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## TRANSCRIPT<sup>o</sup>

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

## Panel on the Possibilities and Limits of Criminal Justice Reform

UNIVERSITY OF MIAMI SCHOOL OF LAW

*Leigh Goodmark*<sup>\*</sup>

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

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

<sup>\*</sup> Leigh Goodmark is a Professor of Law at the University of Maryland Francis King Carey School of Law. Professor Goodmark was one of the co-chairs of the Converge! conference. Connie Burk co-founded the first regional LGBT survivor services in Kansas over 20 years ago. Since 1997, she has directed The Northwest Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse in Seattle, WA. Michelle Kaminsky is a prosecutor with the Brooklyn District Attorney's office. Sandra S. Park is a Senior Staff Attorney with the ACLU's Women's Rights Project.

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

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<sup>1</sup> Michelle Kaminsky, REFLECTIONS OF A DOMESTIC VIOLENCE PROSECUTOR: SUGGESTIONS FOR REFORM (2012).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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