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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

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C. Quince Hopkins
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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.

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[†] 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.dayoney.org/> (last visited May 21, 2015).

⁵ THE NORTHWEST NETWORK, <http://nwnetwork.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).