise necessary services. Domestic violence lawyers have some obligation to eradicate the obstacles to meaningful legal assistance that have been repeatedly described in the literature, if not in their own lawyer-client meetings. Without efforts to engage in strategies to accomplish those goals, the concern that victims are unable to access services and legal intervention will remain empty rhetoric.

¹⁰⁹ See *Understanding and Abiding by Title VI of the Civil Rights Act of 1964*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/crt/pressroom/videos.php?group=1> (last visited May 22, 2015).

¹¹⁰ See *Technical Assistance on the Americans with Disabilities Act*, ADA.GOV, http://www.ada.gov/2010_regs.htm (last visited May 22, 2015).

¹¹¹ See *Lawyers and Legal Services*, NAT'L ASS'N FOR THE DEAF, <http://www.nad.org/issues/justice/lawyers-and-legal-services> (last visited May 22, 2015).

¹¹² See, e.g., *Language Access Services*, THE NORTH CAROLINA COURT SYSTEM, <http://www.nccourts.org/LanguageAccess/Default.asp> (last visited May 22, 2015).

¹¹³ *Id.*

¹¹⁴ See, e.g., Press Release, Gay & Lesbian Advocates & Defenders, *Gay Domestic Violence Survivor, Denied Reconstructive Surgery, Charges R.O.S.E. Fund with Discrimination* (Oct. 8, 2013); Smith, *supra* note 98 (describing a suit filed against an organization established to help survivors for discrimination in regard to services for a gay man).

V. CONCLUSION

A recent United States Supreme Court case demonstrates the multiple challenges facing the domestic violence movement and the intersecting complexities at issue in the realm of domestic violence law. In *United States v. Castleman*, the Court was asked to interpret a federal law that makes it a crime for people convicted of domestic violence to possess guns.¹¹⁵ At issue in the case was a broad reading of the term “misdemeanor crime of domestic violence.”¹¹⁶ A group of domestic violence advocates filed amicus briefs supporting such a broad reading in an effort to assure that “anybody who has been convicted of a misdemeanor crime of ‘domestic violence’ would be prohibited from possessing a firearm.”¹¹⁷ They noted the abundance of evidence that demonstrates “the extreme—and extremely dangerous—role that firearms play in domestic violence matters.”¹¹⁸ They did not, however, acknowledge the impact such a broad ruling would have on immigrants, including immigrant survivors of domestic violence who are often, albeit wrongfully, convicted of misdemeanor domestic violence crimes and who would face an increased risk of deportation as a result of the recharacterization of misdemeanor domestic violence offenses. Organizations representing immigrant victims of gender-based violence, however, did raise such concerns in their amicus brief.¹¹⁹ These groups argued that such a broad definition “could have profound effects on immigration law” and would “hurt immigrant domestic violence survivors who get swept into the criminal justice system, as well as their family members, and stifle the vital reporting of domestic abuse.”¹²⁰

In a decision described as a “sweeping ruling on domestic violence”¹²¹ the Court concluded that domestic violence encompassed acts “that one might not characterize as ‘violent’ in a nondomestic context, and included ‘seemingly minor acts.’”¹²² However, the Court, in a footnote, expressly declared that such convictions *should not* qualify as domestic violence convictions for immigration purposes.¹²³ Experts following the case attribute the Court’s attention to the immigration

¹¹⁵ *United States v. Castleman*, 134 S. Ct. 1405 (2014).

¹¹⁶ *Id.* at 1406.

¹¹⁷ Brief for the National Network to End Domestic Violence et al., as Amici Curiae Supporting Petitioner at 3, *United States v. Castleman*, 134 S. Ct. 1405 (2014).

¹¹⁸ *Id.* at 1.

¹¹⁹ Brief for ASISTA Immigration Assistance et al., as Amici Curiae Supporting Respondent at 6, *United States v. Castleman*, 134 S. Ct. 1405 (2014).

¹²⁰ *Id.* at 5.

¹²¹ Adam Liptak, *Sweeping Ruling on Domestic Violence*, N.Y. TIMES, Mar. 27, 2014 at A19.

¹²² *Castleman*, 134 S. Ct. at 1405.

¹²³ *Id.* at 1411, n.4.

consequences to the arguments offered by the immigrant rights organizations.¹²⁴

Castleman reveals the anomalies confronting domestic violence advocates who sought to prohibit gun possession by convicted domestic violence perpetrators. Yet without considering the unintended consequences affecting immigrant women, they risked furthering legal developments that would have prevented such women from seeking legal remedy. Domestic violence advocates must take under consideration these challenges as circumstances will so frequently warrant. That is to say, they must endeavor to contribute to a movement that does not deny the needs and interests of disadvantaged and marginalized women.

Gender violence, and especially violence against women, will not obtain ready mitigation within the context of a criminal justice system where the poor, racial, ethnic, and national minorities are disproportionately targeted as suspected criminals. As Beth Richie has observed, “[m]ost successful movements for social change have relied in part on legal and legislative initiatives, through which laws are changed and public policies are reformed with the goal of bringing the legislative power of the state to force change,” and use these strategies “side-by-side with activist-oriented activities designed to radically change the society and its institutions.”¹²⁵ Much of the domestic violence movement, however, has evolved into a conservative “law-and-order” approaches, principally demands that for expanded law enforcement strategies, increased punishment, and emphasis on individual offenders rather than structural sources of violence.¹²⁶ Attention to remedying institutional inequality, racism, and other disparate government practices have been absent from anti-domestic violence litigation and legislative campaigns.

The consequences of the domestic violence movement’s “reform” strategies has resulted in the isolation of domestic violence groups from grander efforts to transform the carceral state, and discriminatory program services that function as a form of “cultural violence” leaving those excluded “disproportionately vulnerable to abuse.”¹²⁷ The imperative to expand domestic violence law to include legal interventions that challenge discriminatory practices thus should be self-evident. Without a broader understanding and enhanced legal skills by

¹²⁴ National Immigration Project correspondence on file with author.

¹²⁵ RICHIE, *supra* note 1, at 77.

¹²⁶ *Id.* at 88, 97.

¹²⁷ *Id.* at 95–96 (explaining how the failure to attend to the issues affecting marginalized women have contributed to their worsening circumstances); Janette Taylor, *No Resting Place: African American Women at the Crossroads of Violence*, 11 VIOLENCE AGAINST WOMEN 1473, 1480–81 (2005) (describing racist treatment of African-American women by domestic violence service programs).

which to address the abuses of the criminal justice system and discriminatory service providers, poor and marginalized women will continue to be unwilling or unable to seek state-sponsored interventions.

CONVERGEing Around the Study of Gender Violence: The Gender Violence Clinic at the University of Maryland Carey School of Law

Leigh Goodmark*

The Gender Violence Clinic at the University of Maryland Francis King Carey School of Law recently received a referral from a legal services provider in Baltimore. The client seeking assistance was a transgender woman who was prohibited from using a women's restroom in a restaurant. I asked my students whether we should take the case. The key question, of course, is whether this case involves gender violence.

My students thought about the question for a moment and then responded yes. The case involves gender, they explained, because it revolves around the client's gender identity.¹ While no physical violence occurred, the deep emotional pain and humiliation that the denial of access to the restroom caused the client certainly qualified as emotional and psychological violence. The students concluded that we should take the case.

* Professor of Law, University of Maryland Francis King Carey School of Law. My thanks to my CONVERGE! co-chairs, Donna Coker and Marcia Olivo, for making me part of the most enriching and thought-provoking conference I have ever attended, and to my wonderful students, for the dedication and compassion you show for our clients. Thanks to Cameron Connah for editing assistance. All mistakes are, of course, mine. Professor Goodmark participated in several of the panels at the CONVERGE! conference and co-authored the following article as an introduction to the CONVERGE! issue: Donna Coker, Leigh Goodmark & Marcia Olivo, *Introduction: CONVERGE! Reimagining the Movement to End Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 249 (2015).

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¹ Gender identity "refers to one's internal sense of being male, female, both, or neither." Benjamin L. Jerner, *Culturally Competent Representation*, in *TRANSGENDER FAMILY LAW: A GUIDE TO EFFECTIVE ADVOCACY* (Jennifer L. Levi & Elizabeth E. Monnin-Browder eds., 2012).

When I got the opportunity to start a new clinic in 2013, I thought hard about the kind of work that I wanted to do. I had been working with students for the last ten years in a general family law clinic, where we took all kinds of family law cases, with a particular focus on intimate partner abuse. Frankly, I was bored with family law. But more importantly, in thinking and writing about and practicing domestic violence law for the last twenty years, I had become increasingly concerned about the ways in which gender violence was siloed. I was an expert in domestic violence who knew almost nothing about other forms of violence against women, like rape and trafficking. Moreover, I had not thought deeply about the ways in which larger structural factors, like economic inequality or the hyper-incarceration of both men and women of color, contributed to various forms of gender violence.² I had done some work with lesbian, gay, bisexual, and transgender (“LGBT”) clients, but had not incorporated violence and discrimination other than intimate partner abuse against those communities into my teaching. Starting this clinic gave my students and me an opportunity to move beyond the silos, to look at the places where gender and violence intersect, and to consider the cumulative impact of multiple intersecting forms of violence and abuse on our clients.

To determine where gender and violence are intersecting (for the purpose of deciding what materials to teach and which clients to represent), it is important to define terms. For the Gender Violence Clinic’s purposes, gender is implicated whenever the legal system is acting, or refusing to act, in part as a result of the client’s gender, or when the client’s gender has some impact on the case or on the circumstances leading to the legal system’s intervention. Gender is also at issue when the social harm that requires remedying turns, in part or entirely, on a gender hierarchy or gender-related privilege or oppression.³

Violence is a trickier term. During CONVERGE!⁴, I was asked why I started a *gender violence* clinic, rather than, for example, a *gender*

² Caroline Bettinger-Lopez et al., *VAWA Is Not Enough: Academics Speak Out About VAWA*, FEMINIST LAW PROFESSORS (Feb. 27, 2012), <http://www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/> (discussing, inter alia, how economic inequality and mass incarceration lead to higher rates of domestic violence).

³ Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553 (2009) (linking gender violence to “gendered social arrangements”). My thanks to Donna Coker for articulating the definition that I adopted for the Gender Violence Clinic at the University of Maryland Carey School of Law.

⁴ For more information regarding CONVERGE! Reimagining the Movement to End Gender Violence, please visit <http://www.law.miami.edu/academics/converge/>. To explore full issue of articles and transcripts of panels on CONVERGE! please visit Volume 5 Issue 2 at <http://race-and-social-justice-review.law.miami.edu/>.

justice clinic. It is a fair question. Over the last few years, I have begun to talk about intimate partner abuse rather than domestic violence, recognizing that the term “domestic violence” is limiting both in its conception of the sphere in which abuse occurs and in the assumption that the word “violence” means physical violence.⁵ Many of the speakers at CONVERGE! discussed the importance of reframing, of using language that better conveys our mission and concerns.⁶ I share that inclination. But I have also come to believe in the importance of reclaiming violence. Expanding the scope of the word violence rather than abandoning it could help to underscore the reality that violence is more than just the physical—and more than that which is captured by the law. The Gender Violence Clinic’s goal is to identify the various kinds of violence our clients endure and the injuries (physical, emotional, economic, and otherwise) that result from that violence and to help the client achieve some form of justice. We do not always succeed in finding justice through law; sometimes the violence our clients experience is not recognized by the law and sometimes the law turns a blind eye to their plight. One student, for example, worked with an undocumented client for a year trying desperately to find some way to help her secure legal immigration status, but ultimately found that despite the woman’s suffering, there was no legal basis for a claim. I have had to tell several clients who were victims of cyberabuse that no law currently exists to protect them from various forms of abuse, including the online posting of intimate photos. But even in cases like these, where we cannot provide legal redress, we can provide the client with the knowledge that we have listened, that we care about the injury that has been done, and that we have sought a remedy—and sometimes the validation we can give is sufficient.⁷

⁵ See LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 40–45 (2012).

⁶ Professors Julie Goldscheid and Margaret Johnson both discussed the importance of reframing and of using language at CONVERGE! Professor Goldscheid argued for the reframing of “violence against women” as “gender violence,” and Professor Johnson argued for the reconsideration of safety as security. See Margaret Johnson et al., *Panel on Intersections of Gender, Economic, Racial, and Indigenous (In) Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 357 (2015); Julie Goldscheid, *Gender Neutrality and the “Violence Against Women” Frame*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 307 (2015).

⁷ Leigh Goodmark, *Law and Justice Are Not Always the Same*, 42 FLA. ST. U. L. REV. (forthcoming 2015). One client who we were not able to assist wrote, “I had one of your best student [sic] who took me with consideration, patience and understanding. I wished we had a success story, but I know you did your best, and time will come.” Anonymous Client, Gender Violence Clinic, University of Maryland Carey School of Law, in Baltimore, Md.

The scope of the Gender Violence Clinic's work is quite broad.⁸ Students might find themselves handling cases involving domestic violence; sexual assault; discrimination and violence against LGBT individuals; trafficking; and hyper-incarceration.⁹ Students have worked on domestic violence protective and peace orders, divorces, custody cases, Violence Against Women Act self-petitions,¹⁰ U visa and T visa applications for undocumented people subjected to abuse,¹¹ asylum claims, parole or commutation requests, expunging arrests and convictions for clients whose abusive partners used the criminal system against them, and petitions to the public accommodations commission. We might someday tackle cases involving vacating convictions related to being sex trafficked, landlord/tenant matters, employment issues, or consumer debt. Our only requirement for taking a case is that the matter involves both gender and violence in some way. In addition to litigation, students are engaged in legislative advocacy, testifying on behalf of bills that would forbid the shackling of pregnant inmates,¹² for example, or that would end Maryland's cooperation with immigration detainers, which have disastrous consequences for undocumented people subjected to intimate partner abuse.¹³ Students are also working on community

⁸ JoNel Newman, *Re-Conceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 FORDHAM URB. L.J. 1303 (2007) (discussing the advantages of a "generalist" clinical model).

⁹ We have represented only those clients who have been harmed or negatively affected in some way by gender violence. Although our only requirement for case selection is that gender and violence be involved, there are other considerations in case selection. Those considerations include, but are not limited to, the complexity of the matter, the appropriateness of the matter for handling by student attorneys, and the potential costs associated with the case.

¹⁰ 8 U.S.C. § 1154(a)(1)(A)-(B) (2012) (enabling undocumented immigrant women subjected to abuse who are married to U.S. citizens or legal permanent residents to petition for legal status as a result of the abuse they have experienced without relying upon their abusive partners to petition on their behalf).

¹¹ 8 U.S.C. § 1101(a)(15)(U)(III) (2012) (providing undocumented victims of crime with temporary legal status in the U.S. so long as they are assisting law enforcement with investigation and prosecution of crimes); 8 U.S.C. § 1101(a)(15)(T) (2012) (creating T-visas to provide legal status to undocumented victims of trafficking).

¹² See generally H.B. 27, 2014 Leg., 434th Sess. (Md. 2014) (codified at 2014 Md. Laws Ch. 212 (H.B. 27)) (forbidding the shackling of inmates during labor and postpartum recovery).

¹³ Despite the work of a broad coalition, including students from the Gender Violence Clinic, the Maryland General Assembly refused to follow the several other states which have passed such legislation. See generally Sirene Shebaya, *Restoring Trust: How Immigration Detainers In Maryland Undermine Public Safety Through Unnecessary Enforcement*, ACLU OF MD. 11 (Nov. 19, 2013) http://www.aclu-md.org/uploaded_files/0000/0472/immigration_detainer_report.pdf (responding to "the negative impacts of local compliance with immigration detainer requests . . . a number of states, cities, and counties, including California, the District of Columbia, Connecticut, New Orleans, LA,

education projects, participating in trainings on intimate partner abuse in the LGBT communities, and working towards the passage of local government resolutions declaring freedom from domestic violence a fundamental human right.¹⁴

Expanding the Gender Violence Clinic's focus beyond domestic violence could potentially diminish its impact. Feminist academics worked for years to attempt to ensure that domestic violence was adequately represented in the law school curriculum, and many would argue that domestic violence in and of itself is sufficiently complex and multifaceted to deserve a dedicated clinic and curriculum. Some might argue that diluting the discipline of domestic violence by employing a broader gender violence frame could jeopardize those gains and undermine the legitimacy of domestic violence as a distinct field of study.¹⁵ While I am cognizant of those concerns, I believe that the benefits of deploying the wider lens that I have described far outweigh any possible negative consequences. In fact, breaking down the silos between various forms of gender violence could increase the legitimacy of each of those areas of study, spur more creative thinking as ideas are shared among specialists, and increase the pool of resources available to study all of these issues.

Students in the clinic learn about various forms of gender based violence and about how violence intersects and reinforces other forms of oppression. A transgender woman leaves her home country to escape violence and bigotry against transpeople, enters the United States without documentation, and is trafficked by the person she turns to for support once she arrives. A teenager joins a gang to give her the family she desperately wanted, is abused by her gang-member boyfriend, and becomes an accessory to a serious crime, leading to a crushing jail sentence. Moreover, students see how structural factors like economics

Newark, NJ, New York City, NY, and Champaign County, IL have enacted laws or policies eliminating or strictly limiting their entanglement with ICE detainees").

¹⁴ Following the Inter-American Commission on Human Rights' decision in *Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011), law clinics across the country, led by the University of Cincinnati School of Law, worked with local legislatures to enact resolutions recognizing the Commission's finding that freedom from domestic violence is a fundamental human right. To date, twelve cities and counties, including Baltimore, have passed such resolutions. *See also* University of Miami School of Law Human Rights Clinic and Columbia Law School Human Rights Clinic, *Recognizing Freedom From Domestic Violence as a Fundamental Human Right: Local Resolutions Across the United States* (August 14, 2014), <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf> (listing resolutions from the nine cities and counties across the United States recognizing freedom from domestic violence as a fundamental human right).

¹⁵ My thanks to Donna Coker for this observation.

affect the choices their clients make when they encounter women who beg judges not to incarcerate the men who they depend upon for economic survival, even as those same women acknowledge that the violence done to them was severe and should be criminally punished. Intersectionality comes to life in our cases.¹⁶ Students come to understand that the interplay of personal and structural factors has a profound impact on the choices our clients are able to make to address the violence in their lives.

I have not previously worked with clients on many of the legal issues that we confront in our clinic. During the first year of the Gender Violence Clinic, for example, we handled an expungement, a U visa case, and a complaint before the Baltimore City Human Relations Commission—none of which I had ever done before starting the Clinic. In many ways, that makes me a more effective clinical teacher than when I was teaching the Family Law Clinic after handling family law cases for the last twenty years. Students resent clinical instructors when they believe that we are “hiding the ball.”¹⁷ They assume that we have all of the answers to a question and are (maliciously and gleefully) withholding that information from them. In many of the cases litigated by the Gender Violence Clinic, however, my students and I are starting from essentially the same position—we do not know the law in the area and we have not done this kind of case before. The students have come to understand that lawyers do not have all the answers—they just know how to find them. My students learn that lesson not just because I tell them so all the time, but because they see me looking for the answers right beside them.

The seminar component of the Gender Violence Clinic follows the progression of a case involving issues of domestic violence, trafficking, and sexual assault.¹⁸ The students first meet Brenda Robards (a simulated client played by a former clinic student) when she is considering her options after her boyfriend, Andre Jones, has kicked in the locked door to their bathroom and threatened to kill her if she ever locks a door against

¹⁶ Intersectionality is the study of the ways in which different forms of oppression are interconnected and the notion that they cannot be examined separately from one another. The concept first came from legal scholar Kimberlé Crenshaw in 1989. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). See also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

¹⁷ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 162 (1994).

¹⁸ The basic structure for the clinic seminar was adapted from the curriculum developed by Professor Margaret Johnson and from the Family Law Clinic at the University of Baltimore School of Law.

him again. Brenda has good reason to fear Andre; he has been physically and emotionally abusive to her in the past, once holding her at gunpoint for an hour before ordering her not to move from where she was sitting until he returned. Andre has also been controlling from the inception of their relationship, insisting that Brenda does not need to work because Andre can take care of both of them, buying Brenda a cell phone with which he tracks her movements, isolating Brenda from her friends and family, and pressuring Brenda to tattoo his name on her neck. In the initial client interview, students learn most of these facts, depending upon how well they craft their questions and identify and pursue the hints that Brenda drops. What only the most intrepid students learn, though, is that Brenda is pregnant. Andre has been selling Brenda to his friends for sex for some time, and Brenda does not know who the father of her child is. Brenda was hiding in that bathroom, in fact, because she did not want Andre to know she was experiencing morning sickness. Brenda is adamant that Andre not know about the pregnancy, at least until she has some sense of what her options are.

Over the next twelve weeks, the students will learn how to craft a case theory (in Brenda's case, as well as in their live client cases), how to tell a persuasive story, and how to find the facts to flesh out that story. Students counsel Brenda when, after receiving a temporary protective order that excludes Andre from their shared home, she finds herself without the means to pay her rent or buy food. The students are forced to struggle with the reality that in the short term, Brenda may be better off without the protective order and with Andre, who has promised to curtail his abusive behavior, back in the home, at least until she can find a job or some other source of income. Seminars focus on evidentiary issues and the basics of trial advocacy—opening statements, closing arguments, direct and cross examination. The simulation culminates in a protective order hearing based on a new allegation of abuse. During that hearing, half of the students are representing Andre; students learn how a change in perspective affects their lawyering. For the first time, Andre is fully represented, and the stories that Brenda and Andre tell about what happened in her apartment on the night in question are dramatically different. Lawyers for Brenda receive a memo detailing her account of the incident; lawyers for Andre receive his recollection, and the case is tried based on those facts. A retired Maryland state court judge presides over the trials, ruling at the end and sharing her insights about lawyering strategy and performance with the students.¹⁹

¹⁹ I offer my thanks to retired Baltimore City District Court Judge Nancy B. Shuger, as she provides the students with invaluable experience and advice in this role.

In both the seminar and in their individual representation of clients, the students are guided by the principles of client-centered lawyering.²⁰ Most clinics teach client-centered lawyering, which turns the traditional top down, lawyer/client dynamic on its head and instead posits an equal partnership between lawyer and client based on the skills and experiences each partner brings to the relationship.²¹ Client-centered lawyering recognizes that clients can best understand and assess the non-legal consequences of any option and stresses the importance of active collaboration between lawyers and clients to achieve client goals.²² Learning client-centered lawyering in the context of gender violence cases has particular challenges, however, as students are forced to question their closely held but largely unexamined beliefs about how people subjected to abuse should respond, what they should want, and what the legal system has to offer.²³ For example, students quickly find that while protective orders sound good in theory, they may be severely limited in practice: unavailable for certain forms of gender violence (like “upskirt” photos taken by strangers), restricted in the remedies they provide, particularly for clients who want to remain in their relationships, and available only when sometimes skeptical judges believe that they should be granted. The Gender Violence Clinic’s cases have offered similarly thorny questions. How does a client-centered lawyer counsel her client when her client wants to pay the bail for her abusive husband, but doing so could negatively affect the case that child protective services has brought against her for failing to protect her child from her husband’s abuse? When her client dismisses her protective order without informing the lawyer, then wants the lawyer to help her obtain a new order after the abuse resumes? When an undocumented trafficking client turns back to prostitution because it is the only work she can find? Helping clients to identify and evaluate options can be challenging in any type of case; it is certainly more challenging when the client takes an action with which the student disagrees on moral or ethical grounds or when the student fails to recognize the judgments and assumptions that are coloring option generation and evaluation.

²⁰ See generally DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012); see also Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J.L. & POL’Y 301 (2012) (describing the problems with using a client-centered approach in gender violence cases).

²¹ See BINDER ET AL., *supra* note 20, at 4.

²² *Id.* at 5.

²³ The students’ views mirror those found in society more generally. GOODMARK, *supra* note 5, at 81–83.

In addition to the weekly seminar, the Clinic meets each week to discuss a variety of issues during case rounds. Case rounds have been described as signature pedagogy of clinical legal education, providing a forum for students to work collaboratively with their peers to reflect on their work, explore professional identity, find support, and test lawyering theories.²⁴ Topics for case rounds range from specific issues in individual cases to larger systemic questions. Among the questions we have confronted this year: What is a lawyer's responsibility when a client decides she would rather lie to a government agency than admit to being abused? Is the criminal justice system the best way to address domestic violence? What are the commonalities and differences among the forms of violence that our clients experience?

Some students come to the clinic with a history of interest in and work on gender violence issues; others choose this clinic because it provides litigation experience but are less interested in the subject matter. Students leave with an understanding of various bodies of substantive law and exposure to a range of people and problems that they had not encountered before. Students come to understand both the importance of and the limits of the services they provide. As one student wrote of his experience:

[B]eing in law school and being raised in a well-off community kind of kept me in a bubble and prevented me from seeing how essential legal services can be to everyday people in Baltimore by directing the focus away from appellate decisions and focusing on the real people in our cases. The people we help have no way of paying for legal services but are in desperate need of them. Some of them are not only intimidated by the legal system, but would not have any legal recourse or legal assistance without our help. Given the nature of the clinic, our help will have significant impact on the outcomes and well-being of our client's lives. The clinic helped me step out of my safety bubble and see our clients as individuals rather than abstracts learned from a text book. It made me realize how important a legal education can be and how many people and legal fields are affected by gender violence.²⁵

²⁴ Susan Bryant & Elliott Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 206–07 (2007).

²⁵ E-mail from Shuoren Li, J.D., University of Maryland Francis King Carey School of Law (Mar. 31, 2014, 2:57 P.M.) (on file with author).

Students also begin to recognize the limitations of the legal system's response to gender based violence:

I see the system much more as a collection of individuals than ever before. The clinic helped me to understand that the legal process depends on many individuals, including clerks, judges, attorneys, clients, defendants. That means that the outcome of cases can be impossible to predict. It also means that mistakes happen, professionalism matters, and that as an attorney you have to stay on top of your cases at all times.²⁶

Finally, my students come to recognize the role that larger structural factors played in their cases, identifying power and economic instability as the two factors common to all of the forms of gender violence we see over the course of the semester.

The first year of the Gender Violence Clinic has exceeded my expectations. We have been able to secure protective orders for women subjected to physical and sexual abuse; sought immigration relief for clients who have been abused and trafficked; obtained sole custody for a mother whose child was sexually abused; worked with the client mentioned at the start of the article to seek an apology and damages from the restaurant that barred her from its bathroom, and been part of a successful legislative campaign. Student response to the clinic has been quite positive; as one student wrote, "The clinical experience really restored my faith in why I am becoming a lawyer . . . I really do feel like a completely different person having had this experience. I am now more empowered, dedicated and strong as a lawyer and a person and I will never forget this experience as the catalyst that really helped me along this path."²⁷ Over the next several years, the Clinic will continue to litigate cases in a broad array of fora and to work on legislation and other systemic advocacy projects. Moreover, the Gender Violence Clinic is situated on a university campus that is primarily dedicated to health sciences, which provides unique opportunities for cross-disciplinary partnerships. My hope is that the Gender Violence Clinic will develop partnerships with professors and students from the schools of Medicine, Dentistry, and Social Work, enabling the clinic to expand from providing holistic legal representation to those subjected to gender violence to providing holistic services more generally.

²⁶ E-mail from Lisa Piccinini, J.D., University of Maryland Francis King Carey School of Law (Mar. 26, 2014, 4:59 P.M.) (on file with author).

²⁷ Memorandum from Jessica Phillips, Third Year Law Student, University of Maryland Francis King Carey School of Law (April 14, 2014) (on file with author).

CONVERGE! focused on the ways in which our work to eradicate gender violence can create fundamental change in our communities. By helping the next generation of lawyers to understand the scope of gender based violence, the structural and intersectional factors that create and reinforce oppression, and the promise and limitations of the legal system's response to gender violence, the University of Maryland Carey School of Law's Gender Violence Clinic is educating sensitive and skilled professionals who will help make that change.

