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## TRANSCRIPT<sup>o</sup>

### 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)<sup>\*†</sup>*  
*Angela Diaz-Vidaillet*  
*Alesha Durfee<sup>†</sup>*  
*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

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

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<sup>†</sup> 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,<sup>1</sup> 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

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<sup>1</sup> 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.