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## Symposium Transcript

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SYMPOSIUM TRANSCRIPT

## INTRODUCTION

**Dean Wendy Perdue:** Good morning, everyone um and welcome to the University of Richmond Public Interest Law Review's Symposium. It's wonderful to... see you so to speak uh and have you all here. This year the PILR symposium is focused on domestic violence um a topic of enormous importance here and around the world. The WHO estimates that one in three of all women are subjected to domestic violence at some point in their lives. At the same time domestic violence is among the most underreported crimes. So the topic of the domestic violence is a tale as old as time. Roman law gave husbands nearly limitless power over their wives including the authority to abuse or even kill them. That evolved uh into the rule of thumb in the 1820s and eventually the outlawing of wife beating. Notwithstanding, these changes in the law the phenomenon of intimate partner abuse continues. Our speakers today will explore this complex topic from a variety of perspectives. Solutions are not simple in this area and they're likely to be a number of uh good faith disagreements about the best path forward. But our best hope for progress comes from serious discussions like the one the Public Interest Law Review is hosting today. So I'm enormously proud of our PILR staff for putting this terrific program together. I hope you uh will learn a lot from this program and that it serves as a an important launching point for further discussions on the topic. Again, thank you for joining us.

**Jessica Rooke:** Thank you Dean Perdue. A little bit about our journal. PILR is the scholarly voice for issues pertaining to social welfare, public policy, and a broad spectrum of jurisprudence. We publish three issues per year: the General Assembly Issue, the Symposium Issue, and our General Topics Issue. Our authors include experienced practitioners, esteemed legal professors, and insightful individuals, working to change the world around them. On behalf of PILR, I would like to thank you all for being here today and for dedicating your time to focus on an extremely important topic, domestic violence. Today's agenda is filled with interesting lectures and panels that will entertain challenging and productive conversations on domestic violence. Dr. Sarah Jane Brubaker from VCU will kick us off with her keynote address on recent trends in gender violence. Then we will dive into our first presentation by Miss Joan Meyer who will discuss child custody outcomes in cases involving parental alienation and abuse allegations. Mr. David Keck will then talk about the impact of the recent Supreme Court decision *New York State Rifle and Pistol Associations Incorporated versus Bruin* in the context of domestic violence. Following will be our first panel where folks from Tubman, a domestic violence victim shelter and services organization, that's been serving the greater Twin Cities area in Minnesota for the past four and a half decades, will talk about the successful practices

and challenges in holistic services. Then Mr. Jay Sinha, attorney advisor, at the Department of Justice will discuss cyber stalking and harassment and the age of technology. Followed by a short coffee break our second panel will examine another recent Supreme Court decision, *Dobbs v. Jackson Women's Health* organization and its impact on the context of domestic violence. In our first panel... in our final panel we will have the opportunity to discuss the practical and ethical challenges in domestic violence cases with the Virginia Judge, the Honorable Mary Langer of Virginia Domestic and Sexual Resources Prosecutor, Mrs. Nancy Oglesby and the renowned guardian ad litem Ms. Lisa Piper. We will conclude with closing remarks from PILR's Editor-in-chief Carley Ruival. Before we get started a few reminders please make sure to change your displayed name to your full name. We encourage questions throughout the whole event, so please feel free to type your questions into the chat box on the middle of the bottom of the zoom window a little bit toward the right. Our moderators will do their best to have questions addressed. Regarding the CLE credits we have our six CLE credits pending, and if you wish to get this get the credits, please make sure to fill out the survey that we have linked in the comments. Without further ado let me introduce our keynote speaker and we'll take a short break.

KEYNOTE ADDRESS: TRENDS IN GENDER VIOLENCE

*Dr. Sarah Jane Brubaker*

INTRODUCTION

**Teresa Sun:** Good morning again, everyone um, sorry for the delay hope everyone was able to get their morning coffee. For folks who got here after our opening, the um if you would like the CLE credits there's a link to a survey in the chat, if you could just follow that and fill that out that's how we will um be doing the CLE follow ups and um Dr. Brubaker, are we ready to go?

**Dr. Sarah Jane Brubaker:** I am, someone's going to show the PowerPoint, right?

**Teresa Sun:** I don't think, OK I think we're all set. All right... Well then, let's get started with our program and our keynote of the day and um first let me introduce Dr. Sarah Brubaker to you guys um Dr. Sarah Jane Brubaker is Professor of criminal justice and public policy in the um L Douglas Wilder school of government and um public affairs at the Virginia Commonwealth University. She received her BA JMU um master's degree from VCU and PhD from the University of Delaware all in sociology. Dr. Brubaker conducts research and teaches in areas of gender violence, juvenile justice reform, and reproductive health from intersectional and social justice perspectives. She has published a book and several articles in peer reviewed academic journals and received federal grants to reduce violence against women on college campuses and prevent girl's involvement in juvenile justice system. Dr. Brubaker is actively engaged in community based interdisciplinary.... interdisciplinary research aimed at amplifying the voices and rates of vulnerable and marginalized communities and lessening the harm that they experience. Dr. Brubaker take it away.

SPEAKER

**Dr. Sarah Jane Brubaker:** Thank you. Um I really want to thank you all for inviting me to be a part of this today. Um the organizers uh particularly Jessica Rooke who I have been communicating with a lot and um provided a lot of support and In um getting ready for today. um I'm really excited to be here with all of you and um to engage in this conversation and um and engage in this community. Great, um, so let me give you a quick overview of what

I'm going to talk about today. Um I'm going to give you a little bit of an introduction, although you already heard a little bit of background about myself and my work. Um then I want to talk about kind of how we have named the problem of gender violence and some of the history around that. Um and some of the unintended consequences that have come from the criminalization of gender violence. Um as well as some of the ways that we have failed to address particular forms of gender violence through criminalization. And then I want to talk about what the legal system can do um to maybe improve its understanding and response, and uh provide you with some alternative approaches that um kind of innovative community organizations are engaging in. And identify some of the organizations and leaders who are doing that work and then we should have plenty of time for questions and discussion afterwards. Next slide please. So um, you just heard from Teresa some of my, uh, background so again, I am trained as a sociologist all my degrees are in sociology. Um and my work has always been framed through feminist theory. I've always been interested in gender inequality, sexual reproductive health, gender violence, and more recently juvenile justice. Um I've been fortunate to be able to work with a lot of people um over the years in my uh career both community organizations and colleagues. Um and I wanted to share a little bit of that background. Um when I was at VCU getting my Master's degree in the early 90s, um my mentor was Diana Scully who um also is a sociologist she uh sadly passed away this past year, but Diana did absolutely groundbreaking work. Um studying a convicted rapists um in the state of Virginia in the 80s. She had a big grant to do that and interviewed many many um convicted rapists were incarcerated at the time and she wrote a book called "Understanding Sexual Violence" um that really changed um the understanding of sexual violence as not something that only uh mentally ill people do but something that is very normalized in our culture. Um she wrote several articles based on that study as well. So she's really well known in the field and was really actively um involved in a lot of the work um that we did um at VCU related to gender violence. And then the other person who's Gay Cutchin, who's a colleague of mine she and I got our masters together at VCU, and then when I came back in 2001 as a professor um initially in sociology. Um Gay and I worked in a number of different projects. Um one of the first things we did was to um create our certificate in gender violence intervention. I think we did that in 2004. Um and this provides specialized courses and training and gender violence to students. It's a post baccalaureate degree, so after students have earned a bachelor's degree, um they can earn this certificate program together with another master's program, or on its own. Um and we have people from social work, criminal justice, sociology, women studies, public health, education, so it's really a great um way to uh learn from each other in different

disciplines and continue to kind of think about how we um respond to gender violence.

So one of the required courses for that certificate is called “Theorizing Gender Violence.” It was actually created by Diana Scully. Um She taught it a couple of times, and then I've been teaching it for many years, umm, after she retired, and I, uh, published a book a couple of years ago based on that class, umm, that kind of explores a number of different theoretical frameworks for understanding gender violence. We kind of look at the implications of thinking about violence that way, and also responding to violence based on particular theories of causes and responses. Um Gay and I also got a Department of Justice Office of Violence against Women Campus Grant, umm, at about that time, 2005, 2006, maybe, umm, and that was part of a mechanism, umm, called “Grants to Reduce Violence Against Women on College Campuses.” Umm, as part of that grant we created a student organization at VCU called “Men against Violence.” Uh, we also trained victim witness advocates. Students were able to be trained to accompany law enforcement agents when they were called to a domestic violence incident. Umm and kind of be with the victim through the whole process and reporting what happened—you know if they needed to go to the hospital, or if they needed to seek out other services, but just to be really there with them uh through the whole process to make it, umm, less onerous. And then, uhh in 2011, as many of you know, umm, the office for civil rights, umm, issued a “Dear Colleague” letter to college campuses and universities umm explicitly, umm, applying Title IX legislation to the ways that campuses respond to sexual assault, umm, and in the wake of that, I did a couple of studies. One was uh a statewide study in Virginia. They went out to all of the college campuses that were affected by this legislation—basically anyone that received federal funding, umm, to kind of understand how they were reacting to that new legislation and how they were trying to implement the new um processes, and I followed that up with the study of Campus Advocates kind of around the country, umm, more one-on-one interviews kind of talking to them, about umm, the impact that they thought this legislation would have. More recently, a colleague in criminal justice and I were invited by the Department of Criminal Justice Services in Virginia to do an assessment of Virginia's Lethality Assessment program, and this is a collaboration between law enforcement and Advocates where law enforcement officers are trained to do an assessment of the severity of violence and the risk for, umm, even greater violence, umm, when they are called into a domestic violence incident. They assess the situation and if they believe that the victim was in really grave danger they attempt to bring the, pull the victim aside, let them know they believe they're in danger based on kind of um the information that was um, that was gathered, and they attempt to immediately connect that

victim with, umm, services in the local area with advocacy and um other kinds of support services. So we did as an assessment of that a couple of years ago and a report, and have been working on some publications, and then I also wanted to mention um another program that I am involved in at VCU called iCubed. Um And so its three I's: Innovation, Inclusion, and Inquiry. And each project under iCubed um consists of an inter-disciplinary team of faculty and students, and we work with specific, umm, organizations in the local community to address a problem that is facing our community. And so I direct one of the groups called Disrupting Criminalization in Education, which focuses on various um aspects of the school-to-prison pipeline. Umm, I first did a training about that-- or attended a training in a webinar through the Virginia Sexual Domestic Violence Action Alliance that was also co-hosted by Rise for Youth, and they called the school-to-prison pipeline the trauma-to-prison pipeline, recognizing the number of young people who are experiencing trauma who end up in the juvenile justice system, umm, because their trauma is not recognized and treated. Instead, they are arrested. um and so I'll talk about both the Actions Alliance and Rise for Youth, umm, as organizations, umm, who are doing really innovative and interesting important work in this field. The Action Alliance is statewide coalition that provides supports -- support to domestic violence agencies, rape crisis centers all around the state of Virginia. They do a lot of training. That's a great resource for those of you who aren't familiar with them, and then "Rise for Youth" stands for Reinvesting In Supportive Environments, and it's an organization that is directed by a civil rights attorney who is really focused on providing more, uhh, resources and supports to communities and relying less on the juvenile justice system to um address um problems facing youth in Virginia. Next slide please.

Umm, so I did just want to say that um I want to um – I want to say that I'm not promoting any particular approach or response today. Umm, I really want-- am just wanting to share my thoughts and observations from all these various experiences that I've had in hopes of facilitating ongoing conversations about how we can better understand, respond to and prevent gender based violence and whatever role we're in, whatever capacities and and settings. So okay so I'm looking at uh the question of uh how we named the problem of gender violence. So, a lot of the early response to gender violence came about in the 1960s and 70s through the feminist movement and anti-violence movement, umm, based on consciousness raising which was women coming together and sharing their stories and experiences. Umm, this really helped um move the conversation from kind of personal problems to public and political problems. Umm, one of the major successes of the feminist movement um in naming the problem, gender violence, um was showing that it was shared by so many women across various social contexts.



Over time it was pervas—a pervasive part of most cultures and so it wasn't an anomaly when it happened, right? And so it wasn't individual bad men, but something broader and bigger about how we organize around notions of gender, how we socialize people into gender roles and ideologies, and how we distribute power through social organizations that contribute to and encourage men's violence against women. Um, we showed, uh, Feminists showed the problem as rooted in men's control of women supported by patriarchy or men's domination at the structural level of social institutions like government and the law so again you know it wasn't just a few men, a few bad men, and so these efforts led to the criminalization of interpersonal violence and rape, umm, which are kind of two major forms of violence against women. And Katherine McCannon, who is a legal scholar and activist and feminist, umm, argued for the necessity of a legal framing of and for the response to gender violence to make it both visible and actionable. Umm, so for all of its successes um in the feminist movement, in naming the problem of gender violence and particularly criminalizing gender violence, there were also a number of problems, umm, so first the umm... and it came from kind of a narrow framing of gender violence, so first the first problem was that the perspective guiding the legal and criminal framing of gender-ba – gender-based violence, umm, informed by the Feminist Anti-Violence Movement was largely led by white, middle class, straight, cisgender women based on their own experiences, perspectives, interest, needs, and goals. and I'll talk about this a little bit more later... And secondly, the goals of uh kinda this narrow framing um first included a safety paradigm which holds as primary the women's separation from and punishment of the abuser without taking into account how such an approach could be problematic for women from marginalized groups. Scholars and activists have argued that such approaches ignore the realities of many women who do not have access to the resources to leave, who don't wish to punish the abuser, or who are committed to maintaining the relationship. And then secondly, criminalization made certain forms of violence and abuse against partners illegal and punishable, um and I'll talk more about this, but the narrow framing contributed to a number of unintended consequences. Next slide please...

So, there are a number of unintended consequences um of uh this narrow framing um —many of which I am going to talk about here but there are others. So, the unintended consequences included both kind of being ineffective in terms of that framing and some actually harmful practices. Umm so first of all uh this... the narrow framing and the criminalization of gender violence has not necessarily prevented or reduced violence or made people safer. I will say that you know as a caveat it's is very difficult to study this... to study the outcomes, umm, there are a lot of challenges regarding

reporting. Right so we are basing the, umm, our understanding of prevalence rates of violence on self-reports or official reports.

Basing the um our understanding of prevalence rates of violence on self reports or official reports. And we'll talk about a lot of the impediments to official reporting. And there are also measurement challenges related to how we measure violence. Right? And which types of violence do we take into consideration and all of that. But there was a recent international study by the World Bank that suggests that women's lives, many women's lives, have been saved through domestic violence legislation. And I definitely don't um discount that, right? So, um I--I truly believe this as well. That, for all the unintended negative consequences of criminalizing gender violence, there is no doubt that criminalizing gender violence has definitely saved women's lives. But The World Bank also acknowledges that women with more resources benefit the most from the criminalization. So, um neglected and overlooked experiences. So, again I talked a little bit about uh the feminist perspective being based largely on privileged women's experiences. The feminist uh framing also um provided a narrow focus on men's violence against women. So, it hasn't helped us understand women's violence as much or violence against men. Or the fact that most men don't commit violence against women. It's based on heteronormativity and a gender binary. So it doesn't, well, the feminist approach doesn't address well violence in same sex relationships. Or violence among transgender or non-binary people. It also aalum- uh assumes a clear victim and offender dichotomy. When we know that often these things overlap, right? So, people can both cause harm to others and experience harm from others. There's also been a disproportionate impact on communities of color and immigrant communities of-- of the criminalization of gender violence. Uh Many rely uh many of these survivors rely economically on their abusers and they don't want them arrested and jailed. And we also have a history of mistreatment of marginalized groups by the criminal justice systems so that a lot of members of marginalized groups don't trust the system um and they don't want to engage with the system. They don't want the abusers arrested and incarcerated. Also mandatory arrest--arrests of victims um are policies often um resulted from the criminalization of gender violence and criminalization has often resulted in the arrest and prosecution of victims because of mandatory arrests. So pro mandatory arrest laws as well as no drop prosecution laws have um ended up um harming victims. Uh Also failure to protect laws often work um against women who are in uh violent relationships and unable to leave um and so they are held um liable and uh responsible for children's um exposure to the violence. Um And victims who are immigrants risk facing arrest and deportation if they contact police. Criminalization of survival and poverty is another unintended consequence.

So often the behaviors that are engaged in by victims of abuse and violence who are seeking safety or struggling to survive are criminalized. So many young people who are members of LGBTQA plus communities run away from abusive homes and families and end up without a safe place to live and sometimes resort to sex work and other ways to make money that are criminalized. And when victims are arrested they are subject to huge fines and fees associated with the criminal legal process including ticketing, cash bail, court costs, parole and probation fees. All exacerbating the continuing cycle of poverty and punishment. Retraumatization of victims is another consequence. So, victims face revictimization by police, prosecutors, judges, juries, and especially by those workers who aren't trained to recognize and respond to trauma. Which can also leave victims, lead to victims opting not to report or seek help. Vicarious trauma of workers is another unintended consequence. A few years ago one of my doctoral students, Tammy Slivinski, did her dissertation uh focused on Commonwealth's Attorneys and uh Commonwealths Attorneys in Virginia wanted to understand the decision making processes that they go through to decide whether or not to take a campus sexual assault case um to court, to a criminal court. Um and So, she found out a lot of interesting things about how that, how those decisions are made. One of the things she didn't expect to find but she did find um was that many of them experience severe vicarious trauma as they are representing victims and working with them as they have to um tell their stories and navigate the court system and prepare for a lot of victim blaming and um processes like that. And so a lot of the um – the attorneys felt that they were not prepared to handle the vicarious trauma and they had few options for support. And finally Systemic racism and mass incarceration. We know that the United States criminal justice system is a system with racist foundations that continues to disproportionately affect communities of color and um the criminalization of gender violence has coincided with mass incarceration. CommonJustice.org says “Our national story about violence has helped give rise to mass incarceration. The United States incarcerates more people than any other nation in the world. At the same time, there are grave inequities in our treatment of crime victims who pay the price for prison's failure to deliver on its promise of safety. To talk about responsibility without violence, to talk responsibly about violence it's essential to police the people who survive it at the center. This doesn't currently happen. Legislatures have enacted draconian criminal justice laws in the names of survivors. Others have drawn on crime victims stories to motivate sympathy horror and outrage. But the one thing rarely done is to ask the full range of survivors what they want.” And as suggested by insight and antiviolence organizations, “surely it was irrational, many feminists argued, to expect protection from a system that was

itself a key perpetrator of violence against poor communities and communities of color.” Next slide please.

So in addition to these unintended consequences and ways that criminalizing gender violence have harmed um a lot of communities and survivors, it has also left out a number of forms of gender violence. Um And so only certain kinds of violence have been included in the process of criminalization. These are typically those that have clear physical evidence, those that are formally reported to the criminal justice system and those that have a clear offender and perpetrator and a clear victim. So, a few examples of unaddressed forms of gender violence are emotional abuse, um and coercive control. So most people who work in the field know that um these are really dominate forms of violence um and really harmful forms of violence that most victims um endure. Um they’re ways that abusers um in relationships exert power and control over victims by uh controlling their finances, controlling their access to other people, their interactions with other people through isolation tactics, um threats of violence, controlling access to children, controlling even pets. I mean, there are so many ways that coercive control is um used by abusers that doesn’t have physical evidence that um is not –that kinda falls under the radar. Things that cannot be addressed in the criminal justice system. Stalking is another example that is extremely hard to uh prosecute. It is extremely hard to document stalking. Um In terms of um clear physical evidence. Um can be extremely uh terrifying and terrorizing of victims um and they know they’re in danger, but they can’t prove it um in kind of a, a very narrow uh way. And then of course we have talked already about um a lot of violence that is not reported because of uh mistrust of the criminal justice system and fear of um retaliation in various ways um because uh of being members of vulnerable populations. Next slide please.

So what the legal system can do. Um And I want to kind of try to offer a spectrum of ways we might do better. Right? So from working within the system, to working across systems, to working outside of the system. And I want to um s- suggest that um all of these require new ways of thinking about the problem. Right? So theorizing or conceptualizing and understanding the problem. So we need to reconceptualize violence and harm. And I suggest that we need to move toward broad definitions and away from narrow definitions um and try to change laws in ways that recognize and respond to the overlooked harms that are um experienced. Reconceptualizing harm and our responses to harm also requires that we do it in trauma informed and survivor centered ways. So um First, I think that there are better- there are ways that we can better support survivors, that we can do more to support survivors. Um Providing legal aid. So, the legal system is really complicated and really complex and overwhelming um for victims. You know they have

already been traumatized, they're already going through that experience. But having to um really understand and navigate the legal system is really overwhelming. Um and so, I think we can provide more aid and support for victims so that they know what their options are, that they can make the best choices for them, that they can be familiar with and aware of and prepare for what they are going to be going through what they're gonna, um, be going through, um, in legal processes.

Court advocates is another way of doing this. So, um, people who are trained to be with, uh, victims as they go through court processes, literally sitting there with them, um supporting them—providing support, s-um insuring them that they are, um, getting what they need, that they are attended to, um, and to make it, um, as least uh traumatizing and difficult as possible. Trauma training is another important, um, aspect. Um, ensuring that the people working with survivors in whatever capacity understand what trauma is, how it uh manifests, how it can um affect victims, decision making, understanding, recall, memory, um and kinda not blaming them, um, for, um, any impact that-that trauma may be having on them. Uh, second way is through collaboration between advocates and law enforcement. So, I explained a little bit about the lethality assessment program as, uh, one way of connecting survivors with um support even through law enforcement channels. Um, coordinated community response teams and sexual assault response teams are other models for how to do this. Where representatives from various systems come together and meet on a routine basis to talk about kind of what they're seeing, and what they're providing, and best ways to connect uh survivors with the various services that they might need. Whether they be law enforcement, legal um advocacy, um, social services, um, healthcare. Whichever services they may uh need the most and making sure that all of the different systems are working together um to collectively meet all the needs—that no one's falling through the cracks, um and that they each understand what—what each other is doing. And then supporting legislative initiatives, um, through policy advocacy. Um so, one way would be changes...making changes to evidentiary standards, again to not rely so, um, narrowly on specific forms of physical violence, since we know so many types of gender violence, um, are outside of these. Um, limiting abusers' access to guns, which I know you're gonna be talking about a lot today throughout the symposium and the Bruin, um, uh, case. And decriminalizing, um, self-defense. So, I wanted, um, talk a little bit first about access to guns. And if we can go to the next slide on that. Um, again I know you're gonna be talking about this more today. But, um, this is from the educational fund to stop gun violence. Nearly half of all women killed in the US are murdered by a current or former intimate partner. About four and a half million women in the US have been threatened with a gun, and nearly a million women have

been shot or shot at by an intimate partner. Over half of all intimate partner homicides are committed with guns. A woman is five times more likely to be murdered when her abuser has access to a gun. And the majority of femicide victims, and attempted femicide victims, experience stalking in the 12 months leading up to their homicide or homicide attempt. So, again, recognizing how hard it is to, um, report stalking and to have it responded to. Recognizing the...the relation, you know the influence of stalking, um, on the outcome of femicide is really important. If you go back to slide seven, just for a second, um sorry I did not have a slide about, um, decriminalizing self-defense, but I want to talk about this briefly. Um, so there was a 2016 study...international study done by penalreform.org that found that the number of women globally who have committed violent crimes is very small. Women are far more likely to be victims than perpetrators. However, when women have been convicted of murder or manslaughter, in a significant number of cases, the victim is a male partner or male family member, and there is a history of domestic violence. The findings of this survey show that with few exceptions, criminal justice systems are failing these women by ignoring their trauma, and realities and dynamics of domestic violence. In almost all jurisdictions...covered, um, in this study, there is no separate basis in law for history of abuse to be considered, and generally—women have to rely on existing legal defenses. For example, self-defense, provocation, or temporary insanity. These difficult defenses tend to be ill-adapted to women who have experienced prolonged abuse. Courts are not equipped with the right guidance or show a reluctance to take victimization consistently into account as a factor in either establishing culpability or in sentencing. Some promising practices have developed in a few jurisdictions researched. For example, a number of Australian and U.S. states—I think New Jersey is one of the states they mentioned—establishing defenses, or partial defenses for abuse cases, or enabling greater weight to the mitigating circumstance of...of domestic violence to be given when establishing culpability or in sentencing. Um...I also um...talk in my class about, um, stand your ground laws. And so again I'm not a legal expert here but we all became familiar with stand your ground laws when George Zimmerman killed Trayvon Martin, and uh successfully defended himself, um, in saying that he was afraid of this...um, teenager when he saw him walk by. Um, and so there have been a number of cases where women were not as successful in using the stand your ground...um... law in terms of their own fear for their lives. And so, one example is Brittany Smith in Stevenson, Alabama who's, um... who had a history of... of abuse from her partner. He actually had been arrested many times on domestic violence charges, he had a history of all kinds of violent uh...um...violent offenses. And at one point, uh, she really believed that this was the time when he was going to kill her. Um, he had been threatening it

and leading up to it, um, and so she defended herself by shooting him, and killed him, and she tried the stand... tried to use the stand your ground, um, defense. You know arguing that she very much feared for her life after, you know, a history of abuse and threats, um, to... um...from her abuser, and she lost and is serving life in prison. And then another case, Melissa Alexander in Jacksonville, Florida who also was in a long-term, um, abusive, um, relationship. And at one point, um, felt very threatened and so she actually fired a warning shot into a wall. She did not shoot her abuser, or even shoot at him, and she's serving six years in jail for that. Again attempted, unsuccessfully, to use the, um, stand your ground law. So, these are just a number of, um, examples of how even when we fail to protect women, um, legally from abuse, um, we then are also unable to protect them, um, when they act in self-defense because they feel they have no other recourse. Okay if we can go to...um... slide nine please, go past... yes thank you. So, um I want to talk a little bit about alternative approaches. Um, and so I think that, again in addition to reconceptualizing violence and reconceptualizing harm, we also need to reconceptualize what we mean by justice. Um, and one aspect of this is shifting our focus more to accountability...um... and not exclusively on punishment. So, um, there are kind of three...uh so I... I...um, am drawing some information here from Eastern Mennonite University in Harrisonburg, um, that has, uh, a lot of really great programs around restorative justice. So, they identify three, uh, approaches, and I don't have the first one on here because it's not an alternative approach. Um, our traditional approach is the retributive approach—so based on retribution, right. And this one assumes objective measures and rational responses. Um, so here, an incident is a violation of policy defined by rule breaking. Resolution involves looking at the incident, determining blame and administering the consequences. So, the questions that we ask in retributive justice is: what rule has been broken, who's to blame, and what punishment do they deserve. Um, secondly, we have a restorative approach or restorative justice. So, here the incident is seen as a violation of people and relationships. It creates obligations to make things right. Resolution involves looking at the harm caused by the incident, the harm to the persons who were victimized, the harm to the instigator or aggressor, and the harm to the larger community, and it asks how can this harm be repaired. So, the questions that it asks are: who has been hurt, and what are their needs, who is obligated to address these needs, who has a stake in the situation and, what's the process to involve them in making things right and preventing future occurrences. And then finally we have a transformative approach or transformative justice. Here, the incident may have occurred as a result in part of unhealthy relationships, and social systems. So, this moves very much from an individual level to a system level...systemic level, kind of like the mystery... looking at structures of

inequality. Um, it creates obligations to build new or better relationships. So, kind of saying there's something wrong with the way that we have organized relationships and social systems that has contributed to...to...to the harm that's been done. This must happen not only at an individual level, but at the level of social structures and institutional policies. Resolution involves changing wider social systems in ways that help prevent the occurrence and reoccurrence of harmful incidents. So, the questions that are asked here are: what social circumstances promoted the harmful behavior, what structural similarities exist between this incident and others like it, and what measures could prevent future occurrences. So usually we first, um, take the retributive approach...um and rarely, um, do we get all the way to the transformative approach. Next slide please. So again one way of kind of rethinking, um, our approach and our response is rethinking what we mean by justice. Um, and one way to do that is asking, you know, do we...are we seeking more accountability, or are we seeking more punishment. And so this is a...a slide provided by the Action Alliance, um, that kind of, um, juxtaposes these two ideals of, um, justice. Next slide please.

So again one way of kind of re-thinking um our approach and our response is rethinking what we mean by justice, um and one way to do that is asking you know do we--are we seeking more accountability or are we seeking more punishment. And so this is uhh a slide provided by the action alliance that kind of um juxtaposes these two ideals of um justice. Um And so you know with punishment can involve shaming, can be violent, it's usually coerced, um and usually doesn't address repair. Accountability on the other hand, addresses the harm that can be done. Looks at obligations, builds connections, um its ongoing, its not a one time thing, it has to be voluntary and that's really key right? Um all parties have to be willing to engage in this process and be committed to the process. Um You can't force someone to do it right? it won't work. Um Determines who has been harmed, um.. is determined by those who were harmed so They have an opportunity to express how they experienced the harm, what harm was done, um which we often don't give an opportunity for, and um takes responsibility for and is ultimately seeking repair of uh the damage that has been done to the relationship or to the community. Um Next slide please. And so accountability requires five key elements, this is from um commonjustice.org. Um this means acknowledging one's responsibility for one's actions, acknowledging the impact of one's actions on others, expressing genuine remorse, taking actions to repair the harm to the degree possible, and no longer committing similar harm. you know it strikes me a lot when I'm think-thinking about these approaches that I'm a parent those of us who are parents I think struggle with kind of how to discipline our children and um kind of engage with some of these um different approaches, I think,



you know, we have parents who are much more focused on punishment and others who are punish-punished uh more focused on punishment and others who are more punish-punished uh focused on accountability and um I think it's interesting that many of us really engage in these kind of accountability-accountability elements with children. That we expect them to be able to understand and engage in these and for some reason we have little um faith or trust that adults can do this as well but it just seems a little ironic to me but OK uh next slide please. OK so uh Kate McCord who is-works at the action alliance who is just amazing um and does a lot of this work around accountability um connected me with some of these organizations um and individuals that I just wanted to tell you about in case you would like to learn more about them in case you're interested. So um common justice is an effective model that offers a trauma informed survivor centered alternative to incarceration for serious and violent crimes using a restorative justice approach. They get consent from the DA and the crime victim to use this approach and if the program's completed successfully all felony charges are dismissed. Um eastern Mennonite university I mentioned before um has some opportunities for degrees and certificates in restorative justice that you may be interested in learning about. The national equal justice initiative um which you may have heard of um and this is um led by Brian Stevenson you might be familiar with his book just mercy which also became a film. He's a civil rights attorney who works on um uh works with people who've been on um death row for a long time often the result of wrongful convictions. Um so the equal justice initiative in Virginia's legal aid Justice Center are two examples of how attorneys can work toward dismantling the prison industrial complex including decriminalizing things that should not be considered crimes in the first place and then Miriam Kaba and Shira Hassan are national activists and thought leaders on the subject of transformative justice and prison abolition so just some um potential resources um if you want to learn more about these alternative approaches. next slide please. so a couple of final um thoughts to ponder so Mariam Kaba says harm is different from crime our response to harm doesn't need to be either a cage or doing nothing at all that these are generally the only options on offer from the state. prisons make people feel secure but do not make people feel safe that feeling of security derives from the myth that prisons are where the monsters are held. safety comes from strong community ties and relationships having basic needs met and creating a culture of accountability. we must grapple with the difference between security and safety. so um I'd like to offer a challenge for us to um envision and act um in ways um to respond to gender violence that are more effective. Um by kind of asking questions like what are the best ways to achieve justice and accountability, both for those who are harmed and those who harm and how can we all work together in community towards

those goals. next slide. so thank you very much for your time and um I look forward to discussing um and any questions that you might have for me.

**Teresa Sun:** Thank you so much Dr. Brubaker. Um while we wait for questions to trickle in, I think I'm just going to get our guests... get us started. Um so I have a very specific question um to start with I know you talked about how you know the legal system sees um the issue as a very binary sort of victim-abuser dynamic and um that's kind of one of the side effects and not how it's supposed to be. Um what do you think should the um should we change about that before we achieve you know like further maybe more holistic kind of approach that you talked about?

**Dr. Sarah Jane Brubaker:** Yeah that's a good question and you know I think that generally our society operates um on binaries a lot right we see everything as um black and white yes or no and so we see that kind of um embedded in a lot of our social institutions it's just I guess it's easier cognitively right to just kind of have yes or no right or wrong um an--but you know the the more that people um work in this field the more they realize that um there's no there's often not a clear offender and victim so um you know feminist often kind of put all the offenders assume that offenders were always men and the victims were always women and that was problematic for a lot of reasons as I talked about but the criminal justice system also operates that way and you know one example is with mandatory arrest or pro arrest um uh legislation that requires that when, when the police arrive at is seen they have to arrest somebody um and so there's an assumption that one person is the offender here and one person is the victim and whatever they see at that moment is how they respond right so if they arrive when the victim is defending themselves you know physically at that moment they get identified as the offender and then um they're the one who gets arrested you know so you know a lot of it is about efficiency you know because it takes a lot longer to actually understand the history and the dynamics and the context that might allow them to recognize you know who the offender has been. Um it's also possible that they both in various moments have been on either side of that right? and so I think that um not having um policies um in place like that that assume a clear distinction between the offender and victim is one way. Right? so kind of not forcing a split decision to react to one person-one party or the other because that decision can't be made that fast. Right? so and that's just I mean that's kind of a broad way of thinking about it so I don't um have as specific an answer as the question was specific but that's my attempt.

**Teresa Sun:** That is very helpful. we got one question from the audience, um they're asking about so you touched on what the legal system can do is there a jurisdiction that is doing more or better and can serve as a model for other jurisdictions?

**Dr. Sarah Jane Brubaker:** That is a great question. Um yeah and unfortunately I don't have a great answer to that. I will say that the um the Penal Reform um article that I mentioned the 2016 that looked at the self-defense stuff, that was a pretty um comprehensive study where they looked um at uh specific states as well as the number of different countries and what they're doing um and you know New Jersey was identified I think as one state in the United states that actually has better approaches to the self-defense um uh women who have um long term histories of abuse and um how to take that into consideration and uh so yeah. I mean I will say that when um I was asked to do this I it occurred to me that I uh am less familiar with a lot of the legal um aspects of kind of specifically how um gender violence is um responded to um but so it was it was interesting for me to kind of do some research to kind of think about these things but yeah I think and it's a great question and is so important because we can't just say well it's not possible, right? like like it can't be done. Um and so it's always really important to um find examples where people are doing these kinds of things and also that the list that um that I gave you at the end um from Kate McCord you know talks about the um the approach that common justice talks about where there are specific jurisdictions um that are working where the DA together with the victim you know decide whether they can use a transformative justice approach so. and I think that you know that's obviously the farthest end of the spectrum right and so I think it makes a lot of people really uneasy to think about you know um engaging um those parties and trying to come up with solutions that don't involve punishment because we are so um socialized into a punishment mentality um and and you know horrible things are done right people engage in absolutely horrific violence against other people and so the idea that we wouldn't punish them is really hard to to stomach for a lot of people um and so again I'm not advocating that we just completely do away with um what we're currently doing um but there are cases you know there are lots of examples of again victims of really violent crimes who don't want the person punished you know believe it or not that they really are seeking healing in a different way.

They you know many of them want to tell their story, they want the person to hear how badly they hurt them, they want the person to acknowledge that and hear that. They often want to know why the person hurt them um a lot of times they don't, they're not able to get that because a lot of times people aren't um conscious of why they did it in a way that they can really articulate it but you know just really again listening to survivors about what they want and what they need to heal um has resulted in a an understanding that a lot of times it's not punishment you know, and and that a lot of times when people go through that whole process, right, they go through the whole um process of telling their story, reporting, um going through the court, trial, being on

trial, going through all of that um to get justice, even if they win, even if that person is convicted um a lot of times survivors will tell you it that it didn't help. you know that they feel no sense of relief or healing that it you know on the other side of it, they still you know it still wasn't um satisfying. So again, not speaking for all survivors because for some of them that may be very gratifying, you know to go through that, I think, so you know also recognizing that there's not a one size fits all to try to be more open to again what the survivor feels like they really need um to heal from it, is important.

**Teresa Sun:** I think we've got a question that's actually very relevant on the practical level um about that so uh they asked, in the restorative justice models how do you ensure that the harmed party is genuinely voluntarily participating and uh not being coerced uh by the harm doer or doing it without fare--fear or um doing it out of fear?

**Dr. Sarah Jane Brubaker:** Yeah and those are great questions, and uh in fact there are a lot of people in the gender violence field who are pretty adamantly against um using restorative justice in these cases for those reasons. Um and I don't know that I have um you know a clear solution to that either, but I mean that gets to the heart of this too that you know the survivor needs to be able to decide what they need to heal and so um I think a lot of it is in how it's presented to them um you know there's a lot of research that shows that whoever someone discloses violence to, the reaction of that person has a huge impact on their healing path right so if they disclose it to someone who blames them right away, who questions them, who dismisses them um who doesn't believe them and support them, that is so damaging on top of what what has already happened um and so I think that can happen too when um when they um work uh with advisors I --I mean advocates you know whoever they are talking to, and this can be friends you know people are way more likely to disclose violence to a friend or family member than to an official kind of um service provider whether it's law enforcement or whatever so it's really important for all of us to do a really good job when somebody discloses that to us even if you know I'm not an attorney I'm not social worker I don't work in those official capacities but um I recognize how important it is to say the right thing when somebody comes to you and so I think that organizations that want to provide an option for restorative justice this question is absolutely right that it has to be offered to the survivor in a way that is not coercive. You know it can't be like you should just do this because it'll be easier and faster than the other thing right you know it has to be explained and described in a way that they really know what they're getting into that it's not put forward as the better option I think it's really hard I mean I've worked a lot in title nine at VCU, I've worked on a lot of cases on the review panel which is where after the Title Nine outcome

um is given if either party opposes it then they can kind of appeal and then I'm I was one of the members of the review panel that would appeal look at the case and see if it was handled properly or not and my heart just goes out to the people um who the students who are involved in these cases because it is again so overwhelming and complex and complicated and really being able to prepare people for what they're going to go through whether it's a restorative justice approach or whether it's a formal complaint to Title Nine again in the moment that they're recovering from or you know they're reacting to or responding to what's happened to them they're already so vulnerable because of what's happened to them and then they're having to try to make good decisions about what path to take. um and it's hard you know in that moment for them to really grasp what it's going to mean what it's going to feel like what it's going to entail to go through all these things so I think you know one of the really important things is to be able to describe what the process is going to entail as clearly as possible so that they really have an idea of whether or not they want to go through it. And it and the other piece of it is um the person has to be willing too right so whoever the um whoever is accused of harming that person has to be willing to do it um and a lot of them are good manipulators a lot of abusers are really good at lying and really good at manipulating that was and that's what makes them effective abusers right and so I also think that it's difficult to know if they are sincere and genuine in their um participation in this. I'll also say that one thing I've learned too is that you can't just suddenly introduce restorative justice into um an environment a community a setting that isn't primed for it right. And so um you might have heard of restorative circles and these are in a lot of schools that want to use restorative justice and the restorative circles are kind of um building a community to be able to use restorative justice right so there has to be a sense of community connection and care and concern. You have to care enough about your community to want to be involved in repairing harm. So if we haven't established a community of trust and care and concern restorative justice is not likely to work and be effective because um it relies on that right you have to be committed to repairing the community. So if you haven't built a community that harm is taking place in, it's unlikely that the restorative justice approach is going to work. And so it's it's more than just kind of throwing this response in, we've got to build the community for it to kind of be effective and so there's so much more than just the actual policies and practices but it's kind of the whole context before that.

**Teresa Sun:** Yeah, I think that partially answers one uh of our questions where um they asked you know in a restorative justice framework um it's always hard to know where to start so what would be the first change for the legal system to make. So I guess the question now would be after we um we

are in the process of the community building we're getting somewhere what would be the first change for the legal system to make?

**Dr. Sarah Jane Brubaker:** Yeah I mean I think you know from what I understand the places that have done this first is building the community um across the the provider you know the the kind of um agencies working with district attorneys or working with Commonwealths attorneys or working with you know the people who would be kind of offering that option right is so first would be kind of probably building community across those um those players those representatives of those different systems to get them on board with kind of what it is and what it's going to look um because that's one level of the community. Um I do think to defining a larger community within which some of these things happened so like a college campus is a community, um a school is a community, so it may be that we have to like define communities on those levels within organizations where people do share membership in some larger community um and kind of um working toward um processes and um interactions in that community where people feel a part of it and they don't want to harm people in that community you know I think religious communities which unfortunately are places where this happens kind of rampantly and where they don't um there's a lot of secrecy within religious communities and you don't you're kind of socialized not to go outside the community for help or not to tell anything that's happening in the community so um uh I think different ways of thinking about community and what community means um is kind of an important first step too um because you have to get up people's commitment to that community um as a kind of prerequisite you know for restorative um approach's to work

**Teresa Sun:** Yeah. Um Another very specific question that would be um someone asked if you are suggesting that their cases that should be considered um mutual violence?

**Dr. Sarah Jane Brubaker:** Yeah, I mean I, so um one of the theories that I talk about in my class um is actually not a full theory but it's called Johnson's typology and uh Mike Johnson came up with this typology of intimate partner violence and coercive control is kind of the one we're most familiar with as having one person who completely dominates and controls the and has all the power in their relationship. There is something called, I think it used to be called, common couple violence and then maybe it's called mutual violence after that um and so there are relationships where violence is just the way that um people in the relationship communicate with each other right and where they kind of um lose their temper or they express their frustration and so um they can both um be engaging in violence um. From the research it looks like those might be more common um in younger people um especially maybe

people who don't cohabit you know it in some ways violence is an immature response right um to frustration or to you know kind of get your way or whatever um. So, so that's one aspect of kind of this what I guess criminal justice calls offender victim overlap right so that that both parties are kind of equally engaging in violence um, just kind of routinely, this is just kind of the dynamic, not to say it's any more acceptable than any other time but there's not always this coercive control element or history. Um so that's one example of that.

Another example is just the ways that it's um, kind of um, that trauma begets trauma, right and so people who grow up in abusive, abusive families who witness violence who... you know there's a lot of research that shows that kids who grew up in abusive households are really harmed by watching the violence, even if they aren't themselves victims of the violence and so another thing that we see is that people who have been subjected to violence either witnessing it or experience it themselves then learn that's how you treat other people and that's how you get your way, and that's how you we get more power in the relationship, so then they use the same thing and so, that's another way of recognizing that there, there are very few pure kind of offenders or pure victims right that it's a much more complicated situation and if we could do a better job of preventing and responding to it, um, in more positive ways than just punishment, which doesn't necessarily say that the violence was wrong, it just kind of responds to violence with more violence than we perpetuated and then it's, it's hard to kind of put a stop to it and then we see the kind of ongoing cycle of people who have been harmed. continue to harm other people.

**Teresa Sun:** Yeah, one of our participants would like to thank you for distinguishing situational couple violence from the coercive control. So um, there's another question about um, there is any proposed legislation or any other actions in Virginia right now for improving the approach or and or support for victims, I guess for maybe for restorative justice as well.

**Dr. Sarah Jane Brubaker:** So the Action Alliance always does a great job they're very actively engaged right now the General Assembly they do a really good job of identifying specific legislation that's going up in Virginia, um, they are looking at some going ownership gun ownership legislation right now and there's something – shoot, I should have written it down - there's something about custody and so in separated or divorced some couples and one person is abusive but there's some legislation that would give them access to the child um, even in those cases and I know that that's one that they

are definitely opposed to not necessarily restorative justice specific but you know just in terms of supporting survivors more.

RISE has some really interesting legislation up now they put it up last year it didn't it didn't go forward so this year they've adjusted a little bit they are trying to move the department of juvenile justice from Virginia's Department of Homeland security to Virginia's Health and Human services. So they are arguing that the issue of juvenile behavior is, is not a public safety issue, it's a public health issue and so that's, that's very much a restorative justice kind of approach is recognizing that that young people need is more support and more resources in their communities and not more prisons you know so that is a piece of it. So what they're doing now is putting legislation forward to form a committee that will look at doing this and some other states have done it already have kind of made that move so it means access to different funding streams, different ideological approach for sure but also different resources available to support young people rather than punish them.

**Teresa Sun:** And our last question for you is a little unfair. I'm sure for whoever has seen our schedule for the day knows that our last panel of the day is a judicial panel where we have a judge a prosecutor and GL talking about you know they're daily experiences dealing with domestic violence cases, which, you know is pretty much exactly what we talked about here how the legal system deals with this cases what do you think is the one thing that we should ask them?

**Dr. Sarah Jane Brubaker:** Hmm um, that is a hard one I, I think you know asking to what extent they feel like they are able to truly take into account the impact of long-term abuse on victims you know in the in the cases that they are involved in you know discretion is something we talk about a lot in my criminal justice classes and the extent to which different roles in the criminal justice system can operate discretion, and it's interesting you know, it's kind of a mixed thing again so mandatory arrest kind of takes away discretion in a way its discretion but it's fast right you have to decide right now but it kind of takes away the discretion to not arrest anybody, right to say like I'm not sure whatever on the other hand we see discretion overly used and abused in cases where like Brock Turner right, who were the judge felt like prison would be too hard on this rich white kid. You know, so I think asking about discretion is an interesting thing to ask to like in which moments can they exercise discretion and have they or would they, you know based on kind of more knowledge about the impact of long term abuse and trauma could be interesting.

**Teresa Sun:** Thank you so much and our lovely participant we're counting on you for reminding us of that and yeah thank you so much Dr. Brubaker



we don't want to keep you too long past our time slot really appreciate your insight and input for and for kicking us off, and I think we will be rolling into a short break right now and we will be back at 10:45.

**Dr. Sarah Jane Brubaker:** Thank you so much. I enjoyed being here.

## PARENTAL ALIENATION

*Joan Meier*

## INTRODUCTION

**Jessica Rooke:** We're back, everyone. Once again thank you for joining us for the University of Richmond Public Interest Law Review's Symposium on Domestic Violence. We encourage questions throughout the whole event so please feel free to type your questions into the Q&A box and we will do our best to have them addressed. If you wish to get the CLE credits, please make sure to follow the link in the comments and fill out the survey, and if you wish to follow along with the presentations, please follow the link attached in your e-mail to access each speaker's materials.

Now let's get started with our first lecture presented by miss Joan Meier. Joan Meier is the national family violence Law Center professor of law at George Washington University law school over the past thirty years she has taught three different domestic violence legal clinics, two of which were award-winning. Professor Meier's primary focus has been on domestic abuse survivors and protective parents in custody litigation and she has published widely on those topics. In 2004 Joan launched directed and led the Litigation as a Domestic Violence Legal Empowerment and Appeals Project, otherwise known as DV Leap where she litigated hundreds of appeals training judges lawyers and experts and advocates and develop valuable technical assistance resources for the domestic violence field. In 2019 she and a team of social sciences completed a federally funded 5-year empirical study of the nation's family court outcomes and custody cases involving abuse and alienation allegations. In 2020, she stepped down from DV Leap and launched the national family violence Law Center at George Washington the center employs research professional education policy development and appellate advocacy to improve the legal systems response to adult and child victims of family violence. The center bridges the gap between the domestic violence

and child abuse fields while offering research based policy guidance for the overlapping concerns of both fields. Ms. Meier, take it away.

**Joan Meier:** Am I unmuted now? I can't see you so speak for me please. I'm OK now?

**Audience:** Yes, you are.

SPEAKER

**Joan Meier:** OK, great, thank you. Hello everyone, it's really lovely to be here. I'm really impressed with the Public Interest Law Review for hosting this symposium and all the great speakers they have recruited. As Jessica said, I'm going to talk about the empirical findings from a study that a team of five of us did. It took us five years, it was supposed to be three years trying to get data on the question of what's really happening in family courts, which means basically custody battles um involving abuse, and we wanted to also look at what happens when there are parental alienation claims, which I will define briefly as like as we go forward um which are used often by abusers or accused abusers to, to deny abuse. So, let's move into it - hold on let's see if I can figure out how to move us forward - here we are, OK are you already have the bio.

OK, so why did we do this study? I had found DV Leap in 2003 to focus on appeals for abuse survivors because there really was nobody systematically providing that resource and very few appellate cases were happening and terrible things were happening at the trial court level and and I thought, if we could create an appellate resource, we could start disciplining the trial judges and creating good law. I never intended to specialize on custody but once we were open our doors were open we were inundated with, with mostly mothers vast majority were mothers trying to keep their kids safe in the context of custody litigation with the abuser what we were seeing and, and we so we reviewed hundreds of these um requests for assistance, some you know, we were only able to select very few repeal but we were reviewing a lot of them and we were also consulting on a lot of them, and what we were seeing was that particularly when mothers reported child abuse by the father, courts were particularly hostile and resistant to protecting or limiting the access of the father.

Uh we also saw that the label of parental alienation uh which we was often thrown back at the mother from the father or from evaluators and experts that it was very often slept on mothers were reporting abuse and it was very difficult to dislodge it. Just quickly, parental alienation is a notion that was invented by a, a man who ultimately committed suicide in um a um grotesque

way um to claim that women... mothers in particular, who alleged child sexual abuse in court are lying in our only doing it to quote, “alienate the father from the family and alienate the children from the father,” um while his theory of parental alienation syndrome, PAS, was rejected fairly quickly, I mean it was accepted widely but then it was rejected by professionals and courts in when the issues litigated.

Out of the ashes of PAS grows something called parental alienation, which was touted by many more much more respectable and credible... experts and psychologists who claimed that while it wasn't a syndrome and that Gardner was wrong, which Gardner who invented it, there was a thing called parental alienation that was very, very disturbing and troubling. And that it was when, when one parent tries to... wedge the other parent out of the family in a vengeful or ... psychologic- psychopathic way. The label just became very common and widespread and sort of has a stranglehold on family courts not only across the country but across the world.

Um I'm part of an international list and everyone is dealing in, you know, we've documented it in like 8 different countries and we hear about it in 20-30 different countries, the same problem, this way of denying abuse ... um using this label and there's not a whole lot of scientific basis for it, which I'm not going to talk about in this presentation, but I'm happy to talk about in Q&A if there's time.

So anyway, so this label is being slapped on mothers who report abuse by fathers in the family. Um and very, very sad and painful outcomes were occurring. There's even data of ... child homicides in in some of these cases ... by the father.

OK, I just share a couple of examples from my own DV Leap caseload. This was from Arkansas in 2006. The evaluator asked the child what is your biggest worry? Unprompted, the child says my biggest worry is my father killing me and saying my mother did it, which I thought was a really beautiful encapsulation of abusers, which is that they don't care about the kid, but they'll kill the kid in order to upset the mother, and then they'll pin it on the mother, because it's the mother that they really hate, uh which, you know, it really explains the linking of... risks to children with their hate for mothers, which is what abusers um are really acting from.

Um so out of this Q&A, the opinion the evaluator rendered said that the boy's negativity toward his father was unnatural and abnormal and called it a manifestation of parental alienation syndrome rather than thinking it might reflect the boy's experience with his father in the family, it's just it's unnatural and abnormal, which you know it is, ha, but it's also real. But, you know,

easy just, just slap on it this label, which makes it makes the mother to blame for it rather than any reality underlying it.

Another case that was a little more recent from California in 2013 was one where the father was very harsh with he was very he was very abusive with the mother, but he was also harsh with the children. He would manhandle them, he would grab them by their ear and yank them out of the room. He would humiliate them in front of guests, and they had witnessed his abuse and attacks on their mother. Ultimately, she got him convicted of felony sexual assault and he was sentenced to six years in prison. But the court case was about whether the kids would be forced to visit him... in prison or whether he could immediately visit them as soon as he got out, without any further assessment. And this is what the evaluator - this was a good evaluator - found so the child said I don't want to be around my daddy when he's mad and evaluator said frankly, this child is afraid of Mr. H. but in this case, the judge didn't want to hear it, and he happened to be at a luncheon with an alienation expert, and by the way, this is what happens, the alienation theory is touted all over the place. There are luncheons, there are trainings, there are, you know, webinars, it's it's, it's permeated the bar now the ABA, because the people who are pushing this narrative forward are very active and seem to have very little else to do, so they spend their lives, um... building a narrative that consumes the entire culture, the whole legal culture.

Anyway, so he's at a he's at a lunch, and he gets to sit next to the expert and he asks her whatever, nobody knows what he asked her, but he told her something about the case, and uh her response was, well, whatever you do, don't get a therapist who listens to the child. Get a therapist who you know knows that the child's been brainwashed and is a product to the alienation.

Um so he came back, and he word he is his opinion said that the mother had created a revisionist history about the father's treatment of the children. He couldn't, you know, undo the felony conviction, so he basically said based on the felony conviction she's vengeful, and she's making all this stuff up about the kids. The boy's fear is collateral damage from the wife abuse. Somehow that means it doesn't matter, which is not logical and the product of her conscious or unconscious statements to the children. So that's another example of how alienation theory is used in court.

It doesn't have to be intentional. Mother doesn't have to be vengeful. She could just be afraid and be unconsciously conveying that fear to the kids and then it's still not based in reality of the children, it's ...just for the mother's own fear. So, a lot of psycho-babble surrounds this concept. And as I said,

what we were seeing was that this concept was really destroying safety of children and the ability of mothers to succeed in custody cases.

So we had this great... social science team, which I was the only one without a social science background, and my colleague Sean was amazing because he had both the legal and the social science and statistical expertise and could kind of communicate in both directions. So, what did we do? We looked at mmm we, we we needed to get a national picture and the only way to get a national picture, given our country and our decentralized system of states and courts, was to get electronically published opinions. And we were very fortunate, by the time we did this, most opinions were being published electronically. That is to say, most appellate opinions I'll give, I'll come back to that difference between appellate and trial court decisions later.

But anyway, we had a huge database of published opinions during this 10 year period. We spent forever trying, trying to define our search string to capture all the language that different states use to describe abuse and family violence and domestic violence and whatever. We limited it to private custody cases, which means parent versus parent. We excluded third party cases. We excluded state cases of uh child neglect or abuse cases by the state, although we did code state involvement in the cases, we came up with like, I don't know, ten times the number of cases we expected to come up with. Um and spent over a year with two coders full time uh triaging the cases they narrowed ... to get them down to the right, all the cases that belong to the study, they narrowed down to over 4000. They then had to code all these cases. We had over 100 codes including sub-codes, things like domestic uh family violence and then we would have child sexual abuse, child physical abuse, intimate partner violence and, and combinations thereof. So, it was complicated decoding.

Umm and and now I'm just gonna show you the highlights of what we found, which is basically what I share ... most of the time when I'm asked to speak about the study, um there's a lot more data in the study that we haven't fully analyzed yet. And um I'm hoping there will be some secondary analysis by other people, not just us, but we're hoping to do a little bit of that ourselves as well.

OK. So these are the three topics I'm going to touch on today. First, is sort of what's happening to mother's claims of abuse - are the being believed or not, and what's happening to the custody status. Then, what do we find about gender uh differences and similarities in terms of outcomes? And then lastly, what did we find about the impact of Guardians Ad Litem who are appointed by the court as neutral, supposed to speak for the best interests of the child, umm not necessarily for the wishes of the child, usually not for the wishes of

the child, In these cases, uh they, they come up with their own view of what's best for the child. And if evaluators would be psychological, supposed experts who have expertise in assessing for custody, so they interview everyone, the parties and the kids and various other uh witnesses and things, and they come up with their own opinion... based on their psychological training and expertise about what's in the best interest of the child.

So the GAL is an advocate in the court ... uh acts as a lawyer. Uh the evaluator is not, they're kind of an expert witness, essentially, but they're both neutral and so um we wanted to see what they do, what happens with them, because in our experience they were very bad even though... when we would talk to the public about the problems, they would say well what about a Guardian ad litem would that help the child or like I'm so sorry to tell you no. So we wanted the data on that.

OK so, so back to the beginning um what did we find about courts responses to mother's abuse claims and, and this is limited because we were really trying to... validate or invalidate what was kind of the universal conventional wisdom in our field of abuse, which is that mothers who are failing, you know they're losing custody, they're being destroyed in family courts.

So, we focused in on what's happening to mothers here, but we had a little bit later of some gender reversal questions. So, in simple abuse cases where we, we didn't have evidence of a crossclaim of alienation by the father, umm we found courts - even without that, the courts were only believing less than half of the time mother's partner violence claims, which is pretty shocking to all of us, even, even to us, and um far less were they willing to believe child physical and child sexual abuse claims. Um, and so this alone, if this was the only data point we, got is a pretty stunning data point um because so many people still believe the myth that all women have to do is go to court and ... cry abuse and then they win their cases.

That's, like, could not be less true. So it averaged out at 41% of the time ... any abuse claim courts are only believing it 41% of the time and obviously the courts are far less likely to accept child abuse claims than partner violence claims.

Now, then we looked at the cases where we had evidence again our data set was court opinions that have been publicly electronically filed, um so based on the opinions the cases where alienation was cross-claimed as far as we knew that the court mentioned, what we found was that those proclaims dramatically reduced the rate at which courts would were willing to believe

abuse especially child abuse. So, before it was 41% and now it's 23% of the time courts are willing to believe abuse.

DV crediting goes down from 45% to 37%. Child physical abuse crediting goes down from I forget exactly what ... 29% to 18% uh, so less than 1/5. And child sexual abuse goes down to virtually zero. And by the way we've been doing a little bit of cleaning up of some of the coding and I think this is actually zero, this number. I think this was miscoded. But either way it's very close to 0. And so, this shows the comparison of what's happening in cases where there is or is not a crossclaim of alienation. The um blue is where there is not. So, you see courts believing those cases much more than they're believing the gray line which is when there is a cross claim. And um this is just a visual of what I just told you basically.

Another way of describing what I just told you is to say that alienation cross-claims reduced the likelihood of any kind of abuse claim being believed by a factor of two um and it reduces the likelihood of child abuse being believed by a factor of nearly four um and because we're here we're averaging in child abuse and adult abuse, the footnote explains that this impact is really driven by the child abuse difference.

Now uh let me just add right now while I'm speaking that another thing that I think is really important about our study is that nobody, literally nobody, had looked at what courts are doing in response to child abuse claims. There had been a tiny bit of research into what courts are doing in response to domestic violence claims uh, and this has to do with the vagaries of federal funding which we're very focused on partner violence and not on child abuse and also professional and graduate level training which was focused on partner abuse, domestic violence, and not child abuse. So, child abuse has been kind of left out in the cold as a focus for training and research and funding and all kinds of things, so we were the first study that said you know, based on our experience with cases that were coming into DV Leap, we wanted to really look at court responses to child abuse as well as adult abuse and then we looked at the mixture as well which I'm not going into here because it's a little complex.

But anyway, so I think the first time possibly the only study that actually measures court's responses to child abuse at all ... the other studies that talk about DV were much smaller they were particular jurisdictions and so forth.

Okay so here I just want to hone in on the child sexual abuse claims and say only one and possibly zero out of approximately 50 cases was believed by court. When ... when the accused father cross-claimed that the mother wasn't alienator. And you know while we don't know for sure that any of these were true, we do know that other research uh, that has looked at the



credibility of sexual abuse claims in custody litigation a series of different studies some in Canada some here, have found that between 50 and 73% of child sexual abuse claims, even in custody litigation, were likely valid.

Now the determination of valid of course is always subjective but even they were even relying on the same skeptic, skeptical professionals that are impacting the cases here and you know maybe 10 to 20 years ago these allegations were considered largely valid. Then you had the takeover of the courts by the alienation theory and that's over, nothing's valid.

Okay, so that that just goes to you know how often our abuse claims believed. Moving into what happens as a result of this, we defined ... again this is a very narrow question here there are definitely bigger questions we can and should be asking in our data will answer such as who ends up with the kids regardless of who started with the kids. But we wanted to hone in on the loss of custody because again in the field the protected parent field which was a very ... fast growing grass roots world um, of women who are going through or have gone through these horrific cases uh, the protective parent field and those of us from the domestic violence field who are working with them, everybody's talking about losses of custody, so we wanted to really specify, specifically look at what we could say about that.

So we define loss of custody based as based on if a mother started with the primary care of the children ... we didn't necessarily need to have a custody order in the beginning we just needed to be able to show that she was the primary parent in the beginning and that the court switched that at the end. So that's how we defined it again very narrowly. And what we found was that if you just look at how often mothers lose custody without looking at alienation cases uh at all uh, it's roughly a quarter of the time. And there's a little bit higher rate of loss of custody when moms alleged child abuse but not a statistically significantly higher rate.

Um again, one might say this is a pretty concerning data point in itself that one out of four moms who goes to court and alleges some kind of abuse in the family is losing custody to that alleged abuser. Pretty bad, but not as bad as the next thing.

So, when you get to the cases with alienation cross claims against the mother, everything shoots up. So before about 23% of moms alleging DV are losing custody now it's over a third 35%. And then child abuse rates double literally double. 20 uh from 28% to 59% or from 29% to 59% and from 28% to 56%. And now you have one out of two mothers losing custody if they

allege abuse and the father cross claims alienation. And that nobody I think can contest is a pretty shocking number and very concerning.

Now let me just add a note also that that um .. that uh ... the, the alienation field claims that the people who defend it the most who are very kind of overzealous and ... and the most um, what's the word the most productive and the most uh all over the country and below spreading the gospel um ... uh they claim it's not just the defense to abuse, in fact they attack us as claiming that alienation is just a defense to abuse, which we don't. We're a little more nuanced than that. We say it's misused as a defense to abuse. We don't really necessarily opine on whether the idea of alienation is a legitimate one in other contexts. They ... but they hammer and harp on the fact that it's supposedly not a defense to abuse but here it is having incredible power as a defense to abuse, um and that's just what the data show.

Um and again a visual of what I just said, this time the grey line is the cases with the alienation claims the blue line is with the not alienation claims, and now you're seeing rates of custody loss uh, that are so much higher when there are alienation claims compared to no alienation claim, especially when we're talking about child abuse.

And again just another way of saying the same thing is that when fathers cross claim alienation they have almost three times the odds of taking custody from mothers who allege abuse um compared to when they do not cross-claim alienation.

So it's a very powerful weapon for fathers. I'll get into it in a second how it affects how ... how it works as a weapon for mothers. Not as well. Spoiler alert.

Okay so and then this last point about custody losses is that, even when courts credited that the father had committed some kind of abuse, 13% of the time, 62 cases out of 468, these were DV and child physical abuse cases. 13% of the time the father, the abusive father, still got custody. Now I'm going to bet that you guys can guess what these cases were. They were likely ... and we haven't gone back to analyze these although I intend to ... they were likely all cases where mother was considered to be an alienator and courts decided that that was far worse than whatever abuse he had been found to have committed.

But again, this number alone ... I remember when I first presented this data in a very small group setting with some family lawyers and some evaluators and one evaluator in particular could not take this number and she kept saying wait, wait, when the court confirms the abuse? I had to tell her like five times in a row "yes when the court confirms ..." She couldn't believe it and she was

she was one of the bad evaluators who you know generally poopoo'd abuse and was very big on alienation and she couldn't believe that courts were, you know, outweighing abuse because she had the same mindset that I think a lot of them have which is that abuse is an unfair trump, no pun intended, for custody cases. And it's just it's just not true. It's a myth.

Okay so moving into the gender findings that grow out of these data. I'll just tell you up front what they are the findings overall. First of all that overall alienation's power is gendered. That is to say, it's an effective defense for father's accused of abuse but not for mother's accused of abuse. And that it's like ... our data suggests that it's not as clearly gendered when it's just in cases not involving abuse. And this is this is very interesting and I'll come back to that a little bit at the end of this segment, um because it kind of suggests that the story is not black and white um which we never said it was but they say that we said it was. Um and at least in our data that when courts find that alienation has been proven, the impact is gender equal. Now that's something we could peel back and discuss it may not actually be gender Equal on the ground, but numerically it looks gender equal.

Ok, so point 1, alienation claims are more powerful for fathers. So, what we found statistically was that when we looked to all the cases with alienation claims, uh...one way or the other, and this mixes the cases with and without abuse claims, we found that when fathers accuse mothers of alienation, they took custody away in 44% of cases. But when mothers accused fathers of alienation, they took custody in only 28% of cases. This was a statistically significant difference and it meant that mothers have twice the odds of losing custody when accused of alienation compared of fathers accused of alienation. So, a pretty clear finding on that. And no surprise, because it was invented as... you know, in a very gendered way.

Ok, so then we also did some preliminary regression analyses, uh were gonna delve into those a little more hopefully this year and get a publication out in the next year or so on this. Um... when the mother's alleged child abuse their custody loses would be predicted to increase from 32% with no alienation claim, that's a lot higher than we found in our just overt stats, um... to 52% with the alienation cross claim. Um... and so... um... looking specifically at when um... mother alleges abuse, father alleges alienation, that cross setting... but again with the regression analyses, the fathers, when we did the same analysis where fathers accused mothers of abuse and the mothers cross claimed alienation it had no effect on the frequency of fathers' custody loss at all. So again, a clear gender difference.

And here are the possible gender parities. Uh... one, is that when alienation is alleged and a court believes it, the fathers and the mothers lose custody at

identical rates, shockingly identical, 71%. Now, bear in mind, this is a kinda small data set, uh... subset of our data because, in order to define a lost custody, we had to know who started out with the kids and the opinions don't always tell you, a), and b) fathers much less often are the ones who start out with the kids. But we had enough to do these analyses.

And also in the cases that were not abuse cases, as far as we could tell from the opinions, we found that when we sort of reanalyzed the race of custody losses where someone's alleged to be an alienator, we did find a difference between fathers and mothers, but they were too small... the numbers were too small for statistical significance. So it's possible that this is relative gender parity in the sense that it is not a statistical significant gender difference.

So, synthesizing all of that, what I find really interesting about it – and everyone in the alienation field has very carefully ignored this finding – is that the gender differences um... in these cases... first of all are consistent with the abuse fields critic. They do show that alienation in abuse cases appears to be gendered, and effectively denies mothers and children's claims of abuse.

Ok, that we know the alienation field won't like. They ignore it. But this, they also ignore. What we've found is that the relative gender parity in the non-abuse cases as well as in abuse cases where alienation is validated, support the argument that alienation is not necessarily a gendered claim. Certainly, we know that women claim it against men as well as men claiming it against women, and we see at least a surface numerical gender parity in terms of outcomes. That is something that the alienation field should be celebrating, that we found, because it validates their claim and they're always arguing and saying, "it's not just about you know, it's not just a defense by man against women, women are alienated too," we know women are alienated too because we know that batterers do this. This is a behavior that batterers do the most and most effectively because they combine fear and coercion with their... uh brainwashing. But um, uh... it's... the alienation field tries to use the fact that men are also alienators, supposedly, uh to say that our critiques of the alienation field are wrong.

But again, they are ignoring the nuances in our critiques. Um, and I'm just gonna validate this by saying I have had a handful of fathers that came to me who were accused of alienation – I believe wrongly – from what I could see, um and the dynamics in these cases were remarkably similar to the dynamics for our women clients. The fathers become demonized, nothing they say is

credible, everything the mother does is excused, etc. etc. etc. Um, so... um... uh it was very interesting to me to see this data.

Ok, so last topic. What happens with these neutral court appointees... that the court leans on the most because they think they're neutral, and they think they're objective, and they think they don't have a dog in the fight. So, they think whatever these folks tell them has to be... you know... trusted. So, what did we find? We found that when there was a guardian ad litem in the case, mothers alleging abuse were even more likely to lose custody than when there wasn't. Especially when alleging physical... child abuse or mixed physical sexual child abuse...

And, conversely we found that GALs had no statistically significant impact on protective fathers who were accusing mothers of abuse, likelihood of losing custody. So, it seems like a very clear gender bias... in the world of GALs. Which is what we see anecdotally, but I was kinda stunned by the degree of statistical support for it.

And similarly with Custody Evaluators who are neutral appointees of the court, when an evaluator is there, mothers alleging abuse are 2.5 to 6.5 times more likely to lose custody. These higher frequencies are, again, with physical child abuse or mixed physical sexual child abuse similarly with the GALS. And similarly, they have no statistically significant impact on protective fathers' likelihood of losing custody. So again, exacerbating gender... bias, these so called neutrals are... furthering gender bias in the system.

Ok... so here's the limitations and then I'm going to take the slides down so I can see you, and... well maybe I can see you or I can at least see me. Um... and we can talk, and I would welcome your questions um... or comments. So really important limitations. First of all, this study is not a study that proves that courts are doing anything wrong. We don't know the facts, we couldn't go back and assess the facts, so we didn't try. All we're doing in this study is measuring what they're doing based on the allegations. So, we're finding that they reject the abuse claims normally more often than not, and especially when it's child abuse. We cannot say that they were wrong to do so, but that is why I bring in some of the outside research that I mentioned on child sexual abuse to compare what courts are doing... with what other research suggests about credibility of these allegations.

Second major limitation is that the data set, as I'd mentioned earlier, is primarily appeals because those are the... by and large, states publish online their appellate decisions but not their trial court decisions. But, we had 4 to 5 states that actually published trial court opinions too... and um we were able to do some preliminary comparisons and analyses... um to see... if you look

at this footnote, to see how... the trial court opinions compared to appeals. Because the big critique of our study that judges like to fall back on is appeals are not representative of what's happening, not at all, the cases that get appealed are few and far between and are really extraordinary cases they say.

So, you... this is not measuring what's really happening in courts. And, you know, it's a valid concern. On the other hand, its measuring something, um something pretty significant. And what we were able to find when we compared... the several hundred trial court opinions that did show up in our dataset, we found that it's true that the rates of custody losses for mothers were lower. Compared to in the cases that had been appealed, and that's not surprising because when mothers lose custody, I think the odds of their appealing must go way up.

Um but we also found that the rates at which abuse claims were disbelieved was not very different between trial court opinions and cases that had been appealed. So, similar dynamic, perhaps slightly less draconian outcomes, uh and we can't really say... although we could look at these several hundred to see what the outcomes were and the rates of custody losses were, and we haven't done that either. We really need an article that looks specifically at these differences um... and gives... puts out data that people can know.

Um, but anyway, so that's... those are the first two very significant uh limitations and then the last limitation here, number 3, is that...because we were reliant on court opinions that had been published online, we had to take their word for whether the case involved abuse or alienation frankly. And... uh judges don't always mention every allegation that was made in a case, and it's very possible that there have been some abuse or alienation claims in these cases that were not mentioned in the opinions. But... I believe that that actually strengthens our findings rather than weakens them. Um, because um... I can go into that if you want to on Q&A. I don't think this hurts our findings though.

Um... so that's it and... there is contact information here I'm sure you can probably get ahold of these slides and uh follow-up with this information uh after today. And I think I'm gonna stop sharing does that sound ok Jessica?

**Jessica Rooke:** Yep, that's great thank you so much.

**Joan Meier:** Ok.

**Jessica Rooke:** So, we will get started with the Q&A portion. Um, if you guys want to go ahead and send any questions in the Q&A box, and I will kick it off with a question we already got actually. So, one question we got was, was your study about loss of custody in alienation defenses and abuse

cases based nationwide? And were a group of states more prevalent in the study?

**Joan Meier:** Uh, that's a great question. Our whole... one of the big drivers for us doing the study was to get a national picture. Because the only research that had been done at that point was state-based and in some cases particular courts. So, you really couldn't learn anything generalizable from the research that had been done and we wanted some generalizable findings. So yes, it was absolutely national and we have the data state by state... and there have been a number of advocates from different states who have asked us for our data... um and the problem is that it's complex... decoding is so complex that I think they have trouble using it. But we're... interested in helping people if they want to analyze their case state law from our study. Um, as far as some being more represented, absolutely. Um I... I'm not going to remember off the top right now, but I think Delaware was one state where we had maybe 2 appeals and maybe 20 trial court opinions. Like a very surprisingly low number of appeals and a handful of trial court opinions. And then you had California which had by far the biggest uh... case uh number of cases in the entire data set something like 500 or something.

Um.. so... there's a huge spread and some states, even I think Ohio is fairly small, Delaware is small, um, D.C. of course is very small. So, um, yeah. There are those differences but you know you work with what you've got. And that's as good as a national picture as we are ever going to be able to get because nobody's ever going to be able to go to every courthouse in the country and gather this data.

**Jessica Rooke:** Another question we got was, what are the evidentiary standards for proving alienation?

**Joan Meier:** That's a great question too. There is none. So, when you're litigating custody it's a civil case, and it's presumed that it's just a preponderance standard of proof. For anything that you're arguing about in custody. Same with the abuse. Um, some, I think a handful of states may have in their statutes something about requiring clear and convincing evidence of certain things that they're most concerned about like I think Florida has some pretty high stringent standards for uh proof of certain kinds of abuse or something like that, and I may be wrong, don't quote me on Florida but um by and large it's preponderance standard for everything and courts.... this is the crazy thing about alienation, there really is no evidence of alienation. What there is is an expert or an accused person.. um.. someone accused of abuse coming to court and saying, "she's just using these claims to alienate me from the kids, they're false." That's considered evidence of alienation. The claim. And then you have evaluators who come in and say, "well, she

really, you know, has nothing good to say about the father.” That’s considered evidence of alienation. And, “she even told her kids that she was not going to go to their performance at school because their dad was going to be there.” That’s considered evidence of alienation. So, you know, where he’s abused her in the past, she has every reason not to go and she’s going to have to explain to her kids why she’s not going and being around him and you know, but that’s pointing to his alienation. So basically, anything that an abused mother does, that’s logical for an abused mother to do, is pointed at as evidence of alienation. And the other thing that is really disturbing is children’s behaviors that are also indicative of abuse. This is kind of my new, my new uh, I don’t know what to call it. Theme, meme, theme. Um, I testify as an expert now and then in these kind of high level, high expense, custody litigation where there are experts on both sides and um, I’m trying to educate judges to understand that what alienation experts generally say is children’s behavior, acting scared, acting angry, acting hateful toward their father, they call that evidence of alienation. Because they say, “Abused kids don’t act like that. Abused kids love their abusers.” And they base that on studies that don’t prove that. But, courts don’t know to look behind those cites and what those studies do and don’t prove. Um, so they claim that if kids are really outspokenly hostile to a father, that’s alienation whereas we know in the abuse field that not all abused kids are outspokenly hostile. Some are, still love their fathers it depends on many, many things in terms of dynamic of the abuse, dynamic of the parenting and the family. But it doesn’t mean they weren’t abused. But um, we do know that kids who have a safe parent um, and have no need for an abusive parent aren’t in foster care, but can live perfectly happily with one loving parent, they may hate their abusive parent because he’s fighting to get them. He’s fighting to take them away from the mother and maybe they hate what he did in the family. So, it’s totally illogical but they get away with this because it’s a lot of junk science and courts don’t know the difference. And one of the things I try to do as an expert is to say, “the science doesn’t support this,” but the judge’s eyes kind of tend to glaze over when you start talking about the research and the science. Plus, they think because I’m a lawyer I’m not qualified to talk about the science. So, that’s a whole other thing.

**Jessica Rooke:** So, I think you just hit on pretty well what type of evidence is considered proof, but we had a follow up question of how is that best countered.

**Joan Meier:** Yeah, great question. It’s really difficult, I mean one, the only thing that I and my colleagues advise parents in these cases to do is you know, if you can possibly get an expert, get an expert to at least make the record for appeal. To lay out why what’s being said on the other side is sort



of junk science-y. Make it clear that it's junk science, and, and analyze the facts in the record consistent with abuse. And sort of explain how this is really more of an abuse profile and the alienation profile is just slapping the label on what is actually an abuse profile. So that's the kind of expert testimony I think is needed in these cases. It's very hard to get because you can count on two hands the number of mental health experts around the country who can really address what's wrong with alienation, the way it's used in court and know abuse well enough to really talk in those terms. And they make a living, some of them, off of it so they cost money, a handful of them do it for free or now and then, you know, I occasionally do it for free but I more often charge because I can't devote myself to that many of these cases, it's too consuming. So, um, you need an expert, and you need a lawyer who um, understands these dynamics and a lot of the family lawyers, especially in the private bar, do not understand these dynamics at all. Like, kind of like when I said I presented the data the first time to a small group and this one evaluator couldn't believe what I was telling her that courts were giving custody to people they knew were abusive... family law lawyers are like that too because they don't come from the abuse field and so they don't see it all the time. In fact, they represent often people who are accused of abuse, often fathers, and so they're used to thinking some abuse is true, some abuse is false, a lot of the time it's false, they don't see courts as biased against moms who allege abuse because that's just not their constituency and where they're coming from. So, when they walk into these cases, they don't know what's hitting them. A lot of the time, I mean I hear that over and over and over, "I've never seen anything like this," and I'm like "This is ubiquitous around the country. I see it all the time." So, you need a lawyer who understands the dynamics so they can prepare to fight and either you need that to be your lawyer or you need someone to bring in people like me and my colleagues I think there are... there are again you can count on two hands people around the country who are lawyers who understand how to litigate these cases and can help sort of support as a consulting attorney um, the strategies and the tactics for defending against these claims.

**Jessica Rooke:** Thank you. Um, another question was, were you able to do any analysis of the intersection of parental alienation and foster care and whether the children involved in these cases ultimately ended up in foster care?

**Joan Meier:** No, that's a really good question. Um, we... none of these cases involve foster care because they were all cases with parents battling parents for custody. So, they, they, children have not been removed certainly at the time of these cases. Um, some of them did involve child welfare agency involvement, like there had been a report to the agency and the agency uh,

had made a finding or had not made a finding and some of that was litigated to some extent. Um, but no, we weren't looking at foster care. Um, so it's, I'll just say a couple things about child welfare agencies, I've done another article about that. It uses some of the data from here but it's...I don't have any data on the child welfare side specifically. But, um, they have been somewhat captured by the alienation field, too. So, they're now starting to treat alienation claims as a form of child abuse. Which is what these zealots in the alienation field are saying. And, they've never been good at identifying child abuse, uh, anyway, especially in families that are not in their usual marginalized poor people of color families. When you're talking about any other population they don't find abuse generally, uh and um, now they're finding alienation to be abuse, calling it emotional child abuse, um, and they are becoming a real problem, part of the picture, as opposed to child protective so that's actually my next mission, is going to take that other article and try to build a conference around it to bring child welfare people and family court people together to try and talk about this stuff. So, I'm sorry, no data on foster care and I don't think alienation leads to foster care I do think um, there's a whole different dynamic to some extent in poor populations of color, which is the main focus of child welfare agencies not necessarily for the right reasons. Um, and the dynamics are different enough that I think who goes to the, a lot of it is neglect, what they call neglect. And, um, some of it is physical abuse or sexual abuse but it's, I don't know that that's the dominant portion of it. So I don't, I can't really say. Um, whether alienation is playing a role in terms of foster care.

**Jessica Rooke:** Thank you. Uh, we have some questions regarding GALs, so what are the potential root causes for the gender biases when GALs and/or evaluators are involved?

**Joan Meier:** These are great questions. Um, yeah, it's really hard to believe because you would think an advocate for kids is an advocate for kids. But, um, I hadn't understood it until a few years ago when I got into an extended series of arguments with someone who had been playing the GAL role for many years and prior to that had been a prosecutor and prior to that had been an engineer, interestingly. Um, and what I learned was that she was very angry at her parents for what she went through as a child. And she was at least as angry at her mother as she was at her abusive father. And I think it is possible that a lot of people who become GALs, so she was in the business of trashing mothers, you know I'd send her a case and she would dissect the mother. And she didn't even care how bad the father was that the kid was forced to live with. And I thought, "Do you care about this kid or not?" and so, I think it's um... I think they're acting out their childhood traumas and they have a lot of issues with mothers, whether the mothers were directly

abusive or were failing to protect them, you know in some way facilitating abuse... um, it's acting out anger at parents rather than having sort of a solid ground and objective view in what children need and what's the lesser of two evils even, that you know, she couldn't bring herself to do that assessment.

Um, and uh, so I've come to believe that there's a lot of psychological, historical childhood underpinnings to to the biases that we're seeing in these cases, especially with GALs who, you know, who's commitment and mission is supposed to be to children. And evaluators, very possibly the same, although I haven't had comparable experiences talking to evaluators about their past, so finding out what drives them. I think they tend to be a little more cerebral, a lot of them, um and just sort of probably more garden variety misogyny possibly.

**Jessica Rooke:** So, following up on that, do you have any recommendations for how the courts or GALs or evaluators can receive education to better understand those dynamics?

**Joan Meier:** Absolutely. So, um, there part of the work of my center is to get states to adopt, um, better custody laws both substantively in terms of their standards for determining access and also in terms of training requirements; and we actually got all of that rolled into the violence against women act last year, in a provision called cadence law named after a murdered girl was murdered by the dad who worked, refused to protect her from. And um it was from Pennsylvania and, uh, it provides financial incentives to states to adopt all these provisions; so, we're going around the country with different States and trying to advocate for training among other things and Colorado um adopted not the whole cadence law, but they adopted a training requirement for evaluators. It was six hours of child abuse, six hours of DV training, and there, there is no such thing - nobody's doing both, right? As I said, um, so we developed a 12-hour webinar training for Colorado evaluators and our plan is to build that out um and add to it a lot um to create um essentially a whole set of marketable curricula for evaluators for judges, for lawyers, um and others. I've been doing this kind of training ad hoc for 30 years, so have many people that I work with, um, but to create a sort of a school where you have a whole curricula you can pick and choose which curricula that you need and then you, you pay for it; which isn't always the case when we go around and do trainings. Um and that is our goal and there's also a consortium of groups, uh, including my center and a handful of other groups um organized by the - what's it called - international violence and trauma - IVAT - I forget the full name, but it's based out of California Alliant University, Bob Gaffner's the head of it. He got a grant and is bringing together a group of us to develop um some of these trainings as a consortium; so I think between the consortium and the center itself I think there's gonna

be more um sort of bodies of good trainings out there that people can find, that can go to and find and know that this is where the abuse expertise is found because there's a whole other body which is the association of failing facilitation courts, the AFCC, which puts out trainings for family court people. They purport to be a Big Ten; they are the home of alienation; they do not really include serious abuse experts at all though they have token people here and there presenting but the dominant ethos of the AFCC is very much not abuse sensitive and not um you know very alienation oriented and joint parenting oriented so we want to create kind of a counterpart to the AFCC that is really here's where the abuse expertise resides. Um it, it may take some years but we're starting. So we do believe in that and then the other thing is I think there needs to be accountability and you know how you get accountability? Some of it is appeal although it's very hard to win these on appeal; the others is media like when horrible things happen to link back to the decisions the court made; point out that the court had a chance to protect the child and declined to. Why? Because this alienation claim. What's wrong with the alienation claim? You know and then pin that back to the data that we have to try to educate the public as well as the legal system. This is a pattern, these are not fluky one offs. This is a trend that's widespread.

**Jessica Rooke:** Just building off of that, I think you kind of just addressed this a little bit, but um – and this will be our last question and then we'll wrap up – uh, what have you found to be effective strategies in judicial training and reversing the parental alienation narrative among family court judges and what funding and/or further work is needed here?

**Joan Meier:** Yeah, thank you, great question. This is a work in progress, sort of, what works with judges. I will say that, after decades of doing different judicial trainings on abuse and alienation, I did one that was different. It involved small group vignettes where - and it wasn't even specific about alienation it was just about abuse (DV) - and I put people in small groups, and they had a very pure vignette. It was like three sentences, no extraneous facts: “Mother’s never reported abuse before, now she's on, on, on the stand claiming there's been a history of abuse. Do you believe her or not? Why not?” And, you know, judges all come out saying, “Of course not, she's never reported abuse.” But the rest of the room, which includes DV people, are like, “What are you crazy? Women never report abuse!” And so, you get the dialogue going so the judges see how their misconceptions and, and, you're not the only one challenging them, other people in the room are also. So, you start laying the groundwork to show them that they have biases that aren't based on reality. And they see it themselves, kind of, by the process. And then the goal will be to pan back and give them more data and more, kind of, didactic content. But you gotta start, I think, by inviting them

to think about things and express their views or their interpretations of things in, in order to get them to sort of hook into the content you want to give them. That's a new idea for me and that that training works surprisingly well. It was some years ago. It also involved the judge helping me do it so I think, you know, I think there needs to be a judge as well as a lawyer and/or mental health person doing the trainings and um, or former judge, and I have a friend who is, um and um and, using those kinds of opportunities to try to get people to open their minds based on what they were just thinking about and then hearing, "Oh, wait, maybe not." Developing that for alienation is a little trickier and I don't know that we've figured out kind of the best approach on alienation - it's really, really, tricky.

**Jessica Rooke:** Well, thank you so much for joining us today. We have a couple other questions in the Q&A box and I'll just um, if people are allowed to reach out to you via e-mail? Um, they have your slides so if that's okay with you, I'll advise them to do that.

**Joan Meier:** Sure.

**Jessica Rooke:** And thank you so much for joining us today, we really appreciate it.

**Joan Meier:** My pleasure.

**Jessica Rooke:** Yeah, and for now we'll take a very brief break before our next lecture with David Keck.

BRUEN

*David W. Keck*

## INTRODUCTION

**Jessica Rooke:** All right, everyone, we will be diving right into our next lecture presented by Mr. David Keck. David W. Keck is currently an attorney with the Legal Action Wisconsin in Oshkosh, Wisconsin primarily focused on family and protection order cases. Prior to this position, Dave was the director of the National Resource Center on domestic violence and firearms through the Battered Women's Justice Project from 2016 through September of last year. The center focused on the removal of firearms from domestic abusers in locations across the country. Prior to that position, he was a court commissioner in Winnebago County, Wisconsin from 2006 until 2016. During this tenure, Dave piloted a project which he developed a protocol for Wisconsin courts to follow and order firearm relinquishment. Prior to that, Dave was a trial attorney with the Wisconsin State Public Defender starting in 1993, providing representation and felony misdemeanor, juvenile, and mental commitment cases. Dave Keck resides in Oshkosh, Wisconsin. Mr. Keck, you may take the floor.

## SPEAKER

**David W. Keck:** Thank you. I should, oh you've got it, great, thank you. So, I'm Dave Keck and thank you, uh Jessica, for that introduction ... I was asked to talk here today about domestic violence and their partner violence, firearms, and uh Supreme Court decision in Bruen. Um, I kind of wanted to jump right into that. If anybody has a question, please chat those or comments, um we can start.

I don't know if anyone's heard but, probably all of you heard, but the federal uh District 5 yesterday actually uh ruled that that the uh protection order uh Domestic Violence Protection Order Prohibition, federally, is, following Bruen, is not constitutional anymore and I kind of wanted to jump right into that, so if we could go to the next slide.

Um the narrow holding in Bruen doesn't really impact domestic violence, it doesn't really address that, so that was kind of the "good news, bad news" and uh and as you've heard, I have probably spent the better part of the last 15 years or so working on uh removing firearms from domestic abusers. So

when I say “good news, bad news” I look at from my perspective: um, it's really bad news and worse news is really all it is. And the fact that it doesn't impact domestic violence directly, and even yesterday's decision um doesn't for a different reason, uh it still is not it's still not good news.

And like I said, the the, the narrow ruling in Bruen really was all about, about licensing and the “shall-issue” or “may-issue” uh laws in in different States and how the, the subjective uh, uh law enforcement decision not to give somebody a concealed carry permit was unconstitutional. But, Bruen goes much further than that, and uh this the majority opinion comes out and says Essentially, unless uh unless a firearms restriction anywhere for of any kind in this country, unless it has a historical precedent, it's unconstitutional. So Bruen goes way farther than, than Heller ever did, I'll talk about Heller in a minute, but it goes so far as to say unless you can show somewhere that someone's done this in the past, uh, it's not... it's unconstitutional.

Essentially the way I read that essentially is saying the opposite of what, uh, you know the last 220 some years of, of Supreme Court jurisprudence has said, which is that, uh, the Second Amendment is not, uh ... it's not all-encompassing it's not it's not absolute. Uh, *Bruen* goes almost so far as to say it is absolute. Um it also what what's concerning about the *Bruen* decision is that it doesn't really give any sort of legal, uh, principles that courts, lower courts, or any courts, can, can apply to determine whether a law is constitutional or unconstitutional. It really, uh, focuses only on, uh, history. So, if we could have the next slide, please. So, this is the problem that, uh, still exists even after yesterday um which is that ... the so the prohibition on possession or purchase of a firearm for those individuals who are subject to a domestic violence protection order has been in a place for, for 40 some years. Uh, the problem with that is even though statistically and, and studies have shown this, it has been demonstrated to reduce the incidence of domestic, uh, partner homicide. Uh, it, it, it really works. The problem is it's not really being used in very many places. Uh, probably right around half of the states maybe a few more than half of the of the states in this country have, uh, um, um either an authorization or, or a mandatory um provision that firearms must be relinquished or surrendered if someone's under under a domestic violence protection order. The federal law just says you can't possess it, you can't purchase it. But state laws in many states like I said have gone further and said those firearms have to actually be relinquished. The problem is that's only being practiced in a very few places around the country. Um and so the initial impact I guess that the direct impact on uh, firearms and domestic violence, intimate partner homicide, is probably uh, not as great as we might, we might, we might think only because, but only because lots of places don't do it. Judge judges don't order it, law enforcement doesn't follow through, so in a certain

sense um it's not good news but it's it's not as bad as it could be. Um and there's a number of, of, of reasons I've listed here and these aren't these aren't the only ones but um for example we, every state except for a few have something called a preemption law that most people aren't even aware of, which means, uh, if you, for example, as a as a county or a city or a ... level of government in in your state want to do something about firearms, you want to prohibit those in certain areas, in most states you can't do that at all because there's a state law that preempts that says you can't be more strict than, than the state law. So, that's one of the, one of the biggest hurdles probably that that that you would see in trying to reform or trying to reduce gun violence. Um the state laws are inconsistent as the next one and this is, I can give you an example. I live in Wisconsin, Oshkosh at about 3 hours north of Chicago. Uh, Chicago has for a number of years worked on, on ways to reduce firearm, just firearm violence in general. The problem is from, from Chicago you can drive within a within a few minutes or an hour probably you can go to Gary, Indiana, for example, uh, you can go to Missouri, uh, and purchase a gun and you don't you don't have the same restrictions that you have in in Illinois. Wisconsin is fairly strict but not, not as strict as some. Uh, the question about state and federal alignment is one that's that that's kind of, uh, not talked about very much but uh domestic violence is defined, uh, by every state in the kind of somewhat different way and unless that lines up with the federal prohibition, the federal prohibition won't, won't be implicated. So, uh, for example in, in, in a in a firearms purchase that's done legally through a a licensee there's a what they call a NICS background check and if the state's law doesn't line up with the federal law, then then those are individuals that aren't going to be prohibited. Uh, the lack of a national overview is something that I've been concerned about for a number of years and, and this is something that, um ... it it really is overdue. You know, there isn't really any kind of national, um, overview of how, how these laws are interrelated and really how, uh, certain practices have shown to reduce firearm, um ,homicide rates ... but this is something that just which is probably something that needs to be discussed on a national level. Uh, I talked about the inconsistent nonexistent state applications that's something that, um, is continuing to be a huge problem. Universal background checks are something that probably are also overdue but they're also missing. So, there's a lot of other, other, uh, sort of safeguards that could be put in place even before we had the *Bruen* decision but just simply weren't being, being used. If we could have the next slide please. So, I'm going to talk about, uh, *Bruen* here, uh, but I need to do that I need to talk about *Heller* at the same time. Um but I want to just as an aside, I want to mention one other thing that's really important. Like I said I've been spending a number of years on this I, I left uh that work I did probably a few months ago to start back in, in, in my, uh, area here in Wisconsin and I'm doing work



with, uh, mostly victims of domestic violence and firearms issues. So, this is something that that I've that I've been kind of been devoted to for a number of years but I want to just say as an aside that, um, research uh, you know also in news media, seem to focus a lot on homicide rates but I think it's important to remember when you're talking about domestic violence, intimate partner violence, and firearms, the number of people that are that are, uh, sort of under control of an individual with a firearm are, are many more than then then then show it up as statistics as, as, uh, homicide deaths. Uh firearm deaths, excuse me. So, it's important to remember that lots of people are impacted by these kinds of decisions, uh, who may not be actually, you know, a victim of, of a firearm homicide. Uh, it's important or lots of people are, are controlled that way, uh, just by the fact that this, that, that they know that people aren't going to be required to give up their guns. So, uh, the *Bruen* decision came really in and, and if you look at that it isn't ... uh, there isn't a lot of legal principles that are in there, it's kind of, it really is built on *Heller*. And *Heller* is something that came from 2008 District of Columbia, *Columbia versus Heller*. It was followed in the two years later by, uh, City of Chicago versus McDonald, uh, which applied *Heller* to the states. Uh, *Heller* had some kind of, was kind of a really the kind of the starting point of all of this, um, where we are now with, with *Bruen*. Uh, prior to that, for over 200 years, the Second Amendment the U.S. Supreme Court had consistently found that the Second Amendment only talks about, it only means firearms have to be available for, to put to arm a militia. And a militia is a very specific term and, and the Second Amendment talks about a well-regulated militia for a very specific purpose because the, the, the practice in those days was to ensure that there were enough firearms in any given community as a defense against any kind of attack. And remember that the within about 20 some years of the, of the, of the Bill of Rights being, being enacted the Congress was burned down by the British. So, it was a very, very big concern that people could not defend themselves particularly against, against another country. So, that's what the Second Amendment said up until *Heller*. And in *Heller* the, they made kind of an interesting, um ... an interesting sort of strategic move, uh, Antonin Scalia is the, was the author of that of the *Heller* decision and he essentially took the first clause out of that out of the Second Amendment that refers to well-regulated militia being necessary to the security of a free state and then essentially crossed that out and said that's just prefatory language. It's just something that I haven't found anywhere else in any other, uh, constitutional jurisprudence anywhere where someone in courts, particularly the Supreme Court, has said that, uh, part of that, that amendment doesn't, doesn't really apply it's just prefatory. But that's essentially what they did. So, um, and at the same time *Heller* also found that there, the, the need for a firearm was there and has always been there independent of the militia, uh, purpose

to defend hearth and home. And hearth and home doesn't appear anywhere in the Second Amendment, uh, they crossed out the well-regulated militia and put in hearth and home. Uh, this is important and this is always been important for at least for our work or for my work because ... the home is statistically the most dangerous place for a woman if there's a gun there. And so having a, a gun for the purpose of protecting your hearth and home, uh, is something that I heard the word misogynist a few minutes ago and I don't dispute that I think that probably is what, uh, drives a lot of this, this decision making. Now *Heller* did, and this is going to be important here in a minute, *Heller* did acknowledge that the long-standing prohibitions on firearms are presumptively constitutional. I don't know where we are with that after *Bruen*. I think that may have been, uh, also crossed out. I don't know if that still is good law. *Heller* is really the one that did at least acknowledge that, that there are reasons, and this is what, for example up until yesterday I would have said it still, uh, is the basis for removing firearms from domestic abusers for example. Uh, eh, we don't know where this is going to go, if it's going to be appealed, is it going up the Supreme Court or where it's going to go but, um, that appears to maybe also have been removed. Uh, *Bruen* essentially dispenses any kind of balancing test. It doesn't matter what the governmental interest is. It doesn't matter what the, you know, any of that. The focus ... after *Bruen*, the focus is on history. Is there, is there a history behind this. If we could have the next slide. So, uh ... uh ...

**Speaker 2:** Excuse me, is that the correct slide? I'm sorry, I–

**David W. Keck:** I don't remember anymore. See if there's one maybe just before that. Okay, ye– thank you. Um, so, the, [unintelligible] really the, the main concern, uh, for all of these kinds of, um, prohibitions or limitations on use of firearms or, or possession, uh, of a firearm really, uh, focus on access to firearms. Uh, as an aside, this is also I think one of the big drivers of the high suicide rate in our, in our country. About 60% of those I believe are also used by– also done by firearms. But it's the, it's simple access in, in, in a domestic dispute, uh, th– the presence of the firearm, the accessibility of it. And sort of the, um, really the, um ... I'm lost for words here but the, the way, um, that that people get angry in an argument, and they have a gun right there then they'll tend to use it. And this loss of protection, this leaves victims and survivors of intimate partner violence much more likely to be intimidated and controlled by abusing partners. A study was done a, a, a couple of years ago about, about four and a half million women in this country have reported being intimidated or being controlled by an intimate partner with a firearm. And that firearm may never have been, uh, pointed at them. It may never have been fired at them. They may not have ever been injured by the gun. But the simple presence of the firearm is a little bit like um, uh, somebody you know

committing a bank robbery and they walk into the lobby of the bank with a gun and they get the money. Nobody really wants to, to challenge that. And it's the same thing when someone brings a firearm into the home. And so, this is really the, the real concern, the main concern that, that I have around the proli- the proliferation of firearm and the absence of any kind of follow, uh, uh follow through on removing the firearms. And really the message that comes through is really the indivial right versus the collective right. That slide, the next slide is good. So, uh, there's a lot of talk about you know, uh, originalist thinking and originalism, uh, within the Supreme Court, and I'll give you a little bit of the history about how some of this developed. But I just wanted to, I just wanted to ... sort of illustrate ... this that Second Amendment, First Clause, "a well regulated militia being necessary to the security of a free state." Without any kind of, uh, authority or any precedent really for this, the, the *Heller* court said that's prefatory language only. It's not the operative language. The operative language is the right of the people to keep and bear arms shall not be infringed. Uh, this is ... this is huge and if you want to do anything, if you're at all concerned about where we're going with firearms the way I am, uh, and you want to do something about *Brun*, you're really going to have to go back to *Heller*. Because *Heller* is really the, the jumping off place where the Supreme Court just did a completely different, um, view of the Second Amendment. Uh, Justice Scalia doesn't go into, any, really any detail or any analysis about why he feels that's prefatory, um, but I think there are probably ... suspicions and we'll always have suspicions about this being somewhat outcome determined, that he wanted to find a way to have the, the Second Amendment say what it now says. And uh there were certain groups, I won't mention them, but there were certain firearm gun rights groups I guess, uh, that for a number of a years, sort of paraphrased the Second Amendment, they, they eliminated that first clause and, and, and, and the Second Amendment for them was the right of the people to keep and bear arms shall not be infringed, period. And that became sort of the mantra for so many years that it really in a way, uh, I think influenced the, the Supreme Court and the Supreme Court found a way to cross that out, and the simple way to do it was simply to cross it out and say it doesn't apply. Um, that is sort of the jumping off place. From there is where the *Bruen* court, really relying on *Heller*, applied a new test, um, which I, I believe it fails, and it fails its own test. I mean the *Brun* court doesn't demonstrate anywhere, uh, in the Supreme Court's history where they have said the Second Amendment is absolute. Uh, so I, I think if you if you take the words of *Breun* literally, uh, which I think we have to do now, uh, a-after that decision yesterday, I think we have to take those words literally, then unless you can find the historical precedent for this it's, it's, it's just not the law. And, uh, like I said, I think *Bruen* itself failed its own test because they don't demonstrate a place

where that's been done before. Um, so I think it's a very, it's a very questionable decision. Uh, it's a very predictable decision based on the history with *Heller*. Uh, if we could go to the next slide, unless anybody's got a question or comment? So, uh, this is what, what I think I really wanted to talk mostly about, um, is, 1991 retired Justice Warren Berger referred to this tactic that I'm going to call a tactic of, kind of, uh, paraphrasing the Second Amendment to mean what you want... what you want it mean which means it doesn't apply to the militia. It's not a militia at all even though it says militia. It says that's its purpose. Uh, Justice Berger called it "one of the greatest pieces of fraud of the American public by special-interest groups that I have ever seen." Um, and this was almost 20 years before *Heller*. In 2008, in the *Heller* decision, uh, Justice John Paul Stevens was, uh, was one of the dissenters and he, he gave a very I think a very, um, prescient, uh, warning here, he said "there's a special risk that the action of the judiciary will be perceived as the product of policy arguments advanced by an unusually powerful political force." And I think that's exactly what we have seen. Um, it's too late now if you want to talk about how to prevent gun violence. It's too late now to talk about the military or the purpose of it or anything else like that because ... the Supreme Court has said militia isn't the only purpose here and has gone, [unintelligible] and now gone on to say unless there's a historical precedent for it you can't do it. And again, uh, Justice Scalia in *Heller* sort of crosses out that, that reference to the militia and says its merely prefatory which I think is something again that, uh, done deliberately it, it, it, it, it, it was you know, it was kind of a maybe, uh, not a very clever way to do it but it was at least a justification for how that would happen. So, I, I think *Heller* is really where you have to look if you want to try to do anything about firearms. Can we have the next slide please? So, uh, I, I wrote this a couple of days ago, uh, and yesterday when I heard the news about, about the, uh, *United States v. Rahimi*, it's called, and I think it's was down in the 5<sup>th</sup> Circuit. I think it's down in Texas or Louisiana. Uh, it's difficult to envision any legislation that could potentially reduce the number of guns in the hands of prohibited individuals that doesn't fail the history test. And I think that is, uh, and I think that's very evident now. If we, if we take the Supreme Court at their word and say that it's the history only, that's all we can look at all we can look at from now is the history, I don't think any, any, um, I can't imagine any firearms restrictions that that would that would pass that muster because it's, you're looking at, at, at, at history of a couple hundred, uh, of two hundred years. Um I suppose as a solution it's possible the Supreme Court of the United States may eventually re-examine that reasoning. Uh, and if they do so, if they do, dec- you know, if the Supreme Court decides to, to open that up to some discussion and look at what they decided in *Heller* and how *Heller* really, um, set up the *Brun* decision, I think it's possible they may do that.

Now ... personally my personal view on this i—is if you’re going to do that, one of the issues that they kind of struggled with pre-*Heller* and in *Heller* was really this whole problem that, that, uh ... certain individuals wanted firearms to be more available. And the problem they were having was this language about, uh, the militia and how that sort of ... means that it’s for that purpose only and how to, and how to, uh, address that or deal with it and I think in *Heller* what they tried to do is say that’s just prefatory language, it doesn’t mean anything. Operative language says everybody gets to have a gun and we can’t uh, uh, militias not really a concern. I, I was taught in law school that if you’ve got language, particularly a statute but I think in an amendment as well, that seems a little bit ambiguous and you’re not sure how to, how to interpret that or what it means, I was taught to go from statutory construction to go read the entire statute and read the whole chapter maybe, to see if you can figure out how that fits in. And I think that that’s a step that was missed in *Heller* in the analysis. Uh, I think what they really probably should have done is looked at the Third Amendment. You know, the, the Second Amendment and the Third Amendment are right there, they both have reference to the militia. The Third Amendment in case you were wondering, and it’s really, it’s the forgotten amendment nobody really talks about it, uh, for years I’ve been talking about how you really need to look at the Third Amendment to un—understand the Second Amendment. The Third Amendment simply says you can’t be forced to have soldiers in your home, uh, unless there’s a war going on or unless there’s some kind of, um, uh, predetermined way of, uh, deciding that in times of peace. Third Amendment’s really has never been challenged, has never been, really been applied. I think the Third Amendment, when you read the Third Amendment, the one purpose that it does still serve, is it helps us understand what the Second Amendment means. Second Amendment was very clear, uh, during the colonial times if you needed, uh, to protect some place, a, community, uh, from another, another country, for example, you needed to be able to get soldiers from one place to another and this is before humvees, before helicopters, before any of that, people had to walk, right? And, so, they had to be, be kept on. OK. Thank you. Uh, people had to have a place to, to be housed in, in, in, you know, like in the wintertime or anytime. So, uh, it was a big concern that not only would you have an effective, uh, militia that was armed with firearms, right, um, but also had a place to stay, but they, in a way that didn’t really infringe on people’s rights and, and you were forced to have to have soldiers in your home. I think when you read the Second and Third Amendment together, they make perfect sense. This whole language, this whole idea of that’s just prefatory language doesn’t mean anything, uh, I think that’s really just kind of a ruse, uh, and a way of, of really getting the, the, the outcome that that was that was desired here. Um, and so I think that’s what needs to

happen. If that doesn't happen, if the Supreme Court doesn't do that, uh I, I anticipate there's going to be a lot of probably a lot of discussion in Congress about legislation and, and legislative fixes here but I think those are, uh, going to be under, under ... there's going to be limited to what has worked in the past and honestly this hasn't something that really has been um ... historically done in a way that's, that's meaningful today. Uh, certainly uh you know in the wild west and in places like that it's that there's all this mythology about, about guns. But reality is, uh, in most places you weren't allowed to have your firearm in the city or in a town. It was taken away was you know was held by the sheriff until you left the city. So, uh there's a, there is a precedent for doing that. Uh, It's kind of been a forgotten one because of, again, all of the mythology around, around the uh Second Amendment. Can we get the last slide, please? ... So again, um... The ... sort of the short term effect for, for, for the work that I'm doing right now with, with, with people that, that, that are you know, that victims of domestic violence uh, and, and, and there could be a firearm involved it doesn't have that direct impact because you know a lot of places in Wisconsin, where I live the firearms are removed, um, by domestic abusers, but lots of places they, they just aren't, so it's not good to have that impact that we might be afraid of. Um, again ... unless the Supreme Court is willing to take a look at this um it's, it's gonna be it's, I think it's going to be very problematic, um ... How exactly they apply this rule was something we'll probably see sometime soon. I think there's probably gonna be some challenges you know to, to the, to this most recent decision that go up from the Supreme Court. But I I'm skeptical that they're that they're really going to take a, uh very close look at it ... And that's, uh, one more like the last slide is probably just my contacts ... Yeah. So, if if you have questions or comments, you, you're free to call me, you can e-mail me, um, and I don't know if anybody has any comments or questions about anything that we've discussed...

**Jessica Rooke:** Thank you so much Mr. Keck. We, we do have, um, one question. So, this guest asked: what do you think this would mean for advocates in the D.V. realm? I can only imagine people feeling like SCOTUS decisions are very out of reach, so what can they do aside from being mad about this?

**David W. Keck:** Well, uh, thank you. I mean, I think that's what we're all asking ourselves now. I, I, I, you know, I was very um was frankly I was shocked yesterday when it when I, when I read it, but I wasn't really surprised I, I knew it was coming. Um, so I mean one of the things that, that, that we, we worked on with Battered Women's Justice Project in the past year or two, uh, really was around, uh, if we can't go to the legal system for protection, uh, then what's, uh, what are our other choices? Uh, I think there are there are

certainly a lot of people that are saying arm yourself with a firearm and I, I do not agree with that. I think it's probably the worst thing that, that that a person can do. Uh, so I don't advocate doing that. Um, you, you know, ... to, to ask the courts to enforce a, you know, a, a, a firearm restriction now I think it's going to be very difficult because I think, uh, I think this is going to be even ... uh, another reason why law enforcement and the courts are not going to want to do that again even though it's been demonstrated to, to, to show a reduction uh in in homicide rates. So, I guess uh you know if there's if you have non uh judicial sort of uh remedies like having family members involved maybe, I don't know who else you can do, so uh, if you've got any ideas out there, thank you. But if you let me know because I'd be happy to work on this this is something I think we're all asking ourselves.

**Jessica Rooke:** And then, uh, another question we had is what is the best defense for D.V. victims being controlled by firearms when the law in our states doesn't protect us?

**David W. Keck:** Yeah, another great question. Um, you know that that everybody's, every situation is a little bit different. I ... for some people the, the best thing is to, to just leave, uh get out of the house getting and get someplace else. But a lot of times people are in more danger when they do that. So, uh, I would say, uh, the two questions together I say I think is, is ... talk to advocates in your community about what other resources there are. Uh, in Wisconsin and I think probably a lot of places they have those safe at home addresses where if you do move you can, you can get an address that that the person can't find you. That's one of the things, uh, it's complicated when you have children together. It's even more complicated when you have a dependence: one, one spouse, for example, one partners that depend on the other, you, you have a loss of, of, of you know, control and, and loss of, and loss of options so, uh, short of you know, short of self-help, and this is the really the, the real problem that you're, you're identifying here is, uh, I don't think it helps anybody for someone to get a, get a gun and and, and, and shoot the shoot the person with a gun. Uh, I can tell you that that the majority of, um, women who are killed are killed by a person in nine or 93% are killed by a man that they, that they knew and 2/3 of those are are, uh, men that they had an intimate relationship with. Uh, and again, those homicides usually take place about two out of three take place in the in the in the course of an argument only. And, if a woman takes a gun to protect herself from being killed, she's most likely to need it when she's in an argument with a male intimate partner. If she shoots that, that man because of an argument, she's going to go to prison, right, for the rest of her life, because that's no one's going to want to give her a pass for that. So, that that's not a solution either. It's like the speaker just before us that talked about how no matter what, when a

woman does she's, she's going to be wrong the, the, the legal system or someone's going to find a way that she's done it the wrong way. So, uh, I'm sorry I don't have better answers for you. Uh, I hope I will in the future, but right now it it's, it's not it's not really any good news.

**Jessica Rooke:** And then just to conclude the Q&A portion, can you please repeat yesterday's ruling?

**David W. Keck:** OK, uh, the narrow ruling and it's like I said, it's U.S. v. Rahimi, uh, is essentially that, uh, the federal prohibition against purchase or, or possession of a firearm while that individual is subject to a domestic violence protection order is unconstitutional.

**Jessica Rooke:** Thank you so much, Mr. Keck.

**David W. Keck:** Thank you.

**Jessica Rooke:** We're so glad to have you with us today.

**David W. Keck:** Thanks again.

**Jessica Rooke:** Thank you.

**David W. Keck:** Thanks.

**Jessica Rooke:** And Teresa will move us into the next panel with the folks from Tubman.

**David W. Keck:** Okay.



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## PANEL: TUBMAN MODEL

*Ben Lacy, Siri Ericson & Sonya Voss*

## INTRODUCTION

**Sonya Voss:** Hello, good morning ... or afternoon, I suppose, on the East Coast.

**Teresa Sun:** Hi Sonya. I have been, uh, Hi Siri. We are jumping right into our first panel of the day, uh, you guys bear with me for a second I need to make another reminder. Uh, everyone if you just joined us, please make sure change your to say, your displayed name to your full name. And, um, of course, feel free to type your questions into the Q&A box during the session. And, uh, we'll do our best to have them addressed. And if you would like to get the CLE credits, follow the link in the comments and fill out the survey, that's how we keep track of that. And, uh, about this panel, we have invited our wonderful and experienced staff from Tubman to share with us what makes a D.V. shelter and services organizations successful. And, as a lot of you probably already know, Tubman is a nonprofit organization located in the Twin Cities area in Minnesota. Uh, Tubman has been helping people of all ages, all genders, and all cultural backgrounds, struggling with relationship violence, substance abuse, mental health, and other forms of trauma for, um, more than 45 years. They provide safe shelter, legal services, counseling, youth programming and community education. And each year, about 20,000 people in the greater Twin Cities area get the support they need from Tubman to experience safety, hope, and healing. And little more about our speakers: uh, Mr. Ben Lacey is the staff attorney at Tubman, focusing on trial work and, uh, litigation of protective orders, and in addition to direct client work, Ben provides legal advice, support to the Safety Project staff, attorneys, and the, um, the advocacy teams. And prior to joining Tubman, Ben was an adult felony criminal prosecutor. Ben is the president of the Washington County Bar Association and, um, sits on the National Board for the Alliance for Hope International. Sonya Voss is Tubman's legal services manager and a licensed social worker. She manages the various legal programs Tubman offers and coordinates Tubman's vast volunteer attorney-led network. Sonya has been in the domestic and sexual violence field since 2014, with a focus on the civil and criminal legal systems. Prior to joining Tubman's team, she supervised a team of legal advocates serving Hennepin County. She has a passion for serving victim and survivors and enjoys collaborating with other disciplines to provide traum-informed, holistic approaches. Last but not least, Miss Syria

Erickson is a community resource manager at Tubman with a background in anti-violence advocacy, training, and consulting. She began working in the anti-violence field as a sexual assault advocate at Saint Olaf College and then supported survivors of domestic violence through civil and criminal court systems at the domestic abuse project, then Tubman.

As a domestic violence consultant, she provided case specific consultations and training to Administration of Children's Services (ACS) and, uh, preventative and foster care staff on domestic violence issues impacting families involved in the child and welfare system. And through various roads at Tubman, she has also managed a 24/7 crisis and information line, the clothing boutique, the youth community-based housing program and the youth outreach center. She has a B.A. in political science and sociology and anthropology with a concentration in women's and gender studies. And, um, yeah, Ben, Siri, and Sonya, take it away.

PANEL

**Ben Lacy:** Hi, good morn- good afternoon, as Sonya mentioned, uh, I think we already have a question in the chat but it's, I think its more administrative, "Do we have to fill out the link, um, for each session to get CLE credit or is the first time sufficient?" Teresa?

**Teresa Sun:** The first time is sufficient.

**Ben Lacy:** Alright. Um, thank you for the introduction, Teresa, I think the ... plan here is we are just going to talk about, sort of, what we do at Tubman a little bit, um, perhaps, Sonya, if you want to go first, you are, um, you have your hands in a lot of different things and I think it is helpful for people to understand, sort of, um, that structure, and, uh, we are happy to field questions as we go and um, yeah, thank you.

**Sonya Voss:** Yeah, um, absolutely, um, we don't have a presentation planned so this is, um, we are kinda planning on it being a panel, so please feel free to send us your questions as they, uh, arise. Um, I'm happy to start, uh, I'm Sonya Voss, like Teresa said, currently I'm serving in an interim position as the senior manager of our legal representation services, um, but just a little more about Tubman, uh, as Teresa mentioned, we are a non-profit serving, um, the metro area in the Twin Cities here, um, and we serve clients who are experiencing trauma in a whole number of ways. Um, really at the heart of Tubman's, um, mission and philosophy is about, um, providing holistic care to folks who've experienced trauma, and so, as such, we have a lot of different programs, um, trying to kind of address, um, the many different needs of the clients that we serve. Um, so Ben and I are primarily focused in our legal department but we do also have, um, a really big and robust shelter

program and housing program. Um, we have youth services, we have, um, a, a big clinical department that does a lot of different things. Of course, we have groups, we have outreach programs, um, and of course our legal department – um, our legal department as well. I'm sure I'm missing a bunch as well, so Ben and Siri feel free to interrupt me at any point in time. Uh, but like I said, uh, we really are trying to kind of address the many different needs that clients have, um, and what I think that, um, makes Tubman somewhat unique and is definitely a priority of ours is that we are really are trying to, not only address the different needs, but work with the other disciplines, work, kind of, across the board, um, and so for one example of that, one of our legal programs that we offer is called the Safety Project, you heard that in Ben's bio. He does a lot of work with the Safety Project, um, which is a legal program that we have, um, that serves clients who are going through the order for protection or harassment restraining order process. Um, and what's really unique and cool about this program is that we have it, um, as an attorney advocacy kind of partnership to best serve clients. Um, and so what we know about, um, particularly, uh, folks who are experiencing, or have experienced domestic violence, is that advocacy is key, um, in all areas and so we do have, um, a large team of legal advocates here at, um, Tubman, as well as partnerships with other advocacy agencies in the metro area. And then, as mentioned, we have, of course we have Ben on staff. We have a few contract attorneys, but really the majority of our legal services are provided by, um, a huge network of about 250 volunteer attorneys throughout the state of Minnesota. And so we have our advocates, both Tubman advocates and, um, from other agencies in the area, kind of partner alongside our volunteer attorneys to provide that type of care and legal services to the clients as they're going through this process. And that really makes sure that, um, it really ensures that the client is receiving all of the services that they need, and with the strengths of both the advocate and the attorney and of course the victim-survivor, it's going to be a lot more comprehensive and hopefully a successful experience going through that court process. Um, with the experience and the, um, the trauma-informed care of the advocate, they have a lot of legal knowledge and experience in these courts, of course having the attorney, um, with the legal expertise, and being able to provide that representation and legal advice, and then the strengths of the victim-survivor and what they already know of the situation, um, and, you know, different, um, safety planning and survival skills that they've already acquired in their situation. Between kind of the, the three, we've found that to be an incredibly successful model. So that's just one example of how we are really trying to take a holistic, and even multi-disciplinary, approach, um, to serving our clients. Um, I'm going to throw it to Siri if that's alright. If you want to talk a little bit about, um, the other programs that you've worked with and some other, uh,

some of Tubman's other programs and how, um, in your role now, we all kind of collaborate.

**Siri Ericson:** Yeah, absolutely, thank you. Um, in general I think when people think of Tubman, a lot of times people think first and foremost of our shelter. And while that's a really big part of what we do, it's only one piece, kind of like Sonya mentioned. So, beyond working in the shelter, we do a lot of work in schools, we work in courthouses, we have an outreach program located at Maplewood Mall. And then, probably most importantly, we do a lot of work in the community, really to meet the people that we serve where they're at. Um, some of the programs that I've been most excited about to have been our youth programs. Um, I think that a lot of times, youth are a marginalized population, um, of their own, and then especially when we are looking at BIPOC youth and youth survivors and queer and trans youth. And all of the youth programs that we have are co-created by the people that we serve, which is something that we're really proud of at Tubman, so we work really hard to be flexible and responsive and to really learn from the people we serve and to take feedback, um, very seriously so that we can be more rooted in anti-violence work as a whole. Um, in terms of our youth programming, we have youth housing that includes site-based, transitional housing. It's a program where people can live for up to two years, um, and they have an opportunity to build rental history without paying rent. And then we also have youth community-based housing where we, um, help to house people in the community. All of our housing programs are based on Housing First models, so we were, we look at how we can break down barriers for people who are struggling to access safe places to stay. And then once people are housed, we work to provide wrap around services and support. Um, we have youth mentorship models, we have youth, um, social media campaigns, and we have a youth outreach center that we mentioned is located at a mall. Um, and, um, yeah, probably most important for most of the programs that we work in, that really, um, centered on the people we serve and co-create it with people we support. Thanks, and I'll pass it off to Ben.

**Ben Lacy:** Great. Hi everybody, um, let's get nerdy about D.V. Here we go, um, I wanna, I wanna address one thing, just as we, as the last panel is concluded, I don't know if it was mentioned but DOJ, uh, Department of Justice released a, um, statement saying they will be challenging the Rahime decision from the Fifth Circuit. Um, and that the Rahime decision is not settled law in any way, shape, or form, um, and so, as it affects 18 U.S.C. [§] 922(d)(8) which is the statute that prevents domestic abusers from possess – possessing firearms, we're in a spot where we still have a thirty-year law, um, that was decided by legislature, um, that ... the – there's a good reason to be alarmed, I don't think it directly affects the clients that we're serving yet.

Um, would be a good way to put it. So, going back to this model that we have at Tubman, um, Tubman has a really awesome advocacy-attorney setup, where, where we work together in a way that allows for advocates to advocate, and attorneys to litigate. And, we do that through layering of legal services agreements, we do that through layering of releases of information and timing those in a way that we can allow for someone to get advocacy services in a confidential way, uh, with an advocate providing the level of confidentiality that an advocate can have, um, and then if we need to, allowing for an attorney-client relationship to form, both on temporary basis and a, a continuing pro-bono basis if we need to take things to trial. Um, or evidentiary hearings, or whatever you want to call contested litigation about protective orders. Um, that comes up in a number of different ways from my attorney perspective. Often, I wind up settling cases, I mean that— it happens quite a bit, you know you serve your evidence on somebody and you show that they— there’s a recording of them doing something that’s entirely inappropriate and is domestic abuse and suddenly they are more than happy to take a, an order for protection without a finding of abuse. The case is settled. You’re done. And so, a lot of cases never make it out of the gate for, um, for a trial. That being said, uh, the, the typecast of, or the mental position of many of the abusers is a very defiant position and we wind up in situations where we have to fight that in court, and we do. Um, advocates do a fantastic job bringing the cases that need that extra level of attorney support to our attention. Um, and we, we can provide very narrow— narrowly focused um, litigation skills to get results for our clients in a way that is ... very highly effective. I mean it... we don’t ... we generally through our screening processes and everything else are helping people in a way that gets them the orders that they need or the result that they want. Sometimes its not ... necessarily an order, and as an attorney, um ... that’s been a change for me, personally, where understanding what the client wants, doesn’t always mean that you are winning a trial, or that you are, um, I guess just sticking it to the abuser kind of a thing, there ... there are layers, and trusting that your client or, uh, victim-survivor knows what’s best for them in their situation ... is ... can be tricky as an attorney. It’s something that you know, can appear to be really contrary to what we expect out of our clients as attorneys. For example, uh, if I have a client who just stops responding, um, this happened the other day... that just stopped responding, they had full pro-bono representation, really high-lethality case, um, and they just stopped responding, and the, the advocate and I were able to team up together and figure out what the right response to that was, because it’s not the same as, you know, a, a client not responding to an attorney in a normal, say divorce setting, you know, it’s, it’s much more nuanced. Do we need to call the police? Do we need... you know, what do our... what do our agreements say we are going to do, in terms of, if someone isn’t responding.

Um, how do we check in? You know, how do we make sure that they know that we are still there for them when they come back, because once you get an attorney on your case it's sort of, it ratchets up the seriousness in everybody's mind you know, just because of the nature of attorney work, right? And our attorneys do a really good job of listening to the clients and figuring out what they need and working with advocates. Uh, there are some ... it was mentioned, I, I was a prosecutor before this. Relationships between advocates and attorneys are stereotypically, uh, not what Tubman has. Extreme—we have an extremely collaborative, informed, positive, progressive relationship with our advocates. It is very often, at least from a prosecution perspective, that I saw prosecutors, defense attorneys, community corrections people, not wanting to engage—engage with community-based advocates. And that was for a variety of reasons, but what I can say is by pairing advocates with attorneys and building trust there, uh, and openness, it's only going to help your client. And as attorneys we have a duty to help our clients. So, build the trust, because, to be what makes us as people who are serving domestic violence survivors, um, more effective. I—It also means that in these cases we need to be listening. We need to be able to, um, take the time ... when you take on a DV case, you are not just taking on, like a regular litigation situation, you're not, it's not just motion practice. You need to hear somebody's story. You need to know when to ask for more details, how to ask for more details. Uh, and often, you know, when it comes down to trial ... I—I generally will set up an entire, uh, conversation just about that the next conversation, that we'll be preparing for trial. Because at the end of the day, you are doing to make someone live in that space again, in the form of the questions that you're asking. And that means asking really tough questions, and ... also being able to let go of some control because sometimes there are situations where you're doing trial prep, preparing a direct for example, and ... direct examination ... and in the preparation for it, you are triggering that person. And you need to know, obviously when to stop, but also to trust them to say, "I can do this at the trial. I can't do it in prep, I can only do this once." And that's a big leap of faith as an attorney, right? I mean you want to know that your witness is gonna know to answer the questions that you're asking them, and you want to know how they're gonna answer. I mean, that's basic trial work. And so, you, the only way to get there is to build that trust, and that means working with everybody, and that is, in my opinion, the greatest strength of the Tubman model. I'm going to see if I've triggered, so I've seen a lot of nodding from Sonya and Siri so maybe I've triggered a few things.

**Sonya Voss:** Yeah, well I think you actually led us right into a great segue, we have a question in the chat it looks like. Um, "[A]re you seeing better custody outcomes for survivors within your advocate-attorney structure?" um, and I can say something to this and then Ben certainly feel free to jump

in. Generally, I would say yes, I'm obviously not an attorney myself so, um, I'm not representing on the cases, but we do have a ton of success with this model, as Ben mentioned. Um, not only with custody, uh, but in a variety of different ways. Um, and as Ben mentioned, um, a D.V. case is not your average case, we really have to see the whole story, the whole big picture. Uh, and kind of in that same vein, I was an advocate for many years before I came to this role, um, and I always really tried to challenge attorneys that I worked with, other professionals that I worked with, to understand, uh, that this court process is about so much more than accomplishing the goals of the legal process, but it's also a massive integral part of a victim-survivor's healing journey and journey to safety and ... um, and so, I do find that we have a lot more success, um, when we all team up together, rather than just getting, you know, piecemeal services here and there. Um, with the attorney-advocacy model if a victim-survivor can feel safe and supported and cared for, and that their priorities and concerns are on the forefront of things and that safety planning is at the forefront of you know, proceeding through the legal process. And, have, you know, the other needs taken care of as well, whether that be within Tubman's programs, maybe they're receiving services around housing or mental health or chemical dependency, or whatever it might be, um, or even external resources as well of course ... We find that generally when people feel cared for and have their needs met, they have a lot more success in every area that they, um, you know, go to seek help, um, and that definitely includes the legal process. And so, kind of going back to custody specifically, this is absolutely something that I have seen, um, throughout my career in all the roles I have been in. Um, when— especially when we are involving children, if um, you know oftentimes it is the mothers that we are working with, um, and if there is kids involved, when those basic needs are met, when, uh, victim-survivors feel empowered and cared for, uh, they have a lot more success, you know, kind of, engaging in their legal process and being an active participant, um, and also speaking up for themselves, and um, advocating for what they need. So, we have seen a lot of success and certainly, Ben can speak more to maybe, the, you know, black and white successes in court, but from my perspective as an advocate and as a manager of the program, we see a ton of success in how victim-survivors feel about having gone through the process, um, regardless of what that outcome was. And so as, um, an agency that's really prioritizing trauma-informed care and really taking an important look at, you know, the whole experience, not just the legal outcome, that's been a huge success for us, and I think a real benefit to this model.

**Ben Lacy:** Siri, I know you have done a lot of advocacy work as well, before we move on to sort of the succe— outcome stuff, did you have anything you wanted to add?



**Siri Ericson:** Um, I agree with all of that. I think learning how to center relationships and how to build trust with survivors and families is really the most important work that we can do as advocates and people who work in the anti-violence field. And I think that, it's a really important point talking about what success means for one person can be really different to another person. Um, I think in general, when I think about the legal system, I find it really, really helpful to zoom out, and look at all the different barriers that people have for accessing help in the legal system, and then recognizing that it might not always be the safest or the best choice for each individual, individual person. So, looking at ways that, you know, the legal system can be intimidating or dangerous or expensive, or arbitrary, and that there are lots of challenges and barriers that come up for people, um, at all different stages of legal processes, whether it's calling the police or filing an order or moving forward with a divorce or child support or whatever it might be. And I think that a lot of times, like, domestic violence or sexual violence advocates can be really good at talking about, um, power dynamics that happen in interpersonal relationships, and I think that, as a whole like within our field, we have a lot of work to do in terms of looking at power dynamics that happen with the state and power dynamics that happen, um, in our communities more broadly and I think a lot of that work can be much more nuanced, so looking at, you know, not having prescriptive models that say, you know, this happened to one person, and then "x, y and z," but looking at how, um, a lot of things can be much more tangled and much more complicated, and that a lot of times we're working with people who have used violence and experienced violence, both, and that we have a lot of work to do to in terms of untangling what those dynamics can look and what protective factors might look like for individual and different families.

**Ben Lacy:** So, going back to this idea of better results for custody cases, the simple answer is yes, we do have better results, and it goes further, um, better results also are played out in ... prosecution as well, as advocates get linked up with our ser-, er, er, survivors get linked up with our services. You get an advocate on a case, success in prosecuting a domestic violence case goes up. You get an advocate and an attorney on a case, I mean that person has someone who can ... the survivor has someone that can work in concert with the prosecutor if they need to, to formulate the best way to have a witness be prepared to ... testify, I mean it's, it's, it's really, and that's a conviction, for really heinous crimes. Um, and, we hear all the time about survivors not showing up to testify, and, um, all of those things ... yeah it's a challenge for prosecutors, but frankly, again if we go back to this idea of engaging community advocates, working with ... with .... an understanding survivors in a way that is ... appreciating where they are, we're going to have better results across the board. I mean so, custody, yes, prosecution, yes, financial

situation, yes, all of it. People are getting better results by engaging these services. Um, an- and that's, eh, it - it's just... that one's kind of a no brainer, in terms of, we're getting great results and, the outcome that is a black and white win or lose uh, trial outcome, is always more nuanced than that, uh, in the sense that ... I have taken OFP cases that did not ... um ... that had that had that met the level of a colorable case, but likely would not be able to make it through the rigor of an evidentiary hearing, um, and cross examination, and ... in doing so, th-the conversation with my client was: "Does this buy you the time you need to get what you need done? And, get out of this situation?" And the answer inevitably was, "Yes." I mean, it's happened several times. Okay, well then, guess we're going to trial. I mean, you know, the conversation isn't win or lose, because the win is the fact that we've bought the time that you need to get out. Uh, and so, the black or white, win / lose in trial is not always the same for the survivor, uh, and it's just important to remember that, the process itself can be helpful, um, I'm seeing a lot of questions... "One of the previous speakers talked about the impact of gender biases in D.V. cases, including cases involving G.A.L.s, guardians ad litem, and evaluators. How prevalent is this in your area? How is your advocacy network working to address such biases?" ... It is prevalent, we ... work ... tirelessly on addressing biases, we have entire committees ... uh. at Tubman, that spend ... you know, weekly meetings or monthly meetings, that are just working on this type of work. Um ... it also means that as-as a D.V. lawyer, I am nearly always educating my peers, and I'm educating judges, and I am, am, an, an and so anytime my client is testifying or I am in a, not, not a courtroom setting, in ah, in a setting where it's like a happy hour, and there are a bunch of judicial officers there, we're talking about domestic violence because a lot of people aren't touching it, and ... it's an opportunity to talk about the nuances, and the opportunities, and um how to, how to address ... gender biases. Uh, if the person who asked that example wants to give an example specifically about what gender biases they're referring to, I could probably answer more specifically, but yeah, we're addressing them, they're out there.

**Sonya Voss:** Yeah, and the other note that I would just add on that too is I think, you know, one of the biggest ways we address it is that we, you know, try to be as self-aware as we can about our own biases, um ... and we make it a point to ... uh we do serve, of course, men, or non-binary folks, you know this is not an agency only serving women, um, our shelter is one of the only if not the only shelter, D.V. shelter, in Minnesota um, where we house men, um, and so this is absolutely, you know, being upheld as well in just our daily practices of who we serve, and that gives us then an opportunity to bring that conversation to other spaces as well, like Ben said.

**Ben Lacy:** The follow up question to that is often, “Well, do, do you have problems housing men with women in a shelter?” We have not. Just ... just put that out there. It came up the other day, I was talking to our, um, shelter director, we haven’t had that issue. Um ... next question I see is: “Do you also have clients reaching out to you in cases of emotional abuse and coercive control?” I’m gonna, treat that as one question: yes. We do, and coercive control is now codified in, I believe, California, um, it is not yet codified in Minnesota. Um, some judges and referees are open to testimony about coercive control, and if you as a trial attorney ... can’t figure out how to talk about coercive control, then call me, um, but, but really, it, it’s as simple as, an, I can’t tell you how many cases we have like this, but the rules are on the fridge– or on the back of the door. Uh... the fi– the abuser will put them there. And that, that’s evidence, and that’s coercive control. And, we bring it in in many ways. And the, the, financial abuse often is a form of coercive control. It’s, it’s, you know he won’t let me have access to the bank accounts. What does that actually mean? Well let’s talk about globalization your honor. You know? We, we, we can prevent or, or hamstring entire wars, by controlling finances. Obviously, an abuser can control somebody, by controlling finances. So, let’s talk about that, and let’s really get into it, and talk about, and that comes up in directs and closing arguments and so on. Um, uh oh ... I lost my ... there’s a second half of that question. Uh ... anyhow, so yeah, there’s – there’s a ton of work being done on coercive control, be it Alliance for Hope International is also doing it, they, they’re primarily known for strangulation. We’re starting to work more on some of the coercive control stuff. Uh if you’re interested in coercive control, and working on getting that codified in your state, they’re a good group to connect with. You’re welcome to connect with me, and, um, we’ll put you in touch. So ,the second part of that question though, is: “In your opinion, have the numbers of these cases increased due to the raised awareness for other than physical forms of abuse?” Yes. “And judging from your experience in courts, are emotional/abusive control and similar concepts widely accepted and reflected in caselaw?” No. Our caselaw is prehistoric. Um ... at least in Minnesota, I mean ... the fact that the last speaker had to talk about abusers having guns still, at a United States Fifth Circuit level, is ... silly. Um, figured out an appropriate word to say. Uh, so, you know, it’s, it is silly, and it’s wrong to um ... to think that our courts are anywhere close to addressing coercive control. Do they– can you use it as evidence? Yeah, and judges will take it and triers of fact will take it and think about it and stew it over and say you can kind of get it in without calling it coercive control. Same with emotional abuse, if you have a physical abuse statute, you can get it in in other ways, in evidence, and on the record, you just got to get creative about it. Okay ... so I’m... gonna, have to cough.

**Sonya Voss:** Yeah and... and like Ben said, um... with emotional abuse and coercive control, financial abuse and all these other forms that you know, typically our laws and our statutes are behind on, you know really recognizing and validating, that's also where advocacy comes in as well. It's making sure those issues are addressed, you know, both in the legal process and uh... elsewhere. Um ... Siri, do you have any good examples from the advocacy realm of just dealing with, um, harassment, cyberstalking kind of stuff?

**Siri Ericson:** Yeah ... well I think, um, so, before giving examples, one thing I want to add is that ... the conversation about coercive control also shows, like, how much work we have to do as an organization and also how much work we have to do at the state legislature. Um, like I think we can talk about policy things like going way back to, like defining domestic violence as a crime, or raising more awareness about domestic violence in ways that domestic violence can impact people of all genders. And it, those things are really important and really significant and really valuable. And also we've have lots of backlash with ways that, you know, the anti-violence movement has been more attached and more aligned with legal systems in general, and it, like if we're talking about the United States overall, we have more people locked up per capita – per capita than in any other country, um, and that hasn't had any changes in rates of sexual violence or domestic violence more broadly. So, I think that, you know, the conversation about violence and, um, things that have been proved in the legal system has a lot of room for improvement and room for growth.

And I think you know, when we talk about emotional abuse and verbal abuse, financial abuse, um, like Ben mentioned, is also one of the most prevalent types of abuse that we see with almost all of the people that we work with. It ends up having like huge impacts for people, especially as they're navigating the legal system, and that's also an area where I think as an organization and as a community we have a lot of work to do in terms of how we can respond and support survivors. . .

**Ben Lacy:** One of the questions that we had was: given the collaborative relationships at the core of the Tubman Model, are you able to offer and/or refer clients for additional support services if they are triggered during trial prep or the trial? Yes, um, so during the trial, I will always try and try a case with an advocate present. In a zoom world, and we're seeing more zoom worlds uh for trials, um that often actually can be really helpful for my clients uh in the sense that they can be in their living room. They can be in a place that where they're comfortable. They can be at a friend's house. They can have their personal support network available, present, and as long as they're not witnesses, right there with them. Um dogs, pets, animals you know uh they can also be there. Those can be really helpful. Uhh the Minnesota State

Bar Association is actually doing a CLE on dogs in the legal setting. You can probably find it on their website if you're really interested in that stuff, but uh um they can help. I mean they can really help. Uh I think we answered the question about Guardian Ad Litem. I don't know if there was follow up for that. Um and gender biases. This question is for me: how do we demonstrate the abuser mentality in civil court? Do you have a blog or articles to help educate our law enforcement agencies and bar associations? I do not have a blog. Um, I don't necessarily have articles either. I have been asked to write a few. Um, someday there will be time to do that. Uh, right now, you know, it's I'm I am very boots on the ground, I'm providing direct client services and that means um a lot of real time stuff. But I can at least answer the "how do you demonstrate the abuser mentality in civil court?" If you can get to cross examination, it's a great way to do it. Um, cross I mean cross examinations. The other day, for example, I had a cross examination where the petitioner and the respondent shared a child together, and we were litigating Minnesota's OFP statute. So, um, we had to show a domestic relationship, and the cross-examining examination questions were pretty, pretty simple because he had made a statement already in open court saying that there may be times where um physical uh repercussions are appropriate in a setting in a domestic relationship setting. So then the question became: what what are they? What are those situations? And he gave some. And were you ever in a domestic relationship with the person that you know that we're here with- the child? But all I said was, "Were you ever in a domestic relationship with my client?" And he said, "No." I stopped there. It shows the abuser mentality. It shows exactly. And the court picked up on it, and then they issued an order. And the order was it caught that as well. I mean they, they knew exactly what you were doing, and less is more sometimes in situations. There's often you know, we we as lawyers have trial rules where we're taught to not ask questions we don't know the answers to. DV cases provide an exception to that. They often provide for opportunities for no right answer. So, go ahead and ask the question not knowing the answer because there's no right answer. Just let them talk. And, you know, uh "Who did pay the bills?" You don't, I mean maybe you do know the answer on that one. "Why did you pay the bills?" You don't know the answer. Ask. Let him let him explain why he or they were the only person who paid the bills. And then just keep building on that because its gonna come out, and, generally speaking, abusers don't even like it when you're asking them questions and and cross examination is uncomfortable. But if you prepped your client right, they're gonna sit there and have the cross examination happen. They're gonna do their best to answer the questions and then and then the abuser is gonna play games. And it's gonna show to the court. It's how we can prove these cases in protective order situations on testimony alone. And in Minnesota the testimony alone applies

the preponderance of the evidence standard. Uh, so were not, we're not in the criminal court world where we have to do proof beyond a reasonable doubt. We just have to get to a preponderance of the evidence. Testimony is just fine to do that, and if you present a credible effective uh survivors testimony, who does her best or their best to um to answer cross examination questions, and then the other person, you know, the abuser gets up there and talks, it's over. Um, that's, so lets say: you don't get to cross examination though, um, and all you do is put on your case, and they, they say they don't have anything to say, all of it is not true. That happens too, right? And they don't have to testify. In your direct, you can, you can get into the nitty gritty details and sometimes you have to, to show the abuser mentality. Um often that means what you're raising to your client are innocuous things. That they want to, they probably want to focus on the fact that they were let's say they uh were hit by a closed fist on the on the right side of their face. Um and you get into that level of detail, right? "You were hit?" "Yes." "Open or closed fist?" "Closed." "Which side of your face?" "Here." Enter the exhibit, you know. There's bruising. And then you get to questions like: "What did he say before that?" "Does he say that to you often?" "What did he do after that?" "Does he do that often?" "What were the circumstances leading up to this point in the day?" "Does he get upset like that often?" "Does that, do those circumstances happen without you getting hit sometimes?" Yep, maybe. "How does that make you feel?" "Scared." Okay, I mean that's the mentality. So you, you have options like that, and you have ways to do it. I am also happy to talk to anybody if you're in a case where you need trial prep help. I will talk to people. Um, we'll get my information out there at some point. Uh, I think we have a slide, but uh, um yeah, that I think that answers that question. Is it and uh uh and I should ask, as an advocate, cause we have advocates here too. I mean is that is what you see being effective in a courtroom? Because often advocates are watching these cases.

**Sonya Voss:** ... Yeah, absolutely. I think he covered it for sure. That's a great way to introduce that and kind of expose some of that coercive control or other abusive behaviors. For sure. Um, I did want to, I see a question about one of the biggest barriers being the cost of representation. Certainly, and I should have mentioned this at the beginning, actually, we're a legal aid firm within Tubman. So all of our services are actually focused on, um, folks who are lower income. We do have income eligibility requirements based on our funding, and that differs across the different programs that we offer. Um, we at Tubman are offering assistance with family law cases and protection orders. As we talked about quite a bit. And so, we are certainly trying to prioritize, um, you know, those with some, you know, significant financial barriers to accessing the legal process. What I will say is that there is absolutely still a gap, for sure, legal services are incredibly expensive. And our income

eligibility guidelines, as well as many other legal aid agencies, are extremely low. Um, and so there is a huge gap for folks who, you know, may be over income for our program or for other legal aid programs, um but still cannot afford an attorney. That's definitely something that we are aware of and trying to address as much as we can. You know, one way of course, is that we're trying to provide other services other than representation where we're able to, um, if we can't provide the rep, um, and another is that because we have the benefit of having such a big network of volunteer attorneys, uh, we do try to also kind of keep up on um what maybe private firms in our area offer a reduced fee or maybe a sliding fee scale, different things like that. So we try to kind of keep somewhat of a network of um other available resources for folks that are kind of in that gap spot, but it's a huge gap right now, and definitely a lot of room for growth in that area. Um, I'm not sure if I answered all of that question here. Let's see. We know of course, that lower income individuals are disproportionately affected by DV. Yes. Um, do you think there's anything that we as attorney students and advocates can do to close the gap between those who need representation and those who actually get it? Yeah, so I think I mostly answered that. The only thing that I would add is that um, that's also the massive benefit of having advocates and specifically legal advocates in this situation, because they do have so much of that knowledge and um expertise to be able to provide and help the victim survivor navigate the system. So even though it's not representation, and you can't give legal advice, advocates honestly sometimes have more information about the legal process than attorneys do. Um, because they're in it so often, and they're watching these things play out. They're helping draft the paperwork. They're helping the clients navigate at every step of the situation. Um, and so, you know, while it's not, you know, traditional legal services and it's not representation, it's huge support to have um legal advocacy and other advocacy as well to kind of, um, address a lot of those needs as much as possible before, or if, representation isn't available. So that would be the other thing I would say is it's a huge, huge benefit to have um the advocacy backing up those legal services to. Um, Ben, Siri, anything to add on that one?

**Siri Ericson:** Um, one thing I want to add just about Tubman more broadly, I know we've talked a lot about victim survivors and how they might go through different court processes. But beyond that, we also do work with people who are impacted by violence more broadly, including people who have used violence in different contexts. And one of the programs that Tubman offers includes our relationship violence intervention program, and that is a, kind of run like a group support group, for people who have used violence and are working at um, undoing different things that they've learned about relationships, including unhealthy patterns they might have in relationships, and different histories of ways that they might have used violence

against people but they might love or care about. Um, so broadly, we work with people of all ages, all genders, and people impacted by violence in all different types of ways. And then when we talk about the Tubman model, I think that includes identifying ways that all people have power in different contexts, even though it might look different based on different circumstances. And all people have strengths that we want to always like look for and identify and help people see in themselves and that people also have capacity for growth and change, and that we work with people kind of at all different steps that they might be in their own healing process or in their different relationships as well.

**Ben Lacy:** One of the questions that we had was: Do you think there's anything that we as attorney students advocates can do to close the gap between those who need representation and those who actually get it? I'm gonna give a little bit more of an answer for attorneys right now. I don't know who's watching this, per se. I mean, obviously, I know there are a lot of law students and a lot of attorneys. You all go off into the world, after law school at least, and get jobs and do things, and some of you are going to go into nonpublic interest stuff. That happens, that's, you know, we need lawyers. Don't forget the obligation that we have as attorneys to provide pro bono representation. And if you can't, if you don't have the time for it, to do, to put the hours in, then you probably have the money for it. So find your local Tubman and give them money and help them in that way. If you're in a big firm, a lot of big firms now have their own pro bono attorney managers. That's all they do. Talk to them, get to know them. Take some cases, some of the best trial experience you can get are protective orders. There. It's getting exceedingly difficult to have trials these days, especially if you go into medium and big law firms. You know, the odds of you having any kind of ability to do a direct is probably in a deposition a couple of years in.

I mean it's not... this is an opportunity for you to be in front of a judge asking questions of a real live person in real time and responding in real time now. So there's a selfish component to it too. And every time you help somebody, you're bridging that gap. Every time. Because there...there's in addition to the gap with resources and everything else, there there's just a survivor gap. I mean people don't understand, at least in my experience at law school and every in everywhere as a prosecutor and everything, people don't understand what survivors are going through. There is a gap there as well. So every time you bring one of those cases forward, every time you put your time into those cases, you are helping. You are covering that gap. And stay vigilant about it because we can keep helping people...

Uh... We have another... How do you prevent very dangerous psychopathic abusers from using your abuser program and learning more ways to exploit



the system to harm their victims? We have a really rigorous screening process. I mean we are, if someone is getting to the point of having services...our...we have extremely complex process that allows us to take on and screen out cases, and we do. I don't think I've ever... I mean maybe someone has pulled a fast one on me, but I don't think I've ever seen our services be used in a way that is learning more ways to exploit the system to harm their victims. I don't....our advocates, our conflict checkers, our teams, our guts, our instincts, are all playing a part and we just do our best to screen everybody out. If one gets through, we're not going to stop helping everybody else you know, so we we got to keep taking cases.

**Siri Ericson:** Yeah...One thing I would want to add to that is that there's so many different types of programs that are available um. And in general, like an anger management program is really really different from an um... accountability or anti-violence relationship violence program. So learning how to ask questions about what type of program someone you are referring to um is really important...and then um... like asking questions of programs to understand what their philosophy is about violence and how you work with people impacted by violence more broadly... I think that like abuser programs or accountability programs or relationship violence programs whatever you call them um can look really different depending on where you're going to access that type of help. Um. In general longer programs are much much better than short programs. And there's tons of studies about why that is including... but you know change is a process and it takes a really long time and it takes acknowledge of... you know acknowledgement of wrongdoing and then intentional work to create change in yourself and in the community more broadly. So I think that if you're assessing someone's level of like danger or lethality or someone's um responsiveness to change, there's tons of different questions that a really trained therapist would be asking that person including talking about... you know what they've learned what they've done wrong why the things they've done wrong are not OK or why they're harmful, how they might impact other family members or kids in different families, and then looking at um you know whether those patterns of behaviors actually changed. So um, I think it's really nuanced and depends on the program and depends on the individual person and their um desire to create change or not. And a lot of times we see that people aren't ready to change or they're not open to having conversations about what they've done and why that's been wrong and harmful and just really broadly it's hard to like change behaviors if you're not able to talk about them. So that's kind of a whole rambly answer but I think that it depends on the person and the program and having really skilled therapists and advocates that you trust go a really long ways.

**Sonya Voss:** Yeah, um, so I know we're coming to the end of our time but

I just wanted to kind of briefly touch on vicarious and secondary trauma as well. Obviously we are dealing with some really heavy stuff um here at Tubman and um... certainly we do experience some second-hand trauma um from the clients that we serve, from the cases that we work on that's a... that's a very prevalent issue and something that everyone who is doing this work experiences um. And so that's just... I think coming in with that awareness right away and knowing that it's going to have to be a priority in order to make this work sustainable long-term both individually and just as a broader agency um and a broader movement. Uh. Self-care has to be a priority. And I know that sounds fluffy and pretty and it's just like a nice concept um. It has to be put into reality um. We have to have some really you know tangible strategies. There's got to be space to do that um both as individuals but as you know a broader agency, with our colleagues um certainly with our clients of course. Um, I view it as one of my greatest privileges to be able to work in some of these programs where we have volunteers from all over the place and practicing in every different area of the law...um Coming alongside and kind of supporting that journey as well like Ben said we get to you know kind of educate a lot of people on this issue um. But that also looks like helping people kind of navigate taking these cases and some of the secondary and vicarious trauma that comes with that. Um. So we do make a real effort you know for example with our volunteer attorneys to make sure that their support, that there's mentorship, um whatever else that they are needing to feel confident and competent and just mentally as well um. And then certainly it's a big priority of the agency as well to always prioritize and and promote that we have a lot of different strategies and just flexibility and space, um, for you know kind of built in things, and we also try and make things as adaptable as possible to kind of meet every individual where they're at. So um I won't go too, too much further into that, but I do just have to say that that has to absolutely be number one if you're going to want to make this long-term sustainable work, you've got to prioritize that self-care as well.

**Ben Lacy:** Thank you for having us here Teresa. We really appreciate it.

**Teresa Sun:** Yeah, as we wrap up here...one of our participants wants to remind all attorneys that your local Legal Aid will be delighted to work with your firm or your local Bar Association, um, to provide training with CLE credit to teach you how to do POs. And I find that very helpful. Thank you guys so much, it's lovely to see you, and just give us a few minutes so we can set up for our next lecture.

**Siri Ericson:** Awesome thanks for having us. Have a great day.

**Ben Lacy:** Thank you. I promised to share my contact information it's B L A C Y at tubman.org and that's generally how all of our emails work, so

first letter of first name, last name at tubman.org. Um. Alright, thank you.

**Teresa Sun:** I put it in the chat as well.

**Ben Lacy:** Perfect. Thank you.

PANEL: DOBBS

*Corinna Lain, Courtenay Schwartz & Meredith Harbach*

INTRODUCTION

**Jessica Rooke:** ... And everyone else, now we will take a much deserved second coffee break and we'll be back at around 2:30.

**Prof. Janice Craft:** Thank you for your help getting on Carl, I appreciate it...

**Carl Hamm:** You're welcome, Janice

**Prof. Janice Craft:** I'm going to put myself on mute again.

**Prof. Corinna Lain:** I love that. Mmk. Awesome. I guess I will just mute...mute myself. Um, Janice, thanks so much for moderating. What are ... what are we. Haha. I have my own little comments. Um. But I'm sort of catching up. Um. What is the order. Am I last? Is that right? Or ...

**Prof. Janice Craft:** I think that's right. I think it's a video recording from Meredith and then Courtney and then you.

**Prof. Corinna Lain:** Love that.

**Prof. Janice Craft:** Perfect

**Prof. Corinna Lain:** Because I'm little off to the side anyway. Like ... its like .... Ok. You know. They didn't want me to speak about like being a domestic violence prosecutor, they did not want that. They wanted the legal history side of *Roe*. So I was like ... ok. How are you doing?

**Prof. Janice Craft:** I'm well and I was just going to say once um some of our attendees hear that you were a domestic violence prosecutor. They may have some questions on on that side so ... you never know.

**Prof. Corinna Lain:** Well, that's true.

**Prof. Janice Craft:** Yes.

**Prof. Corinna Lain:** Ok I'm seeing something that said. Sorry. Oh. Love that. Hi

**Prof. Janice Craft:** Hi Allie! No, I figured that everybody could hear us. That's typically the case on these things.

**Carl Hamm:** It's just ...

**Courtenay Schwartz:** Can you guys? You guys can hear me and see me?

**Prof. Janice Craft:** Yeah, we can see you and hear you, Courtenay.

**Courtenay Schwartz:** Perfect. Awesome.

**Prof. Janice Craft:** Sure.

**Carl Hamm:** Yeah, we are live. And you guys look amazing.

**Prof. Janice Craft:** Um, Teresa, are you there?

**Teresa Sun:** Yes!

**Prof. Janice Craft:** Hello. Um, I don't know if you or Jessica are introducing me. Um. But what I was going to do is after you have passed to me, I was just gonna provide a short biography for Professor Harbach and then pass it back to you to start her ... um ... video. Will that work?

**Teresa Sun:** Yes. We can do that.

**Prof. Janice Craft:** Perfect. Awesome. Thank you.

**Teresa Sun:** Yeah, were just taking maybe a couple more minutes so folks can probably get some coffee. We haven't had a break since this morning so ...

**Prof. Janice Craft:** Yeah, I was looking at the schedule and I was like oh my gosh it is back to back to back to back. So, I am sure that they are appreciating this ten minutes.

Uh, Carl, I have a question for you. Um. If you're there.

**Carl Hamm:** Yeah, I'm here.

**Prof. Janice Craft:** Awesome. Um. So when ... uh ... Corinna and um Courtenay and...

**Teresa Sun:** We are jumping right into our panel analyzing the impact of the *Dobbs* decision on reproductive justice in the context of domestic violence. And our moderator for this panel is Professor Janice Craft. Janice Craft is the director of professional identify formation and assistance professor of legal practice here at the University of Richmond School of Law. And prior to joining the faculty she served as the legal services director at the Virginia Sexual and Domestic Violence Action Alliance. And as policy director at NARAL Pro Choice Virginia now known as Repro Rights in Virginia. Professor Craft.

PANEL

**Prof. Janice Craft:** Awesome, thank you so much Teresa and thank you everybody for being here. Um. Again I will be moderating our panel today part of which will include monitoring the Q&A. So please feel free to submit your questions as they come. We'll probably take all the questions after all of our panelist have an opportunity to speak. But again, please submit your questions contemporaneously and um and we will .... we will get to them in short order. Uh so I'm going to introduce our first panelist who is unable to be with us live today. But we do have the pleasure of hearing from Professor Meredith Harbach. Meredith Harbach is professor of law at the University of Richmond School of Law where she teaches courses in Family Law, Children and the Law, Reproductive Justice, and Civil Procedure. Her recent scholarship published by the University of Richmond Law Review, Yale Law and Policy Review, and the Journal of Gender, Race, and Justice among others has analyzed and critiqued the State's relationship to families and children through the lens of America's childcare law and policy. Professor Harbach also writes on reproductive justice and state politics. And we are grateful for the benefit of her expertise on today's panel. Teresa back to you

**Prof. Meredith Harbach:** Hi. I'm Professor Meredith Johnson Harbach. It's great to be with you. I want to thank the editors and staff of the Public Interest Law Review for inviting me to participate in this symposium. Especially the symposium editors Teresa Sun and Jessica Rooke. And I'm sorry I can't be there to join you in person today. I'm happy, however, to be here to talk with you a bit about intimate partner violence and reproductive justice. Although the formal subject of this session is domestic violence and the *Dobbs* decision: the decision that overturned *Roe v. Wade* and *Planned Parenthood v. Casey*. I'm going to zoom out a little bit in this talk and provide a broader context for thinking about domestic violence or what I'll call intimate partner violence. And another concept, reproductive justice. Understanding intimate partner violence in the frame of reproductive justice helps us understand that intimate partner violence violence implicates more than simply abortion and reproductive health. Reproductive justice uncovers the ways in which intimate partner violence is experienced disproportionately based on race, gender identity and sexual orientation, geography, and socio-economic status. Using the reproductive justice lens demonstrates that responding to intimate partner violence in the context of reproductive health is about more than simply accessing abortion and abortion rights. So to start, I'm going to use the term intimate partner violence. So, violence ... um ... within the context of an intimate relationship with a partner. And I want to be specific about what I consider to be violence or abuse within this context. So, intimate partner violence includes sexual and physical abuse but importantly it also includes emotional abuse and economic abuse. And then more specifically in the context of reproductive health, it can include coerced

contraception or coerced conception for example. So now, to the frame and the term reproductive justice. Reproductive justice is a term attributed to the group called Women of African Descent for Reproductive Justice. And they currently identify as the Sister Song Organization. You'll see a link to their website at the end of this PowerPoint presentation. So the reproductive justice movement seeks to place reproductive health and rights within a larger social justice framework. As conceived in this way, reproductive justice is a human right to first, maintain bodily autonomy, control over one's body. Second, to choose to have children. Third, to choose not to have children. And finally, to parent children in safe and sustainable communities. So, how is reproductive justice different from what we often hear referred to as reproductive rights or reproductive freedoms? First, reproductive justice is about access, not choice. Mainstream reproductive rights movements have typically focused on keeping abortion legal. And the focus is on it being the choice for an individual. Reproductive justice advocates argue that choice is not enough. For even when abortion and birth control are legal, many women cannot afford it, cannot access it, cannot choose it. And so, there's no choice without access. Moreover, reproductive justice is about more than simply abortion. Of course, as you'll hear in this panel, abortion access is critical in the context of intimate partner violence and more broadly speaking. But the communities that reproductive justice centers, women of color and other marginalized women, also often have difficulty accessing contraception, comprehensive sex education, sexually transmitted prevent ... infection prevention and care, alternative birth options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support our families, safe homes, etcetera etcetera. Ultimately, then, Sister Song defines reproductive justice as the state in which all people have the resources as well as economic, social, and policy power to make decisions about their bodies, about their sexuality, and about reproduction. So, reproductive justice advocates have a particular toolkit or set of practices that they say further the aims, the goals, of reproductive justice.

There are four I am gonna talk about here. The fir ... the first is analyzing power dynamics and power systems. Um and reproductive justice advocates face this or form this tool based on a recognition that reproductive politics in the United States has been gendered, sexualized, and also racialized in ways that, um, disproportionately affect certain populations of women. And so reproductive justice works to understand and eradicate, address these particular intersectional dynamics. Next, addressing intersectional identities and oppressions. The idea here is that marginalized women face multiple oppressions and can really only achieve reproductive justice when they're considered through the re- the intersectional lens and understand how different identities intersect and impact things like reproductive justice and intimate

partner violence. Next, reproductive justice advocates argue for centering the most marginalized voices. And they say, quote, our society will not be free until the most vulnera-, vulnerable people, are able to access this the resources, and full human rights to live self-determined lives without fear, discrimination, or retaliation. And finally, joining together across issues and identities. Reproductive justice advocates want to emphasize the ways in which multiple identities and oppressions intersect to impact our reproductive lives. They see reproductive justice as a human rights issue seen through the lens of intersectional identities and oppression. And they argue that intersectionality and reproductive justice is an opportunity to uncover hidden intersections in the reproductive health context, but also to join together as a movement with the power to achieve reproductive justice for all.

So now let's think about the nexus between intimate partner violence and reproductive health. You've heard a lot today about the various consequences, the negative impact of intimate partner violence or domestic violence, on people who experience it. They're isolated from their friends and family, they're unable to work and earn wages, they're often unable to participate in their regular activities, they're limited in their ability to care for themselves and for their children and many of them also experience post-traumatic stress disorder. More specifically, with regard to reproductive health, we know that intimate partner violence may contribute to higher rates of unintended pregnancy. Indeed, that's the impetus for having this panel in this symposium to talk about the implications of the Dobbs case with domestic violence. But we also know that during pregnancy intimate partner violence may escalate. And so there's a, uh, a close relationship between these two.

Now I really wanna focus in on one of the primary methods or tools of reproductive justice and that is to consinner—consider—intersecting identities and oppressions. And to do this specifically within the context of in-intimate partner violence. So, um, the most basic point is that intimate partner violence does not impact all communities in the United States equally. Instead, intimate partner violence, and its consequently, and its consequences, are disproportionately experienced by some communities along a range of different identities. So first, race and ethnicity. Data established that multi-racial women and native women experience the highest percentages of intimate partner violence in the country. Additionally, Black women also experience intimate partner violence at disproportionately high rates, and then more specifically, Black w- Black women represent a disproportionate share of domestic violence homicides. LGBTQ+ individuals and identities. These folks are at increased risk of rape, physical violence, and stalking. Geography, and in particular rural communities. Intimate partner violence is more



prevalent in rural communities than in urban or suburban communities. The injuries for intimate partner violence in rural communities are more severe and there's a greater correlation to homicide rates. Women experiencing intimate partner violence in rural communities experience geographic isolation. They may have greater needs for services but fewer resources because they live in rural communities. Intimate partner violence is less likely to be identified in rural communities because there are fewer health care centers and specialists trained to recognize and screen for intimate partner violence. People living in rural communities overall have fewer financial resources and also lack affordable housing, both of which can impact the ability to leave a violent relationship. Another identity that intersects with intimate partner violence is people with disabilities. So, the data also show that women with disabilities experience intimate partner violence at twice the rate of other populations. And like women in rural communities, women with disabilities may feel more isolated. Immigration status. Batterers may threaten to expose immigration status of their victims in ways that chill or halt their ability or desire to report the crime. What's more, some law enforcement agencies have to pre- have a practice of inquiring about immigration status in response to intimate part- partner violence reports, again creating a disincentive to report for women who've experience intimate partner violence. And then finally, socioeconomic factors. So poverty, unemployment, and substance abuse, not substantive abuse, ha, I see my typo there, are all correlated with an increased risk for intimate partner violence.

So now I want to talk about particular barriers to health and safety for those who've experienced intimate partner violence. So, some of the populations we just talked about, those folks who experience disproportionately high rates of intimate partner violence, may also confront particular social and cultural barriers to health and safety in the context of intimate partner violence. So, more traditiona—traditional gender roles are correlated with an increased risk of intimate partner violence. Likewise, cultures that prioritize family cohesion over safety are more likely to experience intimate partner violence. For some, there's a barrier to reporting or talking about intimate partner violence because it's culturally and socially constructed as a private, personal family matter. Some women in their communities are shamed if they report intimate partner violence. There's a problem for survivors who are seeking services if they cannot rema—remain anonymous. That acts as a dis—disincentive to reporting. And then, other populations experience a poor criminal justice response or a lack of trust in the criminal justice process.

So to conclude, I want to talk about how we might think about promoting reproductive justice in the context of intimate partner violence. So using the eh – reproductive justice lens, how can we work to reduce the incidents and

disproportionality of intimate partner violence, while also better supporting those who've experienced it?

So, using the, uh, reproductive justice lens, how can we work to reduce the incidence and disproportionality of intimate partner violence while also better supporting those who experienced it? First, consistent with the focus on the reproductive justice model, we have to consider access and not just the right to abortion services and also to family planning. Second, we need to focus on ensuring that all women have comprehensive reproductive healthcare. Because abusers often isolate victims, contact with healthcare providers and especially reproductive healthcare providers can be a rare opportunity for a woman who's experiencing intimate partner violence to actually get screened and get help. Access to contraception... in particular with regard to coercive contraception and/or coercive conception, women need access to methods that are not dependent on their partner's cooperation or that can be used without their partner's knowledge so that they don't experience reproductive sabotage. Access to basic resources... financial, housing, and childcare. So, economic coercion may force women to choose between remaining in relationships that are abusive and facing economic hardship including poverty and homelessness. A woman, for example, may stay with her abuser if her abuser is the only means of financial support. So, policies that improve economic conditions for women and their families help women escape violent relationship... relationships. And finally, healthcare law and regulations... can have a dramatic impact to benefit those who are at risk of intimate partner violence or have experienced it. For example, laws that say insurance coverage cannot be denied based on the status of experiencing intimate partner violence, requirements that insurance cover routine screening and counseling, and funding for things like home visitation programs for post-partum mothers and new babies. The research has shown that home visit programs are helpful in identifying intimate partner violence and providing resources and assistance to those who have experienced it. So, in conclusion, using a reproductive justice lens, we will achieve reproductive justice in a context of domestic violence or intimate partner violence when all women and people have the resources as well as the economic, social, and policy power to make decisions about their bodies, their sexuality, and their reproduction without fear of violence or coercion. And here I've attached a list of references, um, that I used in preparing this talk. I'm happy to make the PowerPoint available and thank you so much for this opportunity to be with you and talk about reproductive justice and intimate partner violence.

**Prof. Janice Craft:** Alright, well many thanks to Professor Harbach and Teresa, thank you very much for taking care of the technology that allowed all of us to view and hear Professor Harbach's recording; I appreciate it...

Alright, next up we have Courtenay Schwartz. Uh, Courtenay is a staff attorney for the Project for the Empowerment of Survivors at the Virginia Sexual and Domestic Violence Action Alliance, a statewide coalition dedicated to creating a Virginia free from sexual and domestic violence. The Project for the Empowerment of Survivors offers cost-free and confidential legal advice to survivors of intimate partner and sexual violence and partners with attorneys across Virginia to provide pro bono or low-cost representation to survivors who otherwise cannot access legal services. Prior to joining the action alliance, Courtenay served as a client attorney for the Greater Richmond Regional Collaborative. She earned her law degree from Georgetown where she focused her scholarship on girls and the juvenile justice system. Courtenay, thank you so much for being here today.

**Courtenay Schwartz:** Alright, hey everybody, um, Janice, thank you so much for that uh, introduction. Um, so, uh, as Janice said, I am an attorney for the Project for the Empowerment of Survivors with the Virginia Sexual and Domestic Violence Action Alliance... And um, I am here to talk today about *Dobbs* in the context of intimate partner violence. Um, so, um, this presentation is based on a paper that I have coauthored with Caitlin Bradley and Jonathon Yglesias. Much of the inspiration for the paper and for this presentation comes from our experiences working directly with victim, uh, Virginia survivors of sexual and intimate partner violence, also known as domestic violence. I have included several of these stories of these survivor stories in this presentation, as we strive in our work to center survivor voices whenever possible. Uh, next slide please... Alright, so, autonomy is an important step in recovery... Victims of sexual and intimate partner violence, which again, is also called domestic violence, I'll be, I'll be using the term intimate partner violence, um, mostly throughout this presentation. Um, so, so victims of sexual and intimate partner violence can and do become pregnant because of the violence they experience. Allowing victims to make informed decisions regarding their bodies and their care in the aftermath of trauma is an empowering step towards recovery. Legislative "protections" for victims of sexual and intimate partner violence, um, these include, you know, rape and incest exceptions, further remove agency and control from the victim. When it comes to reproductive freedom, some legislatures inaccurately assume that abortion bans are acceptable if they include enough exceptions for victims of sexual violence and intimate partner violence. Um, however, this logic is fundamentally flawed and ignores the needs of victims of sexual violence and intimate partner violence. Legislators must accurately understand that abusers maintain power and control over their victims, how sexual and reproductive coercion are a part of the spectrum of abuse, what victims of abuse in Virginia are experiencing, and how, in order to protect victims, clear unambiguous protection for abortion is needed in Virginia.

Victims of sexual and intimate partner violence are best protected when the law is nonnegotiable. Infringement of reproductive autonomy in any way jeopardizes the safety of victims of sexual and intimate partner violence. Unfettered sexual and reproductive autonomy is a basic human right, and it's not a special privilege accessible only to victims of violent crimes. All people, including and especially victims of intimate partner violence must be guaranteed full access to non-judgmental, safe, legal, affordable, and medically accurate sexual and reproductive healthcare. Next slide please. So, this is the power and control we all, which you guys, um, may have seen several times already today so, apologies, um, if this is, um, redundant for you, but I do think it's a really good visual representation of the dynamics of an abusive relationship. The wheel serves as a diagram of tactics that abusers use to keep their victims in a relationship. The inside of the wheel is made up of subtle, usually legal behaviors that an abuser uses continually against a victim to maintain power. So, these include, um, using intimidation, using emotional abuse, using isolation, minimizing, denying, and blaming, using children, using male privilege, using economic abuse, and also using coercion and threats. So, the outer ring represents physical and sexual violence, behavior which is often criminal. So, abusive actions like those shown in the outer ring often reinforce the regular use of other more subtle methods found in the inner ring and vice versa. Before I delve more deeply into the arguments in our paper, um, I think it would be helpful to give you guys the definition, uh, that we, we use, and that I'll be using for intimate partner violence or IPV. So, IPV is a pattern of coercive behaviors that may include, but are not limited to, physical assaults, threats, intimidation, sexual manipulation, and control over economic resources. This pattern of behavior is used by one party in a family or relationship to maintain power and control over another person in the family or relationship. Sexual violence is conduct of a sexual nature which is nonconsensual and is accomplished through force, threats, coercion, exploitation, deceit, physical or mental incapacitation and/or power of authority. IPV and sexual violence must be understood in the context of other forms of intersecting oppression that promote the devaluation of groups and individuals. Next slide please. Sexual and reproductive coercion are common tools abusers use to control their victims. Sexual coercion involves behavior related to sexual activity and sexual health that is intended to maintain power and control in a relationship. It is perpetuated by someone who is, was, or wishes to become involved in an intimate partner, uh, I'm sorry, an intimate relationship with another person. Um, and examples include threats, pressure, sabotage, and manipulation. Reproductive coercion involves behavior, uh, relative to reproduction and sexual health that is intended to maintain power and control in a relationship. It is perpetuated by someone who is, was, or wishes to be involved in an intimate or dating relationship with another

person. And there are three forms of reproductive coercion, and they include pregnancy pressure or controlling the outcome of a pregnancy, pregnancy coercion, and birth control sabotage. So, um, pregnancy pressure or controlling the outcome of a pregnancy, um, is when an abuser tends to influence a partner to continue or to end a pregnancy. Pregnancy coercion includes any behavior intended to coerce or pressure a partner to become or not become pregnant, or to coerce or pressure a partner to impregnate them. Birth control sabotage involves tampering with contraception or interfering with the use of contraception. Both sexual coercion and reproductive coercion often occur in the context of abusive relationships. Reproductive coercion disproportionately impacts people of color, uh, and other marginalized people. As our previous presenter, uh, detailed, uh, very effectively. Reproductive coercion frequently results in pregnancy. So, uh, reproductive coercion is a serious form of abuse that impedes a victim's autonomy and jeopardizes safety. Next slide, please. Okay. So, um, the Dobbs decision opens the door for further abuse of victims, empowers abusers, and jeopardizes victim safety. *Dobbs v. Jackson Women's Health Organization* overturned two foundational cases that establish an affirmed, a constitutional right to obtain an abortion. This means that states are now free to put into place laws which further restrict or even ban abortion. As a result of this, pregnant people now have good cause to fear criminal punishment for seeking abortion care. Luckily, abortion during the first two trimesters is still legal here in Virginia, but this could of course change. Dobbs introduces a grave danger to victims of sexual and domestic violence. It must be addressed immediately. Sexual and domestic violence survivors not only have significantly higher rates of unintended pregnancies, but they also experience escalating and far more lethal violence during pregnancy. Therefore, access to methods of contraception as well as access to safe and legal abortion are critical to a survivor's safety, health, and freedom. As reproductive, reproductive freedom is inextricably linked to sexual and domestic violence, protecting abortion rights is crucial to ensuring safety, to ensuring the safety of victims, of such violence. Allowing survivors to make informed decisions regarding their bodies and their care is an empowering step towards recovery. Making sure everyone can live a safe and healthy life means ensuring people have access to all healthcare, including abortion care. Next slide, please. Thank you. Okay. Um, even before Dobbs, pregnant people throughout the United States have been targeted for criminal punishment. Laws restricting abortion increasingly target pregnant people for criminal punishment. Anti-abortion laws are becoming more commonly weaponized against pregnant people themselves. More than 50 people, more than 50 pregnant people have been prosecuted for child neglect or manslaughter in the United States since 1999 as a result of testing positive for drug use after a miscarriage or a stillbirth. Over the last 23 years, there

have been at least 20 felony cases in Alabama, 14 in South Carolina, and 10 in Oklahoma, as well as nine in other states where prosecutors have employed the concept of fetal personhood to bring criminal charges after miscarriage or stillbirth. Um, and these, these personhood laws seek to establish that a fetus is a person, therefore making the killing of the fetus a crime against a person and the state. Most of these cases, um, were situations in which the pregnant person tested positive for illegal drugs after miscarriage or stillbirth. While this approach to drug addiction during pregnancy is harmful and counterproductive, as it disincentivizes the pregnant person from seeking the medical care they need, it is a strategy that is likely to become more common in the wake of Dobbs as states can now pass laws that give fetuses and embryos the same rights as children or as their mothers. Virginia has actually prosecuted pregnant people all, uh, for terminating pregnancies, including a 2017 case in Chesterfield and a 2005 case in Suffolk. Um, and legislative attempts, um, aim to further criminalize abortion. Next slide, please. Thank you. All right. Um, so ambiguity in Virginia's legal system concerning reproductive freedom creates opportunities for abusers to further terrorize victims. The Dobbs decision, um, which of course overturned Roe and Casey destabilizes the legal system and paves the way for vicious prosecution of people seeking abortions or experiencing miscarriages. Dobbs creates ambiguity, which creates opportunities for abusers to further terrorize victims. If there is ambiguity in the law around the issue of abortion, or if the victim is unsure what the law is, this will be a potent method of coercion. Additionally, if Virginia chooses to further criminalize pregnancy, victims could find themselves criminally punished for obtaining the care they require after abuse. Victims may also forego the care they need because of fear of criminal repercussion. Ambiguity in Virginia's legal system concerning reproductive freedom creates opportunities for abusers, uh, to, uh, terrorize victims and to, um, exert power and control. So many abusers use the legal system as another spoke in the wheel of power and control, um, maintaining the victim's access to and perception of their legal rights. We have worked with numerous victims who have reported fear of leaving the relationship due to an abuser threatening to use both Virginia's civil and criminal legal systems against them. These threats are especially potent when they include criminal punishment. Um, so here I have for you, uh, two, um, true stories from victims in Virginia that we have worked with, which highlight the way that abusers use the threat of criminal punishment to control their victims. The first story also demonstrates the reality of pregnancy coercion in the context of an abusive relationship. Um, so the victim in, in the first story became pregnant twice during a very physically abusive relationship, physically, emotionally, psychologically, abusive relationship. Um, the first time that she became pregnant, her boyfriend told her to get an abortion. When she refused to do so, he beat her so badly that she

miscarried her baby. When she became pregnant for a second time, her boyfriend again told her to get an abortion. She again refused. He told her he would kill her if she allowed a pregnancy to continue. Once he even pointed a gun at her while issuing threats. She decided to leave the relationship. Uh, several months later, she delivered a healthy baby. Um, but almost immediately after that, um, her now ex-boyfriend began filing motions in order to gain full custody of their child in common. She now lives in fear of losing her baby to her abusive ex-boyfriend. This story clearly demonstrates how a victim having a baby with her abuser ties her to him through the legal system for the next 18 years. This leaves the victim very vulnerable for a very long period of time. Um, and then the second story, uh, I have to share with you, um, involves a victim who revealed that her husband had fits a rage that were so extreme that he had on a number of occasions attempted to strangle her. In fact, her husband had recently attempted to strangle her while she was breastfeeding their baby. While fighting him off, she scratched him. He warned her that if she left a mark on him and he called the police, they would arrest her, as scratching usually leaves marks, but strangling often does not. Believing him, she did not call the police for help. Unbeknownst to her, she summoned the police claiming that she had attacked him when the police arrived at their house. However, her husband had fled the scene and no arrest was made. The victim lived in fear that her husband would continue to attack her, and that if she defended herself, she would risk arrest, um, and that having a criminal record, she would then have her children taken from her, as her husband had said would happen. As a result, she described feeling as scared of criminal punishment as she was of her husband's terrifying physical abuse. She felt she had no options to protect herself and her children. Because victims of violence are best protected when the law is clear, it is imperative that Virginia's legislators act now to protect reproductive freedom by ensuring abortion access in the state constitution. Okay, so, um, in conclusion, where do we go from here? So, enshrining abortion protections into the Virginia Constitution is the best way to create clear and unambiguous protections for reproductive autonomy. Returning power and control to victims is critical, both for safety and for healing. Um, protecting access to abortion in the Virginia Constitution will not only protect fundamental human rights for all Virginians, but it will also restore power and control for sexual and intimate partner violence, victims for whom access and choice are vital. Um, so, um, I implore you all to keep supporting abortion access in Virginia. Um, if you would like guidance in, um, figuring out how to do this, please contact the Virginia Sexual and Domestic Violence Action lines for more information about advocacy opportunities. So, you can do that by reaching out to, um, our policy email, which is [policy@vsdvalliance.org](mailto:policy@vsdvalliance.org) (or [vsdvalliance.org](http://vsdvalliance.org)). Um, or to hear more about volunteering attorney time, if

you are a Virginia attorney, please contact [legal@vsdvalliance.org](mailto:legal@vsdvalliance.org) (or Virginia Sexual and domestic violence, uh, [alliance.org](http://alliance.org).) Um, and this concludes my presentation. Thank you so much for listening.

**Prof. Janice Craft:** All right. Thank you so much, Courtenay, for your remarks. Um, and I would just remind our audience to please, uh, submit questions as they come up and we will be able to, uh, engage our panelists in a question and answer session after Professor Lain has presented. And on that note, uh, our final presenter on our panel is the SD Roberts and Sandra Moore Professor of Law, Corinna Lain. She's a constitutional law scholar who writes about the influence of extra-legal norms on Supreme Court decision making with a particular focus on the field of capital punishment. Her scholarship would, which often uses the lens of legal history, has appeared in the *Stanford Law Review*, *University of Pennsylvania Law Review*, *Duke Law Journal*, *UCLA Law Review*, and *Georgetown Law Journal*, among other venues, professor Lain teaches courses in criminal procedure, evidence, and the death penalty, and we are grateful to her for lending her expertise to our symposium today.

**Prof. Corinna Lain:** Aww... Thank you so much... ha ha... Janice can you hear me? Can you all hear me?

**Prof. Janice Craft:** Yes, we can!

**Prof. Corinna Lain:** Okay, fantastic! Um, I just have to say, I have enjoyed this panel so much. I learned a ton, ah, from Professor Harbach and, ah, especially from Courtenay, who is in the trenches, as you have been, ah, Janice. So, um, I'll tell you for a very short period of time I prosecuted, um, domestic violence cases—that's what they were known as then—intimate, um, partner violence cases, I suppose now. Um, and I can say that from my own personal experience, and I'm sure you all would, ah, back me up on this—the women are particularly vulnerable to violence when they're pregnant, you know, and as Courtenay said, domestic violence is all about power and control. And so you think about it like having someone become pregnant, mmm... it, ahh, takes, takes away their power and control. You're uniquely vulnerable. You're uniquely dependent. All of those sorts of things. Um, so the reproductive justice side is super, super important, um, but what I've been asked to do here is, um, not to talk about, um, my experience, which was a really long time ago, but rather to put on my hat as a legal historian and to provide a little bit of historical context to *Roe v. Wade* which is of course the decision that *Dobbs* overturned and, and, um, to look more broadly, and say, might there be a little bit of, uh, silver lining. And so that's what I'll be doing. And I'll just move as quickly as I can because I know we, uh, would like to get a little bit of Q&A in, but we'll see how that goes. So, *Roe v. Wade* has



gotten actually a terrible rap, ah, over the years, an ahistorical rap, uh, to be more precise. The critique of *Roe* is that the Supreme Court overstepped and the critique of *Dobbs*, or at least the dominate narrative of *Dobbs* from the conservative side, is that *Dobbs* was just correcting this overstepping that the Supreme Court did when it decided *Roe*. Um, and, you know, it is true that, that *Roe v. Wade* did strike down the abortion statutes of 46 states, so you can think about that. Um, and, uh, you know, an example of this critique is what Robert Bork said about *Roe v. Wade*, said that, um, *Roe v. Wade* was quote “the greatest example and symbol of the judicial usurpation of the democratic prerogatives in this century,”—like in this century, it was the worst case of judicial overreaching in this century. Now that’s a claim. You know by this view, um, *Roe* was bad not just because it was overreaching, but because it was completely counterproductive, um, as we know the backlash to *Roe* led to the National Right to Life Movement, which united various conservative groups and helped to defeat the Equal Rights, uh, Amendment, so that’s really shooting yourself in the foot. Um, and *Roe* did do those things, but the narrative behind it was not true, and so I’d like to spend my few moments or so to provide, um, a data point and a little different perspective, um, a more historically accurate story of *Roe*, um, and then think about how that might help us, um, understand *Dobbs* today. So first, the data points. Uh, since the dominate narrative of *Roe* is that it was stridently counter majoritarian, that is was usurping majority will, it might come as a surprise to people that Gallup’s, uh, August 1972 Gallup poll, which was six months before *Roe* was decided, showed that 64% of the public supported abortion as a matter of personal choice. And the Gallup question, for those who are inherently suspicious of polls and the way things are worded, simply asked for the public response to the statement quote, “The decision to have an abortion should be made solely by a woman and her physician,” end quote. 64% of the public agreed with that statement. Uh, and it wasn’t just a one-off, a similar, uh, polls six months earlier showed 57% support for elective abortions as a matter of choice and polling data going back to the 1960s, which I’ve tracked, um, showed a decade long trend in favor of abortion as a matter of choice. In fact, from the 1960s to, uh, January 1973 when *Roe* was decided, public support for the pro-choice position rose 30 points. Um, the Justices, by the way, were not oblivious to these developments. Um, Justice Blackmun, I’ve gotten into the Supreme Court’s, uh, files—you can do that up in DC—and Justice Blackmun, who was the author of *Roe*, actually had a 1972 Washington Post clipping on the record high support for elective abortions in his *Roe* file. So, this is all very interesting, and brings me to, uh, the story behind it. So, I’ll just say, coming into the 1960s, as people may know, abortion was illegal in every single state with very few exceptions, largely where the mother’s, uh, life was at stake. Most of those statutes had been passed in the late 1800s and

they're still on the books, right. So, there was, uh, a Rubella—uh German measles—epidemic from 1962-1965, and that's, that's the beginning of our story. Um, tens of thousands of women sought abortions to avoid the prospect of babies born with profound, uh, birth defects, and in fact during those three years from Rubella alone, over 2,000 babies died in early infancy from Rubella. Another 15,000 babies were born deaf, blind, or, um, intellectually disabled. So, the law gives way in response is what happens. By the mid-1960s, existing abortion statutes were widely and frequently violated, and the problem was not just the laws themselves. The problem was their uneven application. So well-to-do women, and now I'm sure your minds are starting to think like, "oh right I can see this happening all over again," well-to-do women went to their doctors for abortions. They had DNCs. Um, for those without connections, for those without connections or clout or plenty of cash, the law was much less malleable. They went to back-alley abortionists or performed the abortions themselves, resulting in anywhere from 500-1000 abortion-related deaths annually. Annually. And...it...and the problems was they were, al-also, they were skewed towards those in, um, marginalized societies. So, this was particularly unjust in the 1960s. You know, the country's in the midst of rejecting inequalities based on race, class—we have the Civil Rights Movement. We have the war on poverty. And yet, access to abortion rested on those very distinctions. So, the law was viewed as archaic and out of step. Pressure mounts to change them, and the American Law Institute—I'm a member of that—it had promulgated a Model Penal Code provision in 1962 that loosened, um, the restrictions on abortions and between 1962 and 1967, um, states started to adopting it. Between 1967 and 1969, 14 states adopted the ALI's reform measure, um, allowing "therapeutic" abortions in cases of rape, incest, birth defects, or where the mother's physical or mental health was seriously threatened. Um. But the... the push to pass these measures was short lived because it quickly became apparent that even those statutes, even the reform statutes, were too narrowly drawn to come anywhere close to where the country actually was on the issue of abortion. Um, so the legislatures had moved but the public had moved faster. Um, as I say my paper reform statutes were old even when they were brand new. So then there's this other, of course, by 1970, this other force, that is pushing the country towards the pro-choice position and that is the Women's Rights Movement. Um and... and um... looking back at the periodicals from the 1970s, um, and the late 1960s, oh it's so much fun, but you see a lot in this narrative that, like, no women, no woman, should have to convince a panel of men, or ask permission in some way, um, to be allowed. The decision to abort, just like the decision to use contraceptives, was an essential component of a woman's reproductive autonomy. So, consider what Redbook said in 1971. Um and a magaz-, in a leading magazine article, Redbook wrote, and I

quote, “no other issue is so critical for women today, the right to equality in jobs, educational opportunities and pay, or simply the right to be a housewife and develop her own individual potential, all pivot around her right of choice in childbearing through contraception and abortion.” Okay, so by the early 1970s we've got all of these, uh, threads that are really pushing, um, the law towards widespread support for abortion as a matter of choice. And in fact, by 1972, over seventy-five national organizations had endorsed, not the reform of existing abortion laws, but the absolute repeal. Um, including dozens of prominent mainstream religious and medical associations. So the conservative AMA, American Medical Association by the way, which first endorsed the abortion reform statutes in '67, which was its first change in policy since 1871, um, then changed its position three years later and moved to a complete repeal stance in 1970. Um, there was also something called the Uniform Abortion Act in 1971, absolute repeal stats. People should, women should, be able to make these choices on their own. So, um, uh, we can talk a little bit about the national media, but I'll, I'll uh, sort of pause on that. And you know one, one question that I think arises is, well then why didn't states, just you know like, why didn't they all reform the statutes? Why do we even have Roe? And the answer is, that, you know, that started to happen in 1974. States appealed right or, or repealed their abortion statutes. So '67 to '69, we've got fourteen states passing repeal statutes. Starting in 1970, they're now turning to, ah... sorry, from reform statutes to repeal statutes. But what happened was another force arose. Um, and that was the Catholic Church. Um, as reform and repeal statutes started gaining momentum, a Catholic led lobby arose to vigorously oppose all of this progressive abortion legislation. And it was largely successful. Um, all sorts of narratives in the contemporary news and media about how the pro-life message was being delivered, um... uh, legislators recounted stories in the press, um, of being confronted by grisly pictures of aborted fetuses in jars, all of that sort of thing. So one of the, one of the legislators said to, uh, a member of the press quote, “it's the political repercussions they fear, it's not opposition to abortion on the merits.” Um, minorities, if they're militant enough and determined enough, can stop things. And they did. So I think I'm just gonna um, skip some of the, um, data there that I would give you. But I will say that in New York which had passed a repeal statute, um, the right to life lobby was so strong that it was a governor's veto that stopped, um, abortion restrictions from coming back. And the governor talked about the extremes of personal vilification and political coercion that was brought upon members. So in the end, uh... what we saw was that legislation was at an impasse, right? And it was the worst of both worlds. Pro-choice advocates lacked the votes necessary to repeal existing abortion restrictions and pro-life advocates lack the public support necessary to enforce them. So that the cogs of democratic change were stuck. Um, by the

way, this is an example of what political scientists called Displacement of Conflict theory. The idea is that when it's when, uh, when politicians find it too costly to take a stand one way or another, the stand they most prefer to take is no stand at all. And so this is where the Supreme Court makes its entrance into the story. So uh... as, as Republican senator Bob Packwood shared in 1971, quote, "most of the legislatures in the nation I have met and certainly many members of Congress would prefer for the Supreme Court to legalize abortion, thereby taking them off the hook and relieving them of the responsibility for decision making." In this regard, a New York Times headline, with the front page of the New York Times in 1970, said it all. Here's the headline, quote, "Opponents of Abortion Law Gather Strength in Legislature but Many Law- Lawmakers Would Prefer to Let Courts Settle the Controversy." So it's like, you know, um, yes, the Supreme Court in Roe took an issue from the legislatures, but it was one that the legislatures wanted the Supreme Court to have. Um, so you know, you know, how might that help us think about Dobbs today? So very, very briefly, um I think in part, uh, understanding the historical context for Roe helps us to understand in tangible terms just how empowering the right to abortion was for women in 1973. And conversely, just how disempowering Dobbs is for women today. If history repeats itself, we may see, you know, anywhere from 500 to over 1000 women getting illegal abortions. We, we may well see abortion related deaths, um, maternal deaths. My, my own hope is that 50 years of Roe has allowed for systems and infrastructures to be in place, um, that will help women, uh, cross state lines to get safe abortions. But in rural areas, as we heard um, from Meredith Harbach, that may be easier said than done. So, you know if history repeats itself we can also expect to see gross inequality in access to abortion. Well-to-do women won't need to travel across state lines to have an abortion. They'll go to their local doctor, as they did in the 1960s and they'll have DNC performed instead. Poor women, disempowered women, abused women will try to travel across state lines or go to back-alley abortionists or local abortionists or try to do it themselves. So, um, we know that domestic violence is about power and what the road to Roe shows is that Dobbs has profoundly disempowered women. Everything that Redbook said in 1971 is just as true today. Jobs, educational opportunity, freedom to travel, freedom to leave abusive relationships, those things all pivot around a woman's ability to control her own childbearing through contraception and abortion. So I can't help, and here's the silver lining cause I am a bit of an optimist, I can't help but call out, you know, this great irony, that in the Roe-Dobbs saga, um, Roe has been a lot, mis-uh aligned for decades, as the court overruling. But Dobbs is actually the paradigm example of the Supreme Court imposing minority views on a majority of the country. It does sound de-depressing, but the backlash to Roe shows the path to the backlash to Dobbs.

And indeed the 2022 midterms were undeniably the democratic process having its say. So Dobbs is, in closing, Dobbs is a travesty for domestic violence victims and for women everywhere. That I can say, as a former, uh, prosecutor of these crimes. But as a legal historian who studies social movements, I'm slightly more optimistic. This very symposium, and the 2022 midterms, and the sheer power of women give me hope that Dobbs will be the albatross around this conservative Supreme Court's neck just as Roe was, albeit unfairly, in 1972. Long live the spirit of Roe. Thank you.

**Prof. Janice Craft:** Ah, thank you so much Professor Lain. I know we just have a few minutes left, um, so of course I would just invite folks to, uh, submit their questions regardless if we can take, a-a minute or two more, uh, we certainly will do that. Um, I wanted to just briefly note, uh, from Courtenay's presentation. Courtenay, you noted that, you know, enshrining the right to abortion, um, in Virginia's constitution would really sort of be the gold standard for the Commonwealth, and I think, you know, many of us could approach that with skepticism given the makeup of the state legislature and, you know, given, um, who occupies the executive branch. Um, but professor Lane, I just wanted you, slightly off topic, but again on this note of optimism, to remind us what happened in Virginia in 2021 when Virginia made history with respect to the death penalty, um, which may have seemed, you know, all that impossible years before then. If you could just share that with our audience again as a note of positivity and hope.

**Prof. Corinna Lain:** Yeah, you know, I mean Virginia abolished the death penalty. We're about to do a program at Richmond I think in two weeks called "When Pigs Flew," because people said, "when pigs fly Virginia will abolish the death penalty," right? And here's the thing. Backlash to the Trump administrations' executions were a part of that story. You know backlash politics, um, that, that's on the constitutional law side, and the and the, you know, legal history side, that's what I write about. And, you know, backlash politics are mighty, mighty forces. Um, you know, it's like, the Supreme Court decides something you agree with, and you nod along, and you and you go about your business. The Supreme Court decides something that you don't agree with, and you mobilize and... you know that decision creates a moment to mobilize around. And one of the things I think is just really interesting, bringing it back to, um, you know, abortion, is you don't see Republicans, uh, talking, really, about abortion. They're trying to like... You can tell where people are at and where they sense that the public opinion is at... Because if they're against it, right, and they can't come out with moderate views, because they got to feed the red meat to their base. But, um, sorry. But, but, but, uh, you know, and so they're just quiet, they just can't say anything about it at all. Um, and I think that the, you know, what happened in Kansas and some other

places, where it was like okay we've got Ruby red States, and even they were like, no. So I-I mean, I really do think that Roe or Dobbs and backlash politics are, um, a-a-a light for us. It certainly was true in the capital punishment context in Virginia. And I- I think it's true here too.

**Prof. Janice Craft:** Thank you so much, again, for that additional note of, of hope and optimism. Um, one thing that I also wanted to, um, briefly mention before we, um, let our next panelists come on, um, is you know this idea of mobilization, um, really at the state level. You know we do pay so much attention, and right really so, to what is occurring at the national and federal level. We pay attention and should to Supreme Court decisions, but really for-for everybody here, as a reminder to all of us, you know, politics is local, politics is happening at the local and state level. And really on the anti-abortion side, on the pro-abortion pro-reproductive side. There is so much movement and so much momentum that could be had at the state level and for state policies. And so really just a note of encouragement for all of us to remain vigilant and involved when it comes to our own state legislature and paying attention to the, uh, abortion related and reproductive healthcare related legislation that is going to inevitably, you know, come come down the pipeline one way or the other chat, um.

**Prof. Corinna Lain:** Can I just doing a shout out?

**Prof. Janice Craft:** Please.

**Prof. Corinna Lain:** I know you're about to close this down.

**Prof. Janice Craft:** You're good. Do a shout out.

**Prof. Corinna Lain:** You know... the shout out is to you and Courtenay. You know, because you're talking about local level and you're doing, you know, you've done it, Courtenay is doing it. You know, she is boots on the ground. Um, not only, you know, helping people on the front line but doing that sort of advocacy work, um, that is so, so, so very important. So I just want to say, you know, I came in with like a little legal history, nerd, nerd, nerd thing, but like y'all are the, are just, um, you you're wearing the capes, and I just want to say, you know, thank you for the work you've done, Janice. Thank you for the work that you're doing, Courtenay. Really important.

**Courtenay Schwartz:** Well, thank you so much for saying that, Professor Lain. I really appreciate that.

**Prof. Janice Craft:** Ditto. Thank you so much, Corinna. I appreciate it. Um, Teresa, we see you back on.

**Teresa Sun:** Yes, I am. Thank you so much Professor Craft and our lovely panelists. We are just taking a few minutes to get our next panel ready.

**Prof. Janice Craft:** And I do see that there is a question that came in on, uh, the chat. In the interest of time what I'm going to do is copy that question down, um, and perhaps, uh, Teresa I don't know what the process is going to be, but if there's maybe some conference materials, I'll see if we can Crowdfund an answer to this question, and then perhaps that could be posted along with other conference materials, if something like that would be at all possible?

**Teresa Sun:** Yeah, absolutely.

**Prof. Janice Craft:** Wonderful. Thank you so much, and thank you everybody.

## PANEL: JUDICIAL PERSPECTIVE

*The Hon. Mary Langer, Nancy Oglesby, Lisa Piper*

## INTRODUCTION

**Teresa Sun:** Okay. Well, we get this sorted I'm going to go ahead and introduce our, um, last panel. This is our last panel of the day and we're bringing in very well-respected judge and attorneys to discuss the ethical and practical challenges in domestic violence cases in court. And our moderator for this panel is our very own Professor Julie McConnell. And Professor Julie McConnell is a Professor of Law and the Director of University of Richmond Children's Defense Clinic. She has worked in youth justice for more than 25 years and specializes in holistic trauma-informed representation and the client-centered practice. She and her students represent disadvantaged youth and parents and also adults originally sentenced as children. She has previously served as an Assistant Public Defender and as a Supervising Assistant Commonwealth attorney. As a prosecutor in the Richmond Commonwealth attorney's office, she specialized in the prosecution of violent youth crimes, domestic violence, elder abuse, child physical and sexual abuse, and domestic homicide cases. She was part of a multi-year, multi-disciplinary team founded by the office on violence against women, which conducted training on the successful prosecution of elder abuse for law enforcement and prosecutors throughout the Commonwealth. Professor McConnell is also the co-editor of the book *Juvenile Law and Practice in Virginia* and consults as a juvenile legal system expert in Virginia criminal cases and with the International Institute for Justice and the Rule of Law in Valletta Malta. Professor McConnell is currently the Chair of the VA Advisory Committee on Juvenile Justice and Prevention and the Virginia Bar Association Commission on the needs of children. She also serves on the boards of the Mid-Atlantic Gulf Center and Housing Opportunities Made Equal. Professor McConnell.

## PANEL

**Prof. Julie McConnell:** Thank you, Teresa. I appreciate that. There's nothing worse than listening to your own introduction. I don't know how other people feel about that. But anyway, thank you. That was lovely. It's great to be here with all of you and it's been an amazing symposium all day. So really well done, PILR. I'm going to jump right in and do a brief introduction of our three speakers. And what we're going to do is, we're going to start with Nancy Oglesby. Then we'll go to Judge Langer for some response. And



then Lisa Piper will present and then more response and then we'll go to your questions. So, just so that we don't get too interrupted in that process, I'm going to go ahead and introduce everyone now. So I'll start with the Honorable Mary E. Langer. She is the presiding judge on the Richmond Juvenile and Domestic Relations District Court. She was formerly the Deputy Commonwealth's Attorney and my boss, ha ha, for ten years. Um, and the head of the Juvenile Court Division and the Richmond Office of the Commonwealth's attorney. She was also a member of the adjunct faculty of the University of Richmond School of Law, teaching Advanced Trial Practice. She is a native of Whitehall, Illinois and she began her legal career after earning a bachelor's degree from Notre Dame and a Juris Doctor from Boston College School of Law. She's represented defendants and she's also prosecuted them. She started as a public defender in Richmond and then spent seven years with the Chesterfield County Commonwealth's Attorney's Office before joining the Richmond office. She's one of five full-time judges on the court that handles a broad range of issues involving families and children, ranging from juvenile offenders to domestic abuse and adoptions. So, thank you for being here Judge Langer. And next, we have Nancy Oglesby. Nancy has been a career prosecutor in the Commonwealth for more than 20 years. She is currently the Virginia Domestic and Sexual Violence resource prosecutor. She's handled thousands domestic violence, child abuse, and sexual assault cases over the years. And in addition she has provided training on these issues to many professionals, including prosecutors, law enforcement officers, advocates, medical professionals and forensic interviewers. Nancy also served a key role in the development of Virginia's model law enforcement policies and protocols related to child homicide, intimate partner violence, sexual violence and stalking. Nancy is co-founder of Justice 3-D, a company that offers training and consulting to allied professionals nationally on the issues of child abuse, domestic violence, and sexual assault. And, last but not least, we have the fabulous Lisa Piper. Lisa is a partner of, at the Family Law Associates Firm in Richmond. She earned her undergraduate degree from Florida State University and her Juris Doctor from the University Richmond School of Law. Go Spiders! Lisa has a passion for not only helping families through her work in the courts, but also in helping to support and educate other lawyers, particularly those who frequent the Juvenile and Domestic Relations courts. She has served as faculty on numerous CLEs focused on juvenile defense work as well as guardian ad litem practice. She volunteers with the annual Chesterfield County Rule of Law Conference and is active in the Collaborator Pro... Collaborator Professionals of Richmond and Metro Richmond Women's Bar Association, and finally the Henrico County Bar Association Board of Directors. And with that, I turn to my esteemed panel and I would just ask Nancy, if you could get us started, that would be terrific.

**Nancy Ogelsby:** Okay great, let me see if I can uh, share my screen and get the PowerPoint started, um, I think I can do this... uh maybe ...uhhhh...

**Carl Hamm:** I'm here if you need help, um, you should be able to share your screen as a panelist...

**Nancy Ogelsby:** Did that work?

**Judge Mary Langer:** No.

**Carl Hamm:** Did you click the green button and then select... Oh there you go.

**Judge Mary Langer:** Oh, there it is

**Nancy Ogelsby:** Oh yeah? Okay alright um...so yeah, I just want to start us off by kind of giving an overview of uh... the prosecutor's perspective of dealing with these, um, intimate partner violence DV cases. And my background. I started back in 1997 as the Domestic Violence Prosecutor for Chesterfield County. Um and right out of law school, that was, was what I was doing. And that was also right around the time that, that a lot of money was being dropped across the country by the Violence Against Women Act, um, for Domestic Violence Prosecutors, police response, um all really coming out from the Nicole Brown Simpson, O.J. Simpson murder case. Which of course got a lot of attention. And then, um, in addition to all this money for these positions, uh many, many, many states started passing mandatory arrest laws. And so this kind of changed the whole dynamic of what was going on, um, across the country. And I'm sorry I'm a little hoarse so I'm going to try not to speak at you too much. Um, but when I started, I was doing about 1000 cases a year, um, which is why I kinda got inundated really quickly and, and kinda thrown in the deep end in this area and then had the privilege of kinda staying committed to this over, over many years, and so I'm kinda gonna give you, uh, a, you know, 20 plus year perspective over, over these cases. Um, well let me see if I can change this slide... There we go. The first thing I wanna say is that you're gonna hear me say "she is a victim" and "he is, uh, a perpetrator" probably more than anything else. Um, clearly we know anyone can be a victim, anyone can be a suspect, but these cases are gender biased, in the sense that by far they have female victims and male perpetrators, so I just always like to put that out first, and nobody assumes that I, uh, am intending to leave a party out or anything of that nature. Um, and the three things that I'm going to talk about really in my little portion of this are, are three questions. Is, is mandatory arrest working? Especially after 20 plus years of it. Um, how do prosecutors deal with victims that become uncooperative and don't want to participate in the process? And, are we truly recognizing the seriousness of the domestic violence cases? Um, most of these

cases are brought as misdemeanors, and so I'm gonna talk a little bit about, is that correct? Should we be looking to do something different and how can we recognize, um, when the cases are more dangerous or more serious. The first is, is mandatory arrest working. And the key to making arrest work correctly is understanding at least in Virginia of what we call the predominant physical aggressor. And, and this is the idea that the officer goes to a scene, looks at the totality of the circumstances and chooses who is the more severe actor in, of the two people. And this video is a good example of that so let me see if it will play, there is no sound on this... Okay, so predominant aggressor is the idea that you may have two people that are verbally arguing. Um, obviously one person escalates that to physical. Mm, that is not legal and they would probably be the dominant physical aggressor. But it's also recognizing the idea that you could have two people that are also engaging in assaultive behavior and the police are still going and trying to decide, which one of those is the more, um, more serious of the two, the one with the more ability and inclination to do harm, and therefore making an arrest of only one person. Um, this law was passed because they realized dual arrest, arresting two people at the same time, is a very ineffective way to respond to domestic violence. And so the idea is that, if you have dual arrest, if we arrest both people it may put the prosecutors in a position of not being involved at all because, um, they are both coming in as defendants, uh, they both may have attorneys and probably will, and they are both probably gonna claim their Fifth Amendment right to not testify. Um and so we don't have any, um, ability to intervene or hold anyone accountable and it becomes a revol...revol...revolving door. Um, often in those situations prosecutors may just nolle pros both charges, um, which is also pretty ineffective. If you arrest both parties, especially if one person doesn't need to be arrested, you then have an effect on the children that are in the home, clearly because then you're having to place the children elsewhere which can be very traumatic. Um, and then it can also reinforce the actual abuser's threats that, "Hey if you call the police, I'm gonna make sure that you get arrested too or that you get arrested instead of me," which also feeds right into the batterer mentality. Um, and so this, in addition to this predominant aggressor piece, the idea of this dual arrest should be happening very rarely, um, and that's really only going to be when there's a break in time between two separate assaults, and the police are actually having to determine two separate predominant aggressors. And being able to say you know, okay, in this first situation I determined that A, A was the predominant aggressor, something happened in between these two situations, and then now we have a second situation where I am determining B is the appropriate person to arrest. That doesn't always mean we're able to do any kind of accountability, because lawyers still become involved, cases get messy, people claim the Fifth. But this at least gives us

the best shot at saying, okay, maybe there's a way we can intervene. Um, it takes a lot of training for law enforcement to understand both that predominant physical aggressor, um, concept, as well as the appropriate use of dual arrest in order for us to even begin to set up a situation that lets the mandatory arrest philosophy work successfully in the courts. Um the other thing I'll say about that, before I kind of move on to the next issue, um is that everyone who is working at least in the law enforcement, prosecutor side of this needs to understand that mutual combat is not really happening in domestic violence. And we hear those phrases a lot, um, defense attorneys will use them a lot I think to minimize "Hey judge don't worry about these people, this is just a mutual combat situation, you're never gonna see them again." But from a prosecutor/law enforcement perspective, these words really don't belong anywhere in our investigation or prosecution, because in some ways by saying it's mutual combat we're basically saying there is no predominant physical aggressor. Um the other part of that is, is mutual combat is really a meeting of the minds to fight physically, which you don't usually have in domestic violence. What you have in domestic violence may be a verbal, um, altercation, but it's usually only one party that decides to make it physical and then the next party has to, has to respond in a certain way. And so it's not mutual combat. And so making mandatory arrest work really involves a tremendous amount of training around those three areas: predominant physical aggressors, um, dual arrest, and mutual combat...Um... Then what I'll tell you, and you probably already know two as well, is that in most cases by the time a case comes to court, the victim involved does not want to see the prosecution go for it. And so they can be uncooperative in the sense that they just make that their wishes known, but they are truthful if called to the stand, all the way back to not showing up, um, lying about what happened, testifying for the defense, having memory issues, um. And if you really think about it, we kinda created a situation that victims kinda realize, "Hey the only way that I can stop this train a lot of times is to become uncooperative and, in some cases even hostile." Because we have mandatory arrests, which basically says if a predominant aggressor is determined, there shall be an arrest. And then most prosecutors office still have some form of a mandatory, uh, no-drop policy prosecution, um, philosophy, that means a case is going to go to court, regardless of what the victim may say they want to see happen. And so the victims then come to a conclusion well, I don't want this to go the way the prosecutor wants this to go, so I'm going to do what I can to stop this train from moving, and a lot of times that unfortunately leaves them with what can be some very bad decisions. Um, I think a more effective way to deal with this, than putting all the onus or all the burden on a uh, uh, person to move forward is the idea of doing this without their cooperation if we can. And meaning, without a proper issue meaning, we're not even calling them as our

witness. Um, we can't keep all our focus on why they don't leave, we need to focus on the criminal behavior of why do...does the abuser hit? Um, because, um, when you talk about a person calling 9-1-1, they may not be anywhere on this, uh, spectrum of how you make change and how you may decide to do things in your life.

They just want the violence to stop. And so basically saying, "Hey, we need you to cooperate, we need you to be, um, on our team so to speak as a prosecutor, against this person you live with or love or have children with. When all they really wanted was for the violence to stop, it's kinda an unrealistic perspective. A lot of times victims are on board in the beginning and what the research tells us though is they go through a process, a lot of times, of manipulation by the person that maybe being held in jail or maybe not being held in jail, that ultimately leads them to a point that they decide, "Hm, maybe I don't want to cooperate. I'm gonna recant because this is a better choice for me." Now let me share this really quickly because I think it's important to realize that this is research based and we start to see a pattern in how this happens. So one effective way in how to respond to this would be to maybe have some way to intervene earlier in this cycle. So what the research says is that you may have a couple begin to abuse, discuss the abuse event that happened right after it occurs. Um, at this point, the victim's agency is kinda strong in the sense that they feel like they can say, "Hey, what you did to me is wrong. I'm not gonna tolerate this anymore. Um, you can't behave this way." Um, as the case continues, it can go on for months and months. It starts to shift that the perpetrator may minimize the abuse and blame, and basically starts to say, you know, "this really wasn't as bad as you thought it was. You should feel sorry for me," especially if they're locked up. They start to talk about how hard it is for them in jail, how miserable they are. And the victim then begins to feel sorry for them. They may feel some guilt. They may feel some regret for the choices of involving law enforcement. And then you hear the manipulator start to talk about the good times. "Hey, remember when, remember what it was like when we used to do XYZ? You know we used to talk about moving to Florida together and leaving all these people behind. What if we do that again?" And so the human nature of a victim begins to say, " You know what? I like that part of my relationship. I want that again. Maybe this will change if I invest back into the relationship." And then, um, here comes the ask. Now the discussion becomes over recantation. "Hey, if you can make this case go away, we can have everything that I'm talking about." Um, and then the couple then works together to figure out how to get out of the situation. We as the state, or the prosecutor, just see this as a recantation uncooperative stage, but there really is a lot of research behind how we get to that point. When we're talking about this, we can't do it alone. Law enforcement has to do an investigation that supports it. It's done

through detailed documentation, through evidence collection, and then that creative use of Rules of Evidence to be able to introduce enough into evidence to prove a case when the victim isn't cooperative. And we do it in homicide cases. Clearly we can do it in these cases as well. And I think for prosecutors, it takes also the understanding that even though we may stand in a counter-position to victims in this matter because we may be proceeding in a case that we feel is dangerous to them and there has to be accountability, we still shouldn't be hostile to them, we still shouldn't be antagonistic to them and these things, like charging them for false reports, or charging them with perjury, really are not accomplishing the bigger goal of stopping violence. And so I think as prosecutors we really have to make good decisions around these tools and not have knee jerk reactions when victims are uncooperative to say, "Here's a charge I think I can prove, which is perjury." And just go forward with that. Especially since a lot of times we can't prove these charges and ethically can't bring a false report charge if we believed a report was real. And so these are not good tools for us. Because usually the bigger attempt of a victim to lie or get out of case, the more dangerous situation they are in and the more serious they're facing the ramifications if they do proceed. And then the last thing really quickly is are we recognizing appropriately the seriousness of domestic violence? And I just want you to read this for a sec, second. Um, the victim said she was seated across from him, and he stood up quickly pointing at her and came towards her. His friend that was in the room tried to hold him back. I think we can all probably agree that sounds like a pretty innocuous statement. If you're in this field of work, you've seen statements like this in police reports many, many times. And it's hard sometimes to visualize what that really is. Well, this is R. Kelly giving an interview with Gayle King. And as I just described it, this was what was happening. And that's the hand of the guy that was in the room with him basically trying to pull him back from this live interview that he gave to prove to the world that he was not a violent person. And he didn't do all these horrible things to people. And yet, in the middle of the interview, he lost it. And jumped up, and really approached Gayle. And that to me speaks volumes. That picture is what we never see, or don't really see when we see those words that seemed kind of like, "uh, that's not that big a deal." Um, we also need to understand about concussions, they're starting to realize that the percentage of domestic violence victims that have long term issues with concussions is much higher than any other crime victim. And then of course we have strangulation, which can be, uh, an extremely dangerous situation, and, um, the statistics behind the people who strangle their victims of domestic violence are also the ones who are doing the shootings of random people in schools, in public places, and killing police officers. And so it is understandable if you can take someone's life in your hand and strangle them that you are gonna do horrible things to

other people. Well, and we also need to understand again, the medical seriousness of strangulation and make sure that our folks are getting the attention that they need because historically law enforcement has not responded appropriately to concussions or strangulation because they do not see a physical injury. The victim doesn't even know how serious the injury is. And until recently, we've all kind of, from the prosecution, law enforcement side, not had enough training around these issues. Um, and so, we've gotta remember misdemeanors matter, um, we've gotta pay attention to the kids that are in the home because that's really how we change the next generation and then we have to recognize the seriousness of strangulation and concussions, um, that we see a lot in the cases and kinda get handle of those misdemeanors but really should not. So hopefully, that takes you back to...

**Prof. Julie McConnell:** Thank you Nancy.

**Nancy Oglesby:** I said, hopefully that takes me back to you guys, if I did that right.

**Prof. Julie McConnell:** Yeah, yeah, sounds great. And you can stop sharing your screen if you like. I have a couple questions for you and then I would love to turn things over to, uh, Judge Langer and Louisa, of course, you are welcome to jump in as well. But you mentioned evidence based prosecution and I'm wondering if you could just elaborate a little bit on what that is for those who might not know.

**Nancy Oglesby:** Yes, yes and sorry. I was trying to get through it so quickly.

**Prof. Julie McConnell:** No, you did great.

**Nancy Oglesby:** Uh, evidence base prosecution is the idea that, um, the prosecutor prepares a case, um, and does not call the victim of the violence to the stand. Um, and basically we're using things such as, obviously confessions would be great, but even without confessions, all the different hearsay exceptions that we can think of that fit into a situation that would allow us to get enough information into what the victim did say to law enforcement and medical personnel, um, that gets us past that motion to strike. So, we may have an excited utterance, we may have a 911 call, um, we may have a statement to a medical provider that gives us basically the victim's side of the story in a way that we can consider as, uh, substantive evidence, gets us past that motion to strike, and then hopefully, forces the defendant into doing, saying something that gives us even more options, um, to get even more evidence in, but the idea that we are doing it, with or without the victim present, um, and not calling the victim to the stand.

**Prof. Julie McConnell:** Right, thank you. Um, another question that

occurred to me during your presentation, was the issue of police officers charging victims for not cooperating. Have you had difficulty over the years, and has it gotten better hopefully, um, convincing police officers that that's the appropriate course to not prosecute the victim?

**Nancy Oglesby:** Um, I have to say that yes. I've had difficulty. Yes, it's gotten better, um, and that's the good thing though about being the prosecutor and especially if you have a jurisdiction with a dedicated DV prosecutor that's gonna say, "do not charge false police reports."

**Prof. Julie McConnell:** Mhmm.

**Nancy Oglesby:** Could you have probable cause on your end? Yes. Can ethically I proceed in this? No, so if you charge I'm nolle prosequing it. You know, so kinda that sometimes they are invested and understand why we have that opinion, but if they're not, there's always that opinion to kinda say, "well, we get the trump card," so to speak. Um, but I will say as time has passed, I think the resistance to it, whether they actually followed it or didn't, or internally followed it but felt different about it has improved. I think people do understand more, um about what's going on when we, when we are dealing with these cases. Um, it also helps, it also helps when we can provide some other way to hold people accountable, and it doesn't just mean cases are going away. And so that, the more we can do that, the more I think police are also less inclined or less have that desire to say, "well, I want something out of this."

**Prof. Julie McConnell:** And so when you say that are you referring to things like taking the first case under advisement and having the person go to batterer's intervention, you know, those kinda things steps...

**Nancy Oglesby:** Yeah, or even just some kinda proceeding with evidence-based prosecution as opposed to nolle prosequing. Which in the past, a lot of people would say, "well if the victim isn't participating, I don't have a choice."

**Prof. Julie McConnell:** Right, exactly, exactly. Ok. Thank you.

**Nancy Oglesby:** Sure

**Prof. Julie McConnell:** And so when you say that are you referring to things like taking the first case under advisement and having the person go to batterer's intervention, you know, those kinda things steps...

**Nancy Oglesby:** Yeah, or even just some kinda proceeding with evidence-based prosecution as opposed to nolle prosequing. Which in the past, a lot of people would say, "well if the victim isn't participating, I don't have a choice."



**Prof. Julie McConnell:** Right, exactly, exactly. Ok. Thank you.

**Nancy Oglesby:** Sure

**Judge Mary Langer:** I was 10 when I started prosecuting. Um, and, ya know, I don't wanna be the Debbie downer in this crew but this is the exact same conversation we have had for 24 and a half years.

I mean I know I, I can remember the conversation when we talked about why are we—why would we charge a victim? Because what they say now is minimizing instead of knowing that what they said in the heat of the moment was true or or isn't there another way and Nancy you know I I think she's like the pioneer in my mind of evidence based prosecution but why is it a battle to to talk to police officers about actually investigating a crime instead of just responding and doing the quickest fastest you know and do the whole thing that you can and then come in on the backside and complain that there's very little that can happen you know the dual arrest legislation and structure has did a lot to end the you know the two people because that's what police officers did early in my prosecution of these cases was just I don't know who to believe I'm not supposed to figure this out that's not my job that's somebody else's job so I'll just haul all of you in and it'll all wash out somewhere down the road and it washed out is exactly what it did it it allowed for nothing really to happen but we still have a system where anyone can go to the magistrate and take out a warrant when they make an assertion that a crime was committed against them and so there is still a cross warrant situation that appears frequently in my court and that's no different really than the arrest made by a police officer if they rested both be without the real efforts of the police to investigate and prosecutors to say I'm going to get invested in this and try to separate this out and find out something but it's spoiled by not being able to talk to someone because now both people are represented but yeah I just I haven't seen a great deal of movement from it in my prosecutorial experience we tried a lot of different things some of them I will admit were wrong now from my from a vantage point of years later but what I see most day in and day out is you know I I totally understand why people are trying to give you know we want to give back some autonomy and some decision making to victims but all I what I see now that I don't have any perspective from the hallway you know where the real work gets done I just see a motion to no cross no objection everybody goes home and it's hard to it's hard to have a sense that it's hard to get a sense that more is being done that is intervening and you meaningful way because I see the same people over and over again and every once in a while I just say I can't just know process either there's something that's really happening or this person is repeatedly falsely charging us and one way or the other this has to end we sit can't keep having this person sit 2-3 weeks at a time in jail you know until there one way or the other so I

need something else to happen and I say that but I don't know that very much else really happens but it's just I don't know I I don't feel like the response from the criminal justice side is effective I wish that it was there was more that the public health aspect of it which is sort of where the fatality review model and Julie what you did with the elder abuse attack multidisciplinary work right where people come together and sort of talk about the causes but nobody wants to put much money into that because it's sexy to say I'm going to save people on the back end without but it's not very sexy to put money into place or services into place to just allow someone to be economically independent physically safe have the ability to leave come or go perhaps the earlier discussion about reproductive rights that all factor into this right have childcare so that they're not dependent on someone the layer it's layers and layers and layers to looking at this as a public health crisis and you know it takes a long view and it takes a lot of investment and and real work to go at it from that way and you have to kind of wait to see if it works and people are getting people get impatient that's why police officers make dual arrests that's why prosecutors just know across that right it's all about our patience because we want this to get fixed and it's just not something that's that that is that easy and some people like the feeling that I can remember being at a prosecutor's training where they were trying to build I don't care what you say and prosecuting this person because nothing bad's going to happen on my watch and the instructor said when does your watch end and the guy was floored it rocked his world because that's how he sustained himself and that work was that he thought what he did in the courtroom was the end all be all of safety and all of a sudden that caused really caused him to see that what he was doing maybe wasn't making anybody safer he might actually have been making people more unsafe and he had to recognize that limits of his power and maybe think about doing something different but again that's 20 years ago and we're kind of still doing the same thing so again don't really mean to be Debbie Downer but maybe I'm going to send the voice of of reality given my different perspectives that I have as well.

**Nancy Oglesby:** That's what I always say always the voice of reality.

**Prof. Julie McConnell:** Unfortunately I I've seen obviously the same things over the years and it is frustrating that we're still having these same challenges but there was a question that I thought I should turn us to I think this is really for you Nancy but this is from one of our attendees how can we get evidence of coercive control and the incredible harm it causes into court documentation of course scheduling you're welcome to way in as well

**Nancy Oglesby** One of the ways to get it into documentation in the long game is is for law enforcement to be asking appropriate questions in their investigations that allow for that information to be shared it gets into their

report and then at least the prosecutor becomes aware of it and then they have it to begin to figure out if there is a way when there is a way to introduce it if the victims not cooperative you know there's a whole another piece of this too that we talk about is forfeiture by wrongdoing and that's the idea that that not only the victim is uncooperative but we can show that they're uncooperative because the suspect or the defendant made them uncooperative either by bribing them or threatening them or or any number of reasons and that opens up the door for us to get a tremendous amount of of hearsay and and and past behavior in and much more information in in that picture not necessarily to prove the underlying criminal charge but just to get the idea that we get to proceed under forfeiture by wrongdoing and so if we get to pull all police reports and if in those old police reports a victim is shared well this is one thing that happens and then he does this and then he does that and then this is and the officers taking the time to do it no that makes it to us and makes it into court and so again a lot of it goes back to and I think Mary said it best that you know these cases needed to be investigated and need to have time attached to them and if they're not no one else along the line really can do much and even when they are investigated fully it's still battled it's still a lot a lot has to happen but we have to we have to treat them more than just that I'm on the scene I'm making arrests I'm off the scene these are you know misdemeanors matter.

**Judge Mary Langer:** I think the lethality assessments one place where that information can be gathered because those assessments are done right at the that acute moment that people want to share the information and so while that may or may not be admissible it's it is I think it's admissible at the bond hearing now but it may not ultimately be missile on a court of child but you know that is building a history that if someone kind of wants to work at it could maybe use in a in a productive way I haven't seen a heard mentioned or seen a lethality assessment probably since COVID started I don't know if there's a connection there or not but it's been a long time since someone's told me any information at a bond hearing about a lethality assessment.

**Prof. Julie McConnell:** Who would be doing that lethality assessment?

**Judge Mary Langer:** It's the police officers on the scene I think right Nancy?

**Nancy Oglesby:** Which is the one that the attorney general had pushed forward then yes the police officer would go through after the arrest had been made and and ask those questions document that form and then ideally the other part of that is connecting the victim with an advocate from the community resource agency at the same time as well so during the lady assessment sharing that lethality assessment with that advocate on call and then

connecting the victim and the advocate is how the entire model is supposed to play out

**Prof. Julie McConnell:** Great thank you. Lisa do you want to jump in on this discussion or should we move to your section?

**Lisa Piper :** No, actually I would love to jump in and I have in, also in the realm of full disclosure, most of what I know about these cases, I cut my teeth on being trained by Judge Langer when she was a prosecutor. I did my fifth year practice with her so, it's like really, we've got all of this here and I actually—one of the things when I was prepping a docket to be checked by her I remember sitting in her office and I think about this all the time I she asked me, “OK well what are we going to do on this case?” and I explained to her the summary of what happened and she said, “no, I didn't ask what happened, I asked what you can prove happened,” and that has really um, and I just can picture it—it has really driven a lot of how I work with families whether it's through whether it's through criminal matters whether it's through protective orders or in custody visitation cases that have that are rife with domestic violence which I tend to work on a lot and it is really tricky because oftentimes we know—we can feel what's happening and it's really hard to be able to show to the bench what has been happening and I, as I was trained to know that I cannot come before the court and say well this is what I think and that's why you should rule this way we really have to be able to give the court the tools to be able to do that and um one thing that I would love to hear both Nancy and Judge Langer's input on in talking about these cases where Nancy as you said misdemeanors matter um, it feels to me like protective orders matter too and it's so hard to get a protective order when we're—when we're leading up to those assaults and we don't have necessarily have that definitive act of family abuse and we don't have a punch we don't have a slap a hit a throw but we have everything right up into it like like the picture that you showed with R Kelly.

I think we have done six initial uh consults that have to do with protective orders and many of them are gonna fall short in the court. One of them in fact went to the magistrate today, got denied by the magistrate, but granted a protective order when we directed her to go to uhm the directly to the court in Hanover. Uhm and so my thought would be how how do we stop it short if either of you have any input even before the misdemeanors happen uhm are there tools that we can use from from the protective order prospective uhm or maybe the legislation is flawed still which is also a possibility?

**Nancy Ogelsby:** So I'll just jump in first and I'll say that you know I think that the way the protective order statute reads it's actually written broadly enough that again and I think judges have to be trained on these issues too

and have to have an understanding of of domestic violence uhm but you know its based on that active family abuse but in that definition it includes strata violence? and so it's a tool that often you know I see the law enforcement look if you're on a scene and and you can't make an arrest for assault and battery but the people are married but he's been breaking property and yelling and screaming then you still can call up and get an emergency protective order cause that's a threat of violence in the right context explained the right way. And so, I feel like that there is room there for judges to hear the up-to-the-line things and and having the ability to say yeah I know what's coming next and I I'm able to do this now. Uhm but every judge interprets that differently. Uhm so I don't know that it is a legislative fix I—I think in some ways it may be an education fix and then I do know there are gonna be some situations that uh somebody saying I know this is going to happen and like you said you just can't prove it.

**Judge Mary Langer:** I think there's a lot of judicial education that still needs to happen. I'm always a little surprised at some of the things that are said by my colleagues uhm because because if there's if there's one time in a judges career that they believe someone manipulated the system uhm somehow as human beings we are hardwired to remember that more than we can remember anything else. Uhm we so then then the suspicion is just constantly there. Uhm but ... as as much as I think I may know about domestic violence it is still very hard because people can't don't articulate well uhm the circu... uhm what Nancy's example right well you've got to find the chair and point it at me. And there and you know there's a million reasons why they might just say it that way. Uhm from trauma, prospective. But I still just hear well you got out of the chair and you pointed it at me. And so when someone can't flush out what that makes them feel why that gesture is something that feels threatening or may lead to bodily injury then then all then all I have to add on is they stood up and they pointed it at me. Uhm but it's you know in a in a true relationship that has intimate partner violence there's more. It's just the ability to articulate that or or the willingness to share it. And I think a lot of it is still that shame that we put on people who are victims to that they don't want to they don't want to say how long it's been going on they don't want to say all they've been through because the end of I have have the abuse definition in front of me. Look I actually prepared Julie are you proud of me now. Uhm it says or any history of sexual abuse and I think a lot of people who are in relationships with inter-partner intimate partner violence have experience some form of coerced sexual activity. But they don't want to they don't want to tell a stranger that and that's who they're talking to. They're talking to somebody they just walked in and I made them put there hand up and say they'd tell tell the truth and even though there's only a couple people in the courtroom while we're doing you know preliminary protective orders

it's it's not easy to admit that that's going on for months and months and months. And it's especially not easy to do that when you're not certain if the person who's gonna hear it is going to say well then what the what well if it's been going on for months what am I gonna do now. Now you just want him out now you just want to put him out of the house. So there it's a lot.

**Lisa Piper:** Well that the question why didn't you leave was literally at uhm one of my coworkers she was as guardian in a custody visitation case yesterday, and the judge said I mean talking very like absolutely loads of domestic violence and judge said to the mom why didn't you leave. And I wrote it down. So I didn't need to call her she called me so angry afterwards she's like how is that the question how is this this point how is that the impression from the bench that that was the wrong that she didn't leave. Uhm so yeah it's uhm it's it's tricky to the the fact pattern today was actually uhm the she didn't really even recognize how bad it was. The gaslighting was so prevalent that we talking to her we had to really pull out the details and I said did... did he spit on you when he was talking because he had his finger in her face. And she said oh his spit was getting all over my face. I was like there we go okay that's what you're going to make sure to tell the judge that's what they need to hear. How close he was how angry he was he was literally frothing. Uhm and so some of those details are really hard to get out and I think uhm our role uhm whether its counsel or domestic or as a guardian ad litem is really just to try to normalize what we're hearing and uhm just dig at those details as gently as possible but also as probing as possible. Uhm and it's it's hard when you have people who may not even recognize that they've been experiencing that for so long. They go oh yeah well yeah he's I mean he has sex with me when I don't want to but that's you know isn't that normal. No no that's not no you don't have to do that. Uhm so I think that interviewing and that preparation is where we can help whether we're guardian ad litem whether we're counsel uhm or as prosecutors I mean we can kind of prepare them for the normalization that this isn't gonna be the worst thing the judge has ever heard. There not gonna you know there not gonna come down on you there not gonna blame you. It's hard when they do get that blame from the bench uhm but uh unfortunately uh but I think when we can prepare them and and tee it up as much as we can it's really helpful to get as much information for the court as possible.

**Nancy Oglesby:** And I think another problem is a lot of times folks are going in there without attorneys in the protective orders. So there not they don't have a prosecutor they don't have an attorney and so that's more intimidating more challenging more harder to tell what happened. Especially if the other uh the the the other side has an attorney which they often do have it that way. So that's another hurdle.

**Prof. Julie McConnell:** Exactly. I wanted to follow up on something Lisa was saying uhm about blame. I I'm wondering if you see mothers in particular also being blamed for exposing the kids to the violence for not leaving. You know whether there is a harsher judgement when kids are also exposed to it. And along those same lines we had a question actually from one of our participants about you know ideas that you do have about how we can protect kids who are in these situations where they are watching a parent being battered.

**Lisa Piper:** So uhm yeah so uh uhm yes I mean the short answer is yes. I do think that uhm mothers get judged incredibly harshly by if we're looking at a best interest of the children standpoint and the mom is not doing the one that is doing the feeding but she's watching it then if we're protecting the children that's going to be our number one prospective. Uhm I have been heard of abuse and neglect uhm proceedings that have been filed by the Department of Social Services specifically because although the mom was not causing any of the issues uhm that uh she was not able to create a safe environment for the children. So even when we remove dad uhm she kept needing him places contrary to the order. Uhm and we knew the problem was we needed to give her more support we knew the problem and so it was really it was a long road to get her uhm to where she really felt like she could be an advocate she could be protective. Uhm there was there were tons of services for that and we were able to finally return the children uhm to the home. But uhm I do think that mothers in particular are uhm judged pretty harshly and perhaps uhm even though I mean those of us who are mothers and we're like why wouldn't you keep your kids its hard directing so that just as a human just say how on earth could you let that happen. There's just so much trying to figure out what services we need to help protect the family uhm it can be really tricky and we don't have the services either a lot of times I think we can identify the services that are needed uhm but finding funding for them is a whole other uhm just it's a whole other job even just figuring it out. And so uhm I'm always appreciative of when the bench is willing to uhm kind of stretch a little bit and and uhm you know say oh well you know I'm gonna I'm gonna find a chenz? in this situation just to like tap into more uhm ser... more services that we can fund. Uhm because that's really the people that are most in need of the mental health treatment mental health evaluations uhm are the people who are least able to afford it frequently and that's who the population were dealing with a lot of the times is. Uhm so I yes the short answer is absolutely I do think mothers get get uhm kind of the brunt of the lack of protection from my prospective uhm. And just for anybody who's watching that that doesn't know me I do most of my work as guardian in uhm in Chesterfield and Henrico those where I most frequently uhm do guardian work and see that demand. And I don't know if it's different in different

countries.

**Judge Mary Langer:** Now I think we I think we demand a lot more of uhm mothers than we do of fathers. Fathers, fathers can get a lot of credit for for kind of a minimal amount of effort. I I when I never did social I mean I worked with social services when I was prosecutor I never done social services foster care case before I took the bench and early on immediately you know early often in which we don't have identified fathers so much so there are more focus on the mother but when when we had two parents dss would be demanding services all of this for the mom and then they'd say dad went to visitation twice this month.

**Lisa Piper:** And he took a paternity test.

**Judge Mary Langer:** And I'm like uh does that like that doesn't exactly seem like the same thing uhm but yeah uh as a society we just have very we very different expectation and and I will say this as a woman that about women we judge women harshly so harshly. Yes we do. We're not nice to each other and so we're kind of like well you didn't do that and I would have and so therefore this isn't you know you you kind of fouled out uhm... But there was something else I was gonna say uh... I wish that there was more often, so I'm gonna switch gears just a little bit. I see predominantly my custody visitation docket just mom and dad there to present their cases. We don't have a lot of counsel uhm private counsel in those in those cases so I see cases might have a guardian ad litem but I still just have someone saying our relationship was abusive while we were together and that's why I feel this way and someone saying oh no it wasn't that's all made up and no one really there's simply no way for me to know for certain. And one one of the factors in determining custody and visitation is if there is a history of domestic violence and you can disregard some of the other... (audio ended mid-sentence; the second recording was at a different part. I think there is missing audio)

You know, try to fashion a way for the children to be safe, and uh, what's in their best interest in a little bit different way. But H-h-how we figure that out has been just the hardest thing. There's no, no- no one can get a police report because they're protected. Um, often there aren't charges that have been filed or, um, maybe worst-case scenario -I don't know if this is the worst-case scenario or not- but there were charges and they were null prossed because the victim asked for them to be. So, does that say there wasn't a history of domestic violence or does that say something else? If I even knew that for sure, what am I, what am I really supposed to make of that. Um. And so, it's really difficult when there's just this thing that's sort of bubbling around and I would love to see some, I don't, I don't know how this could possibly happen, but I really wish GALs had some way to more investigate



those issues in a thorough way. I shouldn't say thorough, I should say effective way. I just don't think there's an effective mechanism.

**Lisa Piper:** So, to that end, and when we do have this information, um, and this also is something that came up specifically yesterday. Um. When we do have that information and we're able to for instance raise to the court that there have been 5, 6, 7 DVs that have been null prossed, um, or dismissed, um, could you speak a little bit to how you like to see that sort of evidence presented in a way that's helpful to you? Because um, you know, we're dealing with of course charges that either are completely unadjudicated, which I think the facts still come in, if we can get them in or, um, in this instance somebody was actually found, uh, the father in this case, was actually found not guilty by the jury of running mom over twice with a car and um...and..

**Judge Mary Langer:** Probably can't get that in?

**Lisa Piper:** Twice! Um, but there was a protective order that had been based on the same set of facts, so I guess um, being able to speak towards that repetition of action of action of violence where we know it's been built up to when we have it. What's the best, what's the most palatable way for the court to receive that information, I guess is my question.

**Judge Mary Langer:** Right, I think a recitation of that is something a Guardian Ad Litem can do. This is what we've learned, I've seen this pattern but it's probably still going to be incumbent on the person who is the victim of those offenses, particularly the ones that are null prossed, to explain why, why, why did you say no? Did you say no because it didn't happen, did you say no because you, you still loved him, you still – right? And that's, that's the articulation that gets very hard. Because I don't know that, that they even remember why. There was probably so much going on that circle of coercion, kind of changing of patterns that, that Nancy highlighted. They don't know where in, they don't really know where in there they made the decision. Did they make it? Was it given to them? I think that over a span of five years where there's seven instances of domestic violence, I don't think that would be a stretch for a time frame, I don't know if they can even say that. But there's going to have to be something that's expressed about why those cases were null prossed, because what null pross says is that there's not enough evidence to prosecute. And somebody found not guilty by jury, I'd probably have to say I'm not hearing that, I'm not hearing that at all because that one didn't happen, by the law.

**Lisa Piper:** By the law?

**Judge Mary Langer:** By the law.

**Lisa Piper:** Beyond a reasonable doubt. But, if it was a custody/visitation

case, and you're not bound by beyond a reasonable doubt, are you interested in those facts?

**Judge Mary Langer:** I'm probably not going to hear the "not guilty", there's so few that go to trial, that, that far. No, I'd probably say no. I mean, there must be something else. And if that's all there was, in a not guilty particularly, I'd say no. I wouldn't hear that, no.

**Prof. Julie McConnell:** So, we have a question, if-if this is a good point for me to move on to that. So, this is from one of our participants. How do you manage to convey to judges, GALs, and evaluators, for example, that violence induced trauma can alter the behaviors and reactions of the victims and may make them seem um, you know, histrionic, mentally unstable, etc., um, as compared to the abuser who may be very calm and collected, particularly when the police arrive. And that, and also, that trauma can cause memory issues, so they may have a hard time, as we know, remembering exactly what happened. But, how do we deal with that in court? You know, could an expert testify to that or something along those lines?

**Judge Mary Langer:** Was the question who do they explain that to evaluators? I would, I think, you need to find an evaluator that has the proper training. So that they already understand that. If an evaluator doesn't know those things, they're not the right person to be doing the evaluation.

**Lisa Piper:** Now I think to the judges, well, so yeah, agreed with—but also to the judges and the guardian ad litem, I think that's an education piece. So, I know that we, yeah, we have a lot of education that's uh, that aims towards understanding the trauma dynamic and that kind of thing and I don't know what's available, I don't know if there's anything special to the domestic bench as opposed to say General District, I don't know if there's specified trainings. Um, but I know that as guardians we have a lot of trainings to that effect, it's just a matter of them being able to then translate it to the court.

**Judge Mary Langer:** We get, we get lots of training, but you still need, you still need something that backs, explains that that's perhaps what's happening here.

**Lisa Piper:** That identifies it as what's happening.

**Nancy Oglesby:** And, and we're actually doing something, initiative that we have, have done once and we're going to try to do a couple more times this year is we put out a call for, um therapists um, advocates, um, anyone who has the background to maybe be an expert in domestic violence and trauma, um, and we're not training them their expertise, but we did do a training for a sponsor for common wealth's attorney(unintelligible) for what it means to be an expert in court and introducing them to the idea of what that

looks like um and we're also doing a lot of training for prosecutors on using them in court in the appropriate cases, so, um, that's probably not something that can be done over and over in a misdemeanor case, but in the more serious felony cases, um we really are stressing both in sexual assault and in domestic violence cases to add in that trauma expert piece to um explain some of those behaviors that are, whether it be a judge or a jury, very hard sometimes for folks that don't recognize and understand what it is.

**Prof. Julie McConnell:** Yeah, that's really helpful. Um, there was a question from earlier today, from one of the earlier speakers about some data that was presented on parent, parental alienation and the data was essentially that mothers who allege abuse in custody cases are three to five times more likely to lose custody with an appointed GAL, so um I'm wondering if you have a reaction to that, Lisa, and if you've seen that in your practice as a general rule?

**Lisa Piper:** T-to clarify is it, um, allege domestic violence that is disproven or just alleged period?

**Prof. Julie McConnell:** I don't know that- I don't know how they broke it down.

**Lisa Piper:** Okay

**Prof. Julie McConnell:** I think it was probably a little of both, I mean I think it was probably both type of situations.

**Lisa Piper:** It makes my stomach hurt to think alleged period. If we, if it's not a disproven, I think whenever we're talking about that dynamic, um, I mean I do think there are guardians who tend to make, um, more of a judgement of who they believe and who they um, don't believe, um, I have had the um, I guess the benefit of being before a number of judges that they really want the evidence and they're not just saying "oh what do you think Lisa, because that's what I'm going to rule on", they want to know the facts and regardless of what my recommendation is they're going to weigh the facts. Um.

Um, which I appreciate because I'm not the judge. I'm not the one making the ruling. And so part, the what, where I see, um, my job is is not to make a judgment of whether I believe the domestic violence or not but is to bring as much evidence to the court, um, of that dynamic as possible. Um, it makes me... breaks my heart a little bit to think that if moms are raising this issue, um, to fairly raising this issue, um, to guardians or to the court that that's putting their custody, um, at risk. I do think it's a frequent manipulative tool, um, that takes away from the veracity of the people who really are in those situations, um but I don't, I mean I'm, unless I'm the one actually seeing the

domestic violence I'm not in a position to be able to judge that. Um it does not make a difference for me. I do take it really seriously when any facts are manipulated, um, fabricated and I do make sure that the the bench is aware of that when it happens but, um, it's kind of scary to me that there's that statistical data.

**Prof. Julie McConnell:** Yes, and along those lines...

**Judge Mary Langer:** Three to five times more likely? To lose their custody?

**Prof. Julie McConnell:** That was what was presented. When there's a GAL in the case an alleged abuse, and mother specifically, and the data also showed that there was not an impact of any statistical significance on fathers.

**Lisa Piper:** I mean I think father get, I get, and I think this is what Judge Langer said earlier like the number of times that it is argued even by council 'well how many people would love to have a dad that just wants to spend time with their kids' yeah but it's their kid, they're equally in charge of that human. So I do get really frustrated at the past that is often given um to dads. I think it really undercuts their responsibility and their ability um to... oh somebody's clarifying... um to help raise the child then it unfairly puts the burden on on the moms um which is not great for the kids either. So alleged period. Oh, man.

**Prof. Julie McConnell:** Well actually it's has been clarified, alleged and proven abuse.

**Lisa Piper:** I- that's awful.

**Judge Mary Langer:** So they are saying that a person who says 'I was abused it's known that I am the victim of abuse' they are the person who loses the custody of their children?

**Prof. Julie McConnell:** That's what the study she did, um, indicated.

**Judge Mary Langer:** That's... scary.

**Lisa Piper:** To the abuser?

**Prof. Julie McConnell:** Yes.

**Lisa Piper:** Or to, like, a third party?

**Prof. Julie McConnell:** Oh, losing custody in some form, yeah. I don't, I don't know that it it was as specific as that it automatically went to the dad but losing custody.

**Lisa Piper:** Yeah, because the abuser...

**Prof. Julie McConnell:** Someone needs clarifying again let's see...

**Judge Mary Langer:** Because of parental alienation allegations. Well...

**Lisa Piper:** But the code says... that's not what the code says we should be doing.

**Judge Mary Langer:** I mean parental alienation allegations would be made-up allegations of, right, those are things that are that are exacerbated or taken full cloth not true you plant the seed and the child. I mean and they're very very rare parent, true parental alienation is very very rare. It is super scary when you think you see it but it's you know just cause two people really don't like each other and I'd rather that my kid not see dad just because I hate him it's not alienation, that's just...

**Lisa Piper:** Right.

**Judge Mary Langer:** ...Pretty random for me custody visitation. Um but to think that the allegations and allegation of abuse is made known to be true and that's considered parental alienation those two things seem completely contrary to me.

**Lisa Piper:** Agreed. I don't like that.

**Prof. Julie McConnell:** Alright guys I think we have about two minutes left. So any last thoughts? You can each have a a minute or so to wrap up. Nancy, would you like to go first?

**Nancy Oglesby:** I-I don't know yet. Uh, no. I want to pass. Mary, tag you're it.

**Judge Mary Langer:** No, no, I've been talking.

**Lisa Piper:** Alright, you guys think about what you are going to say and I'll say something really quick. Um I just wanted to speak to something that I wrote down when Judge Langer was initially talking about the long term view of how we um, fund the families, the services these families need to break the cycle of family abuse and it is a matter of investment in the community and it is a matter of, like I think if somebody's not seeing pretty immediate turn around. Um so I think those of us who are working with families um that are stuck in these cycles, I think the more services that we can help point them to, does help keep them out of the court. Um the more help that we can give them in building their um building a safe um framework where they can help keep their families safe where they rely on people who um are not themselves um domestic violence victims but they're able to have um a little bit of hope outside that situation it's going to take community movement and we're not going to just be able to do it case by case. It's not a court issue,

it's a community issue.

**Judge Mary Langer:** Yeah, I don't think I could say that better than Lisa just said.

**Lisa Piper:** You taught me, so.

**Judge Mary Langer:** Well, and now the circle is getting even more complete because Carley is also an intern of ours so.

**Lisa Piper:** Perfect.

**Judge Mary Langer:** I feel like I am the home of the wheel.

**Lisa Piper:** Perfect.

**Nancy Oglesby:** And I am going to adopt that statement as well Lisa, so way to close it for all of us.

**Lisa Piper:** Thank you, guys.

**Prof. Julie McConnell:** Thank you so much, everyone.

**Teresa Sun:** Alright, yeah, thank you, Professor McConnell, thank you, Judge Langer, Ms. Oglesby, Ms. Piper. Uh, I could not think of a better way to end our um program today. Now just wrapping up for the day, Public Interest Law Reviews editor-in-chief, Carley Ruivel, for closing remarks.

**Carley Ruival:** Thank you, Teresa. So, hello everybody my name is Carley Ruivel and as Teresa said I have the privilege of serving as uh PILRs editor-in-chief. So today I'm just going to close us out with some brief concluding remarks and then have everyone go uh on their way. So, first of all I would like to thank all of our attendees, everybody who's been watching um on zoom, we really appreciate um you taking the time to be here with us today. I also would like to thank the school, the administration, and um and the technology support that we've had from Carl Hamm. Big shout out to him. Couldn't have run, made sure this ran smoothly without him, so thank you so much Carl. Um I'd also like to thank our wonderful symposium editors Jessica and Teresa who put so much work into this event, truly, and ensure that everything flowed smoothly. Um it would not have been possible without their hard work, so thank you all, hats off to you all. And assisting them were our three symposium associate editors who are Nicole Evans, Kyara Rivera Rivera, and Erin Sweet, who I'd like to thank for their help as well. And then finally I would like to thank all of our incredible speakers today, it was really just, learned a lot. Um absolutely did an incredible job, all of you. We appreciate you taking the time to share your insight and your expertise um with us on the important topic of of domestic violence and intimate partner uh violence. So, thank you all. Also, I know we've said this various times

throughout the day but I'd like to remind everyone that there are six CLE credits pending for this event so if you have not already um filled out the survey in the chat and are interested in receiving credit please go ahead and do so now. And Mary Ruth Keys from the law school administration will be in touch in the coming weeks once we receive confirmation from the bar um in order to be able to apply the retroactive credit. So just keep on the lookout for that. And then finally, um if you listen to today's event and were inspired and are looking for maybe a way to actively help survivors of domestic violence locally, um one one suggestion, one way to do so would be to donate to Safe Harbor Shelter uh which is a Richmond based organization that provides a variety of services to uh to this population. Uh again it's Safe Harbor Shelter and they uh do trauma informed really amazing work and so um that would be a great place to start if you're looking for kind of where the rubber meets the road. Um and again that thank you so much to everybody for participating in PILR's symposium um this year on domestic violence. It was a pleasure to be with you all and um I hope that everyone enjoys the rest of their day and has a wonderful weekend.