

LIGHTLY EDITED FILE

BWJP Webinar - Where Do We Go From Here? Unfinished Business

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Battered Women's Justice Project (BWJP)

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I'm gonna send it over to Stephanie Avalon.

>> thanks, Kari.

It's my pleasure today to introduce once again Andrew Klein and Jessica Klein.

Andrew Klein is a senior scientist for criminal justice for human potential Inc.

He's been the principal investigator for some of the leading on domestic violence for the National Institute of Justice culminating in publication by the justice department of his conservative work, practical implications of current domestic violence research for law enforcement, prosecutors, and judges.

That was followed by the practical implications of current domestic violence research for victim advocates and service providers, co-authored with Barbara Hart.

He also serves as the project director of a pilot

program funded by the office of women's health on the

intersection of violence against women and HIV/AIDS.

A cross training guide for service providers.

He served as chief probation officer of the Quincy,

Massachusetts, courts and assisted in the establishment

of the first D.V. court in the nation in 1985.

Including the most recent co-authored with Jessica

Klein, abetting batterers.

Jessica Klein is a rape crisis and domestic violence

victim advocate from mount Sinai Beth Israel hospital

in New York and a rape crisis counselor on a hot line

for the antiviolence project.

A New York based organization serving LGBTQ and HIV

affected people.

She's provided training as a judicial domestic violence

training for Hawaiian judges.

For the past several years, she's contributed a monthly column to Thompson west's national bulletin to domestic violence prevention.

Thanks again for joining us to do this presentation.

You can take it away.

>> Great.

Thank you very much, Stephanie.

Before we jump in to where we left off last time, we just wanted to make -- we got a few comments back and I wanted to comment on some of the comments.

One person listened concerned that some of the statements they thought were rather glib, such as the statement that police don't chase, when we were talking about some of the challenges that remain with police,

and they pointed out that where they're working, police do go after abusers who are not at the scene when the police arrive.

And I just wanted to explain and emphasize that we're not talking -- we're not pretending to say that every jurisdiction is uniform.

Every state, every county, every city, every locality is different.

What we're saying is if you look at the research, and the research isn't perfect, and put it all together, these are the trends that we can discern.

But we can't say this is the true in every community.

And a lot of the things we're talking about, we're not saying that police do a lousy job or police don't care.

We're saying there's some structural problems that seem

to inhibit police performance.

We're not attributing the fact that people are bad or incompetent, et cetera, et cetera, although there are bad people, there are incompetent people and there's many people who are not.

So we're talking about aggregate research, because what I've discovered, or what you'll discover if you do a lot of research that if you look any specific research on this topic or for that matter any topic, it can be as misleading as it is negative because it's like, you know, the old children's story about the seven blind people feeling the elephant and they each have a different impression of what an elephant is depending on what part they're touching.

The research of a specific program may be

representative without that or it may not.

You have to look at the broad field.

One is, we talked before last time, for example, of the

research on mandatory arrests.

That was done by Sherman that shows the deterrent power

of arrest.

But the problem with that research is it only looking

at deterrence of rearrest.

It didn't look at what happens after the arrest.

So obviously the arrest may have a certain deterrent

power the first time, but if nothing happens, there's

no prosecution, or nothing follows the arrest, a second

arrest is not gonna have that same sort of impact.

So you have to broaden your scope and that's what we're

talking about today.

We've tried to broaden the scope as widely as we can to

come up with some generalizations that we hope are

true.

And I was reinforced in this.

Because since the last webinar, the bureau of justice

statistics just came out with an analysis of police

performance between 2006 and 2015, and if you remember,

when we were talking about had the police had gone from

non-arresting to arresting about 50%, based on the

different research that's out there, well, this was a

national survey for this nine-year period, and they

came up with exact same conclusion which is always very

nice even though this was based on a survey, not the

other kind of research, and they found approximately

about a 50% national arrest rate.

Now, it doesn't mean in certain communities it's not

higher than that.

In certain other communities, it may be lower than

that.

But in the aggregate, that's basically where we're at.

And depending upon, you know, if the glass is half full

or half empty, that is a remarkable achievement,

considering we started at a 2% arrest rate.

So police performance has probably changed markedly,

more markedly than any other part of the criminal

justice system, although as we pointed out last week,

there's some broad challenges that still have to be

met.

Before you moved into prosecutors, Jessica, did you

want to make any comments on anything from last time?

>> I think I'm all set since we've got to get through a

lot of slides this time.

>> That's true.

We were a little slow last time.

So we were moving on to prosecutors and we were saying

that prosecutors, once police started to arrest,

prosecutors were stuck with what to do about them, and

unfortunately, they adopted three responses that have

led to the non-prosecution of prosecutable domestic

violence crime.

They either diverted the cases and a lot of states

actually created legislatively sanctioned statutory

programs for did I version of these occasions, because

it considered worth anybody's time, not real crime.

They didn't want to bother the courts.

So there are did I version programs, although a lot of

prosecutors still use them.

A lot of cases were just dismissed and not prosecuted.

And those rates have varied.

And then a lot of times, the cases have been plea

bargained down so that instead of arresting people in

Connecticut or Wisconsin for domestic assault which is

what happens in most states, in those two states, the

average arrest is disorderly conduct.

So took the domestic violence out of domestic violence

and they took the violence out of domestic violence and

made it into a breach of the peace.

Then it's just -- then you're just as likely to arrest

the victim as the offender because the victim may make

noise too.

Any rate.

But now we're onto a slide, this slide showing that that doesn't happen, doesn't have to be the norm, and some prosecutors do a lot better than other prosecutors.

There was a study done of three jurisdictions in different parts of the country that -- this was back -- adopted -- this was back in the old days, the 1990s, where they were going to try to convict everybody, and they were more or less successful, that they were able to increase convictions at a dramatic rate and at the same time if you read the study, they didn't give away the store to get these convictions.

They incarcerated a larger number of people at the same time that they dropped fewer number of cases.

In fact, the evidence is clear that you're more likely

to have people admit to guilt if they think the

sanctioning is significant.

If they think there's no sanction involved, there's no

reason to admit guilt.

Because nothing is gonna happen to them anymore.

The study was in Nebraska, Oregon, San Diego, but even

in Queens, New York, obviously a large urban area, 24%

to 60% period.

Lancaster, Nebraska, has a very active family violence

council who's been advocates for years who track

things.

And their conviction rate as of 2014 was 60% -- I'm

sorry, 63%, with 3/4 of the sentencing incarceration.

And you compare this when they first started where the

average sentence in Lancaster, Nebraska, for domestic

violence was basically a fine, generally was less than

your major traffic fine.

So as a result of advocacy and a lot of yearly reports,

et cetera, they have really increased the whole

response to domestic violence.

Same thing in felony court.

A lot of people say well, you can do this as

misdemeanors, you can't do it as felonies.

Although -- in misdemeanor, you can't do it with

felonies, but you can do it in both kinds of courts.

Jes, did you want to add something?

>> Yeah, in Dallas, there's a judge, who put a rocket

docket in place to expedite misdemeanor cases so they

don't languish over a year or more before being brought

into court.

Which is obviously more than time for those victims to get cold feet about testifying.

And sort of the background here is that prosecutors in Dallas county have filed 3,700 D.V. cases in 2015, only 900 of which resulted in convictions.

About 2100 of them and diverted about 530.

So at 25%, this conviction rate falls well below the national average for D.V. cases.

So hopefully Kelly's docket will make an impact, and in order for it to do so, she'll need the cooperation of can-do prosecutors.

Prosecutors don't really make a move often by taking too long to hand evidence over to defense attorneys.

>> One of the reasons that happened is because

misdemeanor cases tend to not be the highest priority.

Other innovations that we've seen are the body cameras,

even though a lot of body cameras are used because of

police abuse, in fact, in Minnesota, they've found that

police -- the body cameras have increased D.V.

prosecutions tremendously.

They also constitute really great evidence because

generally, you know, the trouble with juries and judges

is they see people when they're all, you know, dressed

up and on their best behavior.

But with a body camera, they can see what the scene was

actually like.

In New York they started a thing where they were just

video taping suspects.

And that increased convictions because -- I work for

courts in years, defendants, by denying one offense,

they generally admit to two other offenses.

So that's why, if you're a good defense lawyer, the

first thing you say to your client is never say

anything.

Any rate, so there are obviously -- I don't know, if

I'm missing -- the fact that when prosecutors say you

can't prosecute these cases, it's a case of learned

helplessness, because obviously there are so many

examples where you can.

And in Milwaukee, just a simple thing as, say, they

started to listen to the tapes from jail of defendant

defendants who were held in jail pending trial and even

though the phone thing in jail say that the case is --

the phone call is being taped, they found threats.

They found intimidation.

They found new crimes just from jail.

And you can imagine the impact on the victim.

If the guy is threatening her from jail, she can't have

a lot of confidence in the criminal justice system if

they can't even protect her or stop the guy from

calling her when he's in jail.

So they've been able to increase a -- good prosecutors

have a deal with the jail and they get a copy of all

those cases.

Or if the victims won't appear, they can show from

those tapes in the jail, explain to the jury why the

victim isn't there.

It's not because she lied when she gave the original

police report, et cetera.

It's because of the information that's happened since

in either the threats or the cajoling or the fact that

the defendant has apologized, et cetera.

And yet there are obviously still a lot of gaps.

There was a horrendous case for people in Seattle will

know about it of a man who eventually killed his

girlfriend a week or two weeks after he got out of

prison.

While he was in jail, even though there was a

restraining order, he kept calling her and promised her

he would reform and blah, blah, and it was her fault.

The jail was actually facilitating his successful

intimidation and coercion of her, and that just

happened last year.

So there are a ways to go.

But --

>> And here's a story, though, of where a phone call

like this was caught in time, just in time.

So Joshua Harrison of Casa Grande, Arizona, was

arrested by the deputies after allegedly strangling and

assaulting his girlfriend in, what is this, January,

2015.

So according to the sheriff's office, Harrison punched

his girlfriend in the face and strangled her.

And she managed to get away by kicking him and locking

herself in another room.

Police came, Harrison denied the assault pointing to

his own injuries.

But deputies found that the swelling and redness on his

hands were actually consistent with him having punched

someone.

Threatening and intimidating, criminal damage and  
disorderly conduct.

But he was released at the police station and ordered  
to have no contact with the victim while the detectives  
drove her to a domestic violence shelter.

And during this car ride, Harrison called one of the  
detectives's cell phones claiming to be the victim's  
brother.

They didn't realize it was him at first and they gave  
her the phone and he asked her to drop the charges  
against him.

She let the directs know and they immediately did the  
right thing, despite his obvious danger to the victim.

They returned to the suspect home and arrested

Harrison.

He was then rebooked into the county jail for violating the conditions of his release and this time he was held on a \$5,000 secure bond.

And actually, now in Colorado, there's new law that will deny bail for a felony stalking and intimate partner violence defendants between when they are convicted and when they're sentenced.

So this happened in part because of what happened to a woman named Janice last year.

She had a protective order out against her ex-boyfriend who had been convicted of stalking but was released with only an electronic monitor while he awaited sentencing --

>> And he had actually been convicted, but the judge

delayed the case for sentencing and let him go --

>> Yeah, I said he'd been convicted, did I not?

>> I just wanted to emphasize that.

He was already convicted, and yet he was released.

>> Already convicted, but out with only the electronic

monitor to keep the victim safe and I guess anyone

else.

Anyways, so the electronic monitor turned out not to be

the most helpful safe guard as he managed to just cut

it off.

He then proceeded to murder a man so he could steal a

struck to get to his ex-girlfriend who he then also

killed.

So this delay between conviction and sentencing can

take up to about six to eight week which gives abusers

plenty of opportunity to strike back at their victims

and anyone else if they aren't properly safe guarded.

>> Right.

And obviously while there's a presumption of innocence

on first arrest, once you've convicted, there's no

presumption of nothings because you've just been found

guilty.

And yet the judge released this person.

Not only the fact that shouldn't delay, and that's when

somebody may be most at risk, what does the person have

to lose?

They're gonna go to jail anyways.

But, two, a lot of people think electronic monitoring

safe guards victims.

It doesn't.

It makes it easier to prove that the defendant took the monitor off or approached the victim, but unless the victim had 24-hour guards around them, the fact that somebody's electronic monitoring is another protective.

It is not protective.

It is a fine way of enforcing House arrest, et cetera, et cetera, for nonviolent defendants.

So the problem with electronic monitoring is, one, it doesn't work, and it gives judges -- instead of making the tough decision of holding a guy without bail or preventive detention based on dangerousness.

Under the illusion that that's gonna protect anybody and of course it doesn't.

Okay, so what these stories bring up is one of the big issues in terms of safe guarding victims is what

happens pretrial.

There's an old saying in courts which is true that if

the best way to make sure somebody leaves the court in

handcuffs is have them come in court in handcuffs.

If the defendant is released pretrial, it's a message

out there that the arraignment judge didn't think the

person was dangerous enough or serious enough to hold

pretrial.

And so it sets up a momentum for that kind of

disposition even if they're found guilty.

So it's not that everybody should be held in jail, but

if somebody's dangerous, et cetera, if you don't make

that determination originally, it's harder to make it

after the fact.

For this reason, a lot of jurisdictions do not allow

releases at the station, such as the story that Jessica

said where the bail commissioner let the person go.

A lot of them now by legislation mandates cooling off

periods where the person has to be held up to 48 hours.

So they're not released while they're still enraged or

the victim is still extremely vulnerable and has had a

chance to get away or get some help.

Also, I think just about every state has a protocol for

dangerousness.

For example, many states, if you are arrested, even

though there's a presumption that you're innocent of

murder, you're not released pending that trial by

statute.

Because you're allowed to hold people -- persons for,

if they're particularly dangerous.

In many states, that requires a separate hearing and a lot of judges and others are loathe to do it because it takes some time, but obviously it may save somebody's life.

So we should press for those, and good prosecutors press for those.

Also, like the rocket docket in Dallas, fast tracking hearing is very, very important because the longer the delay is, the more chance it is that the victim who may be ambivalent to begin with will become more and more ambivalent and less and less likely because if the abuser has left her alone, she feels less need to do something.

The last thing she wants to do is go to court and confront him.

And if he hasn't let her going, she may -- the chances

are she will say, well, listen, if they can't even stop

him from harassing me or threatening me, et cetera,

while -- after he's been arrested, you know, I don't

trust the system.

So you're gonna lose -- you're gonna lose one of the

key witnesses to the case.

So a lot of these cases are lost before we ever get to

trial.

Okay.

Prosecuting D.V.

There are three types of cases.

There are cases where the victim refuses to testify.

There are cases where the victim comes and agrees and

testifies against the abuser.

And then there are cases where the victim comes,  
recants, and testifies for the abuser, not against  
that.

And if you talk to prosecutors, or at least talk to

Casey win anesthesia who's one of the more experienced

pine nearing prosecutors in the country, he'll tell,

what's the easiest case for a prosecutor to win?

Is it door number one, two, or three?

And he'll tell you -- excuse me -- Jes, do you know

which case is the easiest case for a prosecutor to win?

>> I don't.

I'm waiting in suspense while you sneeze.

>> I guess I'm not gonna sneeze.

The easiest case to win is the third case, where the

victim recants and testifies for the abuser.

And the reason why Casey Gwynn will tell you -- counter

intuitive, easiest case to win because it's usually so

obvious why the victims's recanting, and a prosecutor

can gently bring that out on the stands.

How did you get here today?

Well, the abuser took me here.

And how are you supported?

Well, I'm supported because he does this or -- anyways,

it shows that -- you can show the reason why it

recants.

I remember a case I did on a probation revocation when

I used to be a probation officer and the victim took

the stand and testified for the abuser.

Saying it was all a mistake.

She was just mad that he was intoxicated and he

certainly didn't hurt her or anything like that, even

though she called police -- or no, the little girl

called police.

I asked her on the stand, according to the police

testimony you just heard, when they arrived, the

telephone had been ripped off the wall.

She said, he didn't rip it off the wall.

We just like it that way.

I mean, her testimony was just so absurd that he was

obviously convicted, and I'll never forget this case,

because it was the first time it happened to me.

As he was will he led down stairs to the cell block,

she looked at me and she talked to me before trial, and

I had been trying to contact her to prepare the case,

she looked at me sand said thank you and then walked

away.

Any rate, so it's not true that you need the victim.

In fact, sometimes the hardest case to try sometimes is

when the victim testifies against the abuser.

Especially in front of juries, because a lot of juries

like the victim to look like a victim.

And they like that myth of the passive woman who is,

you know, learned helplessness, who doesn't fight back,

who is, you know, Betty Crocker, you know, who's been

intimidated, et cetera, and they don't like aggressive

victims, they don't like victims who swear, they don't

like victims who are angry, because they think they're

trying to set up and the guy's cool, calm, and

collected, those can be some of the more difficult

cases to prove.

Any rate.

On sentencing abuser, so once you prosecute, and the prosecution rate in this country is better than it used to be, but it varies tremendously.

You'll find some prosecutors are unable to prosecute the majority of cases and others are able to prosecute the majority of cases.

The highest rates in the country, the cases when the attorney -- prosecutor I talked about, San Diego, up to a 96 conviction rate.

That's pretty high.

Although they only won four -- so it was really 96% of 80.

So those of you who are better at math than I am will know that it's still pretty high.

Not quite as high as 96.

You can have 100% conviction rate if you only try one case and you dismiss all the others.

On the other hand, and some of the studies have been interesting.

Some of the best statewide studies of prosecution have been done by three different newspapers in

North Carolina, South Carolina, and Massachusetts, and

they looked at the prosecution of all D.V. misdemeanor

cases or all D.V. felony cases, and they found

different statewide averages, and some of them were,

you know, 50%, some were 60, some were lower, but the

interesting thing is they looked at it prosecutor by

prosecutor and they found tremendous variation even in

abutting counties with the same demographics.

So for example, in Massachusetts, they found in the county that I used to work in, we had a very high conviction rate.

The majority of people were convicted.

But the very next county over with the same kind of demographics, they had the exact opposite.

The majority of cases weren't convicted.

And yet -- and that when they interviewed the prosecutor, they said well, our problem is the victims won't cooperate.

Well, the victims were no different.

It had to do with the commitment and the competence of the prosecutors.

It had nothing really to do with these external factors.

And that's what the statewide studies show in

South Carolina and North Carolina and other studies.

A lot of the reasons given why these can't be done

turned out to be self-fulfilling prophecies.

Now when it comes to sentencing abusers, there's a

great divide obviously in how we sentence people.

And that is whether the person is charged with a

misdemeanor, a minor crime that generally goes into a

county jail or House of correction or work House or

whatever they call it versus a state prison for a

felony.

And if you look, for example, in Arizona, we think

Arizona have really good statewide statistics, if you

look at that, the chances of somebody getting

substantial incarceration with a misdemeanor are

miniscule.

However, if they're arrested at least convicted of a

felony, the chances are much greater.

So the consequences are much greater.

So when police arrest for disorderly conduct or

misdemeanor assault, rather -- or -- rather than

stalking or they overlook strangulation which is a

felony and they go for a misdemeanor, that is a very --

that has very serious repercussions down the system.

And it's gonna result in much less of the final end

there.

Convincing the victim that this is a serious crime, and

the community at all.

It trivializes domestic violence.

This was a national study where they found only 19% of

D.V. was charges as a felony in these urban courts and they looked at, I don't know, 16 or 17 urban courts in different states.

In Minnesota, the Battered Women's Justice Project people in Minnesota, they do -- in the entire state only had 1500D.V. felony convictions across the entire state.

Vermont did a little bit better, was up to 20%.

Anyways, these are the big -- these are just different disparate studies that we have.

Whereas in California, the presumptive sentence is a felony for domestic violence -- domestic assault.

I'm sorry, the presumptive charge is the basic charge is set as a felony, not a misdemeanor.

And the presumptive sentence is three years probation

and 52 weeks of batterer's programs.

Unfortunately, there's a flaw even in California and

that is even though that is the law, subsequent studies

have shown that almost half of the abusers who are

convicted in California are sentenced less than

presumptive sentence.

In Washington, the state of Washington, there's a

mandatory 12 month batterer program for D.V.

convictions, but studies show that only a quarter of

the defendants there who have been convicted are sent

to a 1 month program.

12 month program.

So as you can see from these studies, when you look at

the law and then you look at how they're enforced in

the courts, you realize the courts are fairly lawless

places.

>> I also had an example for this one where an abuser

was actually charged -- or sentenced -- got a very

lengthy sentence.

But as you'll see, it's often -- you have to take

notice of a particularly brutal act for -- to get a

lengthy sentence.

So this was a case involving Mitchell Gibson who lived

with his wife who was a member of the military in for

the Carson, in Colorado.

And he was sentenced to 45 years in prison for abusing

her.

But what he had to do in order to get that sentence

was -- I'm sorry, I keep on telling you all horrible

stories, by the way.

He whipped her, strangled her until she passed her out,  
and then woke her up by pouring boiling water on her,  
all while she was pregnant.

Sometimes these lengthy sentences are handed down, but  
it really takes a lot to get that kind of notice.

>> If you look at the figures, we talked about

prosecution before in Washington, there was a 41%  
conviction rate.

Let's see.

But here's another issue that's overlooked.

There were some sentencing studies, and they looked at  
sentencing and they found out that the sentencing  
didn't make any difference.

That if you were sentenced to jail for 30 days versus  
not being sentenced for 30 days, it didn't seem to make

any difference in recidivism.

What they're saying is the whole, you know, that people

don't care about their freedom, et cetera, there's got

to be another -- so I got this study, and, again, what

they ignored is, they were looking at an individual

sentencing and seeing the effect it had, but you have

to look at the context of the sentencing.

We know that 80%, around 80% of the abusers that are

brought to the court either through protective order

door or the criminal door, also do other crimes,

because abusers aren't nice people except for the

abuse, you know, generally it's part of a pattern of

their behavior.

So 80% have other crimes.

So you have to look at the comparison.

How are they treated for the non-D.V. crimes versus the

D.V. crimes?

So my hypothesis was or -- was that if they're

sentenced more severely or more likely to be prosecuted

in the first place and then sentenced more severely for

the non-D.V. crimes, the D.V. crimes -- then the D.V.

crimes, they'll take D.V. less seriously, and they'll

be more apt to do D.V. again.

So there'll be less of a deterrent effect.

So a 30 day sentence may seem out of context.

Given how most people are treated for that misdemeanor.

But if they just got out of prison for three years for

a bad check, what if the 30 day jail sentence mean to

them?

It means, hey, as long as I don't write a bad check,

you know, I'm in, you know, it's okay.

This is not a serious offense.

So we did this study and we looked at every D.V.

prosecution across the entire state of Rhode Island.

And the only reason we picked on Rhode Island is their

court records are all on the web.

So it was easy to do the research.

>> Yes, I remember sorting through all of those court

records.

>> That's right, Jessica, you worked on that, looking

at thousands of records.

It was quite a chore, because you had to look up each

offense and then follow the court record to find out

what happened.

Well, sadly, prosecutors were more likely to drop D.V.

charges.

So right away there, for somebody who's had ten offenses, two of them are domestic violence and the domestic violence only had a 50% prosecution rate and the others had a higher, that sends a message to the person.

[Talking at the same time]

>> I just remember a lot more people in Rhode Island were sentenced for drug related offenses.

And a lot longer too than for domestic violence.

>> Right, well, it all has to do with the going rates.

So here's what we found out.

If they were sentenced -- we went to look at if they were sentenced more severely for their D.V. crimes than their non-D.V. crimes, and if we controlled for the

other risk factors, their age, their first offense,  
their gender, et cetera, et cetera, our hypothesis was  
that if they were treated more severely for the D.V.,  
they'd do less D.V. in the future.

And that turned out to be the truth.

If you see the first large -- the largest number of new  
arrests were for where the D.V. sentence was less  
severe than the non-D.V. sentence.

And where the D.V. sentence was more severe, they had  
the lowest number of new arrests.

Statistically significant as we say in research.

So it wasn't by coincidence.

But here's the problem.

Despite that, here's what we see.

This was -- I found this -- and it was just appalling,

in Lansing, Michigan, a judge was so proud that she announced this in a press release that she was starting a program for a third D.V. felony offenders called swift and sure sanctions to give abusers with some special funding to have paid for treatment and testing accountability, and if they complete the program, their conviction record is erased.

Now, this is a -- this is a jurisdiction that instead of enhancing the prison time for third felony offenders, the judge had set up a program that basically was a get out of jail free card, a get out of jail card for chronic, repeat abusers.

And the judge said in announcing her program that abusers can change profoundly if they're kept in treatment three to 12 months.

And as the columnist said on the national bulletin on domestic violence prevention, that must be the same research that shows dinosaurs and man roamed the earth together 6,000 years ago.

But here, was this 2014?

I forget the date of that.

Yeah, 2014.

I did I version program for third felon offenders.

This is a judge, presumably she was able to get through law school, so she must have some intelligence, ability to read a newspaper.

But there's just this concept that these are a special kind of criminal that, you know, don't need to be deterred or don't -- the sanctioning doesn't need to be applied to them, and that if we treat them differently,

it will affect them differently, but that's true,

because if we treat them less seriously for their D.V.

offenses than their other crimes, what they learn is

that they can get away with that, that they're more

likely, and the research that we did in Rhode Island,

not only were they more likely to commit more crimes --

how they are sentenced for domestic violence, but they

were more likely to commit any new -- new domestic

violence and more domestic violence.

So they were more likely to do it again and more likely

to do it again often.

If they were treated more lenient.

So we have to look at not when the district attorney

says, you know, he got jail for 30 days.

What's the going rate for other crimes?

Like they found -- I told you about Lancaster in  
Nebraska, they found originally when they started to  
look into it, because people were getting a less severe  
fine for domestic violence assault than they were for  
traffic.

So that sends a very strong message.

So we have to look at that for prosecutors and  
sentencing to determine -- so it's not enough to look  
at the sentence in isolation.

We have to look at how it is in the context of those  
people's lives, what the going rates are for other  
crimes.

Frequently this country in the last 10 years, 20 years,  
since Nixon, so that's even longer than that, has been  
so hung up on demonizing drug offenders that we've used

all our ammunition on drug addicts.

And ignored these crimes.

And then we say, well, we can't put D.V. offenders in

jail because they're too crowded.

Well hopefully, we start to view vent priorities, we'll

save plenty of cell room for the people who need it.

All right, moving along, one of the big issues too in

batterer's programs that has kept us from having

sentences that hold offender's accountability is the

idea of treatment.

Now, it never occurred to us when Willy Sutton started

to rob banks or Dillinger, whoever the big bank robbers

were, to set up a bank robber intervention program or

treatment program.

But what we did -- we did that for batterers.

And we did that not because the science said we could

change batterers' behavior.

Battering is not a disease.

It's not an addiction.

It's not a compulsion.

It's not a treatable disease or character disorder.

I mean, there are some mentally ill people who batter,

but that's not the genesis of the battering behavior,

et cetera.

But what happened, and I'll give you a one quick story.

One of the pine years of battering treatment came out

of the Duluth program and if you look at the history of

the Duluth program, it was the advocates were concerned

that the police weren't arresting for D.V.

So you grow into the police, and the police say, well,

we don't arrest because the prosecutors won't arrest so

what's the point?

The prosecutors said we don't prosecute because the

judges won't sentence.

And the judges said, well, we can't sentence because

there's no place to put these guys because, you know,

God forbid at that point, they didn't think they

belonged in jail.

And they didn't know what to do with them.

So they said if you build us a program, you know, if

you build it, they will come, then we'll put the people

in it.

So the advocates got together and they didn't know

what, you know, there was no science behind this.

So invited in the local anger management group to come

in and to do an anger management group.

And that lasted for a couple weeks or I don't remember  
the time period.

This is an Ellen Pence story.

She tells it much more better than I do.

She's unfortunately passed, but any rate.

One night they got a call from the wife of the anger  
management counselor who said that he had beaten her  
up.

So of course they fired him.

And so they were sort of in a bind.

So Ellen took over the meeting.

And she said, I was at the meeting, and they told me  
about how they, you know, how she provoked them and  
that's why they got angry and she did this and did that

and that's why this happened and blah, blah, blah, and,

you know, and she realized that nobody was admitting to

the fact that they were a batterer.

It was the demon rum, it was this, it was that, it was

she.

She provoked me, et cetera, et cetera, so that's when

they invented the -- what's the control wheel and the

batterer's intervention program.

The problem with batterer intervention programs is

they're not a magic bullet.

It's not -- a meta analysis where they take all the

good research and they put it together like I'm trying

to do today and they came up and they said, well, it

appears if you look at all the sound research out

there, the kind that has the random controls,

scientifically accurate thing, there's about a 5%

treatment effect for the batterer programs, sort of the

Duluth model batterer programs.

That -- actually, that's a lot higher than it sounds

because it's very hard to have a treatment effect on

any kind of behavior change because think of it this

way.

A third of the batterers probably who come to court

aren't gonna do it again anyway.

Either they were deterred by the arrest or the woman

left or whatever happened.

So -- there's no treatment effect because they're not

gonna do it again anyway.

So it's like the pill doesn't cure the cancer because

it's in remission anyway, all right?

A third of them are gonna do it again no matter what

you do.

And everybody, even the most optimistic proponent of

batterers' treatment usually says it's -- designing --

he's pretty very, very much in favor of batterers

programs, but his research shows a hard core of 20 to

30% that are impervious to any kind of intervention.

So that means you only have that 30% in the middle.

So it's not 5% of 100 that you're having a treatment

effect is.

You're having a 5% of the 30%, so that's three times as

high, so that's not, you know, if that were a drug, the

F.D.A. would approve it, because that's a pretty good

treatment effect, but the problem is it's not good

enough and it's certainly not good enough for the

average person coming to court that have done it again

and again.

It's not gonna be affected by this kind of program.

And even if the program were more successful, there's

some unintended consequences of batterers programs.

The research shows that women are more likely to stay.

They're ambivalent if the guy is sent to a batterers

program because they're optimistic.

They assume it's gonna work.

After all, the judge -- they must know what they're

doing.

But I'll tell you another thing that batterers programs

are wonderful for that's not used enough.

One thing we know about a batterer program, those

defendants who are told to go and then they don't go or

they drop out, that is a red flag that they're gonna

reabuse again in the immediate future.

So if nothing else, the batterers program is a dynamic

danger for ominousness.

But unfortunately, what is the court and probation's

response in your jurisdiction when somebody doesn't go

to the batterers program or gets kicked out?

[ Inaudible ]

Generally it's to reenroll.

They get a tongue lashing and then they're told to

re-enroll.

They're telling you right then and there that they're

gonna do it again.

So batterers programs are very important and they can

be very protected in their own right and as a

barometer, but they have to be enforced like everything

else.

Now, whether there's a treatment effect for the

batterers program or a suppression effect, it doesn't

matter as long as they work, although if it's just a

suppression effect, you want the batterers program to

be as long as possible because it only works as long as

the person is in the program and get that weekly

reminder that they're in trouble if they do it again.

That's why the California program is I think a 52 week

program and then two years of maintenance after that.

Unfortunately, it's ignored more than utilized in

California.

Yeah.

This is another study from Rhode Island, a different

study, but it did show the treatment effect for

probability of new arrest based on -- specialized

probation and bar enforced programs.

And the significance just meant that the 3% chance that

this happened by luck.

So in other words it didn't.

That's considered statistically significant.

But here's another problem with a lot of the domestic

violence research.

It gets a false sense of optimism, because usually for

monetary and other reasons, our -- when we look at

whether these programs work, whether it's police

deterrence, prosecution, sentencing, jail, prison,

batterers programs, probationary programs, et cetera,

we do a very short period of follow-up.

We look at how they do for six months or how they do one year after the program.

And unfortunately, a lot of batterers who can refrain or at least not be caught for three, four years, and so your program looks like it's more successful than it is.

This was a study where we looked at batterers, and over two years, the majority did not do it again.

This was based on arrests, prosecution, conviction, batterers treatment, some of them had -- it was a huge population of people who had initially been arrested in Massachusetts.

If you looked at -- no matter what we did, two years later, the average reabuse rate was 40%.

We then found -- well, let's see what's happening ten

years later.

That shows you how old I am.

We looked at the same studies and the act opposite

happened, the majority of them had reabused.

Not necessarily with the same victim.

It's a hard behavior to change in the long term.

It's like -- not that I'm comparing it to alcoholism,

but one of the geniuses of alcoholics anonymous is they

don't let you say that you're a recovering alcoholic

because you have 30 days of sobriety.

You don't get your medallion until at least one year.

And you're not supposed to speak up in A.A. until

you've been sober for at least one year because, you

know, as mark twain said about quitting smoking, he

said it's easy to quit smoking, I've done it often.

Long term behavior change is very difficult.

And the same is true with batterers.

So you have to be a little leery of programs of

prosecutors or judges or -- that claim they have a 80%

success rate.

You have to say over what period of time and who are

you dealing with to begin with?

Any rate.

Okay.

So that's sort of a snapshot of where we are now.

Great strides admittedly since the '80s.

Not great enough.

We'd like to see it a lot better.

A lot more so.

Police have done very well, changed a lot of behavior.

Prosecution is very mixed.

The majority of batterers who are arrested are not convicted in court.

Much too many are diverted, dismissed, or reduced, the charges reduced, or in terms of judges sentencing, too many judges, one, they set up a momentum starting with the decision of prerelease or the bail commissioner so there's nothing happened and the message goes out clearly to the defendant, is the message we don't want them to go out, that it's not serious, and there are plenty of things they can draw them, you know, television and our social environment and movies to reinforce bad behavior.

In fact, typically in a court, when you're doing a case of domestic violence, you'll see a group of people

coming in, and often they're not there to support the

victim.

They're the guy's buddies.

They support the defendant.

Even clergy come in to speak for the poor defendant.

The victim usually is not surrounded by that same sort

of support group as the defendants are.

All right.

So where are we?

Where do we have to go from here?

So this is now part two that we doing a little while to

get to.

Jess, have a missed anything?

>> No, not for part one.

>> Okay, part two.

All right, so some of the biggest unfinished business.

First one is the most egregious thing we haven't done

is disarm dangerous abusers.

The failure of this country to disarm abusers,

dangerous abusers, make American women 11 times more

likely to be murdered with guns than women in any other

equivalent high income country around the world.

And this is particularly vulnerable women who are

abused or particularly vulnerable with the vast

majority of women in some states, like in Montana, are

specifically killed by firearms.

There was an interesting study by a man named David

Adams who also an inventor of one of the first

batterers program.

It was sort of the East Coast Duluth program, started

in Massachusetts.

But he looked at -- he went to the -- well, it used to be called Cedar Junction, maximum security prison, he interviewed 41 batterers, and he found in a lot of the cases, there was a moment of time in a window of opportunity that led to the murder.

And what the key was in making that moment of time and window of opportunity result in the murder was access to a firearm at that particular moment.

So some of these guys stalked and planned this thing, and bought weapons, et cetera, et cetera, but a lot -- the majority of murderers were not that.

There was sort of a obsession that reached this peak and at that particular moment, the universe came together badly, and because of a gun, somebody was

shot.

We also know that if a man's gonna kill somebody, at

least want them to be disarmed because then chances are

you'll have one murder and you won't have mass

homicides.

Obviously guns are much more efficient than hands and

clubs for killing multiple people including responding

police officers, bystanders, good Samaritans, the

children, and themselves.

There are a lot of firearm prohibitions on the books.

The problem is the enforcement of the firearms.

There is a federal law that if any court restrained

batterer is not federally prohibited from possessing or

buying a firearm, but unfortunately, it's a federal law

and the agencies responsible for enforcing it are the

A.T.F. and U.S. attorney.

And they don't.

There are very few federal firearm prosecutions.

For court restrained batterers having things.

So judges usually won't do anything unless it's their  
state law.

But the problem is not enough to have a law that says  
you can't do it if it's not enforced.

U to have a system to enforce a court order.

They don't need a law for a judge to order a dangerous  
abuser to forfeit his firearms and not get new ones.

The question is, if that could be enforced.

And we have egregious examples.

>> Yeah, I think I was gonna do this.

>> Go ahead.

>> All right.

I don't know if we coordinated as well for the second half of these slides.

Anyway so this example from 2007 in Wake County, North Carolina.

Nate Holden's wife took out a protective order against him.

She moved in with her parents only to have Holden repeatedly show up at her parents place threatening to shoot and kill both her, their three children and himself.

He had also been abusive to their children in the past.

During this period, Holden had managed to obtain multiple fire department permits, one in 2004 and another in 2007.

So when Holden's wife first got her protective order,

she told the court that Holden had a gun.

And the court ordered him to give it up.

However, when the police who served Holden the order

asked for the gun, he simply told them they didn't have

one.

And it wasn't long after that that Holden used the gun

that he didn't have to kill his wife and her parents.

Deputies in Wake County were told to take abusers at

their word regarding whether or not they had firearms.

So basically this is an honor system.

>> An honor system among batterers.

That's also -- that's a little oxymoronic.

So what you need is a legislation that not only

mandates somebody not have it and then somebody needs

to be responsible for removing it and taking the gun

away.

Wisconsin, I think last year -- a couple years ago,

Wisconsin I think -- only 12 states have specific

statutes requiring the police to go get the gun as

opposed to judges ordering it and then nobody paying

any attention to the order including the batterer with

the gun.

The firearm threat obviously is not theoretical.

That's why we have to take it so seriously.

And if you look at the studies, it's clear that there

is a association between firearms and deaths.

Some of the largest states, if you look in states with

the highest murder rates for D.V., they're also the

states that have the most liberal gun laws.

Allowing more people to be armed.

The -- and it's amazing that a lot of batterers

disproportionately are those that have weapons.

So by targeting guns, it's particularly important for

this population.

In four counties of Wisconsin, for example, over one

year, there were 199 protective orders granted for

domestic violence or child abuse.

And 20% of the abuse -- of those orders and the abusers

were armed, which is -- but that may not be true for --

[ Inaudible ]

Arizona, big problem with firearms.

62% of the D.V. murders are committed with firearms in

the last five years, in that state.

Which is 45% higher than the national average.

And if you look at it and you say, well, why are things

so bad in Arizona?

Well, for one thing, Arizona failed to enter 40% of its

protective orders into the F.B.I. system used to

enforce federal firearm prohibitions.

So when those 40% of abusers went to go get a gun, if

they wanted a new gun, there was no way for the

F.B.I. to say don't sell them the gun because there's a

protective order against them.

Of the 30,000 orders issued since 2013, through 2015,

only 18,000 were entered into the system.

Worse, Arizona state law leaves the fire department

prohibitions up to the individual judges.

It's not mandatory.

And so the research shows in 2015, among the seven

victims who were shot to death with active protective orders, only one included a judicial order prohibiting a firearm.

So you need these things, when judges do not pay attention or prosecutors do not make judges pay attention, it's got to be mandatory, because unfortunately, if you leave it up to the discretion, it slips through the cracks.

You know, judges assume, you know, I worked in the courts for 25 years and as I say, some of my best friends are judges, but judges take themselves awfully seriously and they think when they say something from the bench that the defendant's gonna pay attention to what they say and sometimes that's just not true.

We also have a big gap in our firearm laws that

convicted stalkers are not part of the prohibition on

retaining or purchasing fire departments.

Firearms.

There was a review of the 20 state criminal files

revealed that 11,000, almost 12,000 convicted stalkers

out there, convicted stalkers, who were still permitted

to have their fire alarm -- firearms, and still in

concert with federal and state law.

And we do know obviously the majority of people who are

killed are stalked first, so that's a big oversight

that our -- if we don't automatically remove firearms

from the stalkers in most states.

And as we know, as we said before -- laws are great,

but they're not self-enforcing.

The example we have in the book is in San Mateo.

This is a good example.

Where the deputies actually contact the victims to determine whether or not the abusers have firearms, because believe it or not, abusers are another always very frank about whether they have guns or not.

They check the databases and firearm licenses.

When they serve the order, they demand the firearm immediately.

They have pre-signed search warrants in their possession in case the abuser doesn't turn in their firearms and they have reasonable cause to believe that the abuser does have a firearm.

And as a result in 2013, in San Mateo, California, the sheriffs collected 322 -- the deputies collected 324 -- 324 firearms from 81 different court restrained

abusers, and that was about 10% of all the court

restrained abusers that year.

So it can be done.

But there has to be a proactive -- an active program to

do it.

>> All right, and, you know, as we're learning, not

only are these orders not self-enforcing, they can

sometimes serve as a heads up to abusers that it's time

for them to go buy a gun now before their final

protective order kicks in and it's too late.

So recently a Cleveland, Ohio T.V. investigation

reveals -- essentially allow abusers to legally buy

weapons from federally licensed stores across the

country.

So the investigation found that because it takes days,

you know, anywhere from days to weeks or even months

between the time a survivor asks for a protective order

and when the final order is granted, that can leave a

big window of opportunity for the abusers to buy guns

in the meantime since federal gun bans only consider

final orders of protection.

So what makes it especially harmful too, they can be in

the most danger right after they file an order.

>> Okay.

There's some wonderful examples there.

Maricopa probation department.

Excelled at removing firearms from probationers.

They made it a condition of probation.

You don't need a law for that.

You just need a judge to order it.

And they visit the victims and they search and they have seized lots and lots of weapons and there's a publication put out by the office for violence against women and the full Faith and credit initiative.

National -- National Center for full Faith and credit.

And I was one of the researchers on that.

And there's some wonderful examples of how probation enforced -- can enforce and remove those weapons.

In one case, for example, the probation officer had given his card to the children in the family.

And it was one of the children who called up the probation department, was concerned that mommy and daddy were fighting again and that daddy had a weapon.

This is a great case that just came out of New Jersey.

You don't need specific law, but unfortunately,

sometimes without that law, you can't get people to do

common sense things.

But after two D.V. convictions, four police calls,

judges -- a judge ordered permanent forfeiture of all

firearms at arrest for this -- at this -- for new

arrest of this defendant.

Even though the charges were subsequently dropped.

The prosecutor said it was because the wife didn't want

to do anything.

The wife testified that she wasn't in fear.

The husband admitted his prior behavior but said that

it was his problem --

[ Inaudible ]

But the judge refused to return or allow him to have

firearms ruling that it wouldn't be in the best

interest of public health, safety, or welfare.

So the man who wanted his guns, the abusers, sued, and

it went up to the appellate court in New Jersey, the

judge was wrong in not returning the weapon since he

wasn't convicted for the offense that he was finally

had the weapon removed permanently.

And they ruled that the defendant is a threat to the

public.

And it would be an invitation to tragedy to give him

back his gun.

So appellate courts can be good on these cases.

This is a New Jersey case in 2014.

So judges aren't necessarily sticking their necks if

they just do common sense things to protect victims.

All right, so firearms, big key --

>> I had another one there.

Do you want me to say that one or are we trying to make it to the end?

Okay, so this is kind of contrary to the good example just provided.

Even though in Washington it was required by a state law enacted in 2014 for abusers served with protective orders, this is in king county, to submit proof required to -- sorry, let me start over.

So even though there's a law enacted in 2014 that requires abusers with protective orders in Washington to submit proof to show that they've turned in their firearms, a media investigation found that in 2016, in king county, 1,002 orders were issued that included a specific note of surrendering all firearms and of those

just 471 abusers, about 47% of those with such orders

failed to respond with the receipt that shows they

turned their weapons over to police or otherwise didn't

have guns.

It turns out that many of those abusers had used guns

in the incidents that prompted those protective orders,

hence the specific orders for their guns to be

surrenders.

The 2014 law also requires -- however, a judge has said

they won't act on that unless they get assistance from

police and prosecutors.

One does actually -- went so far as to say the

investigations -- they dismissed this media

investigation's findings by saying that people would be

surprised at how routinely people ignore court orders.

So I guess that's an excuse to let abusers keep their  
guns.

[Talking at the same time]

>> I just gonna give the background that in the past  
eight years, 400 domestic violence victims were killed  
with firearms in Washington state.

>> Yeah.

Frequently, when you look at these things and you'll  
see, a lot of this is -- if we only followed the law,  
if there was -- if people obeyed the law and that  
means -- includes police departments, prosecutors and  
judges, we could avoid a lot of these tragedies.

We have to hold people -- the criminal justice's feet  
to the fire.

And that's one of the hopefully the take aways of this

webinar and our book.

Some of this is common sense.

It's not rocket science.

It's just questioning and making people do what they're supposed to be doing.

The second big issue that we're still grappling with many, many years later is the notion -- the failure of the system to understand that abusers don't make good dads.

And so the courts and custody courts and guardian ad litem, et cetera, have unintentionally helped hold children hostage -- I'm not gonna go through all this.

But we have lots of examples.

Well, this is already an example in New Jersey --

>> Oh, yeah.

>> Judge refused to allow terrified victim to flee from her abusive husband she was divorcing so that he would have access to her children.

And of course she ended up being murdered.

So it was actually the judge who colluded inadvertently with the dangerous man, and she ended up dead as a result of the judge's inability to understand a very simple fact.

>> Yeah, and I think it was her family and relatives later said that she'd repeatedly told them she wanted to escape, but she -- escape, but she didn't want to leave her children behind.

>> Yeah, I think the last sentence, at the vigil held after her death, her mother lamented, it didn't need to happen.

People knew what was going.

The police department knew what was going on.

The court system knew it was going on.

Why?

There's no sense in it.

Same thing that there have been studies done of court

custody evaluators and you know what, even if they have

D.V. education, they see what they want to see.

If they don't believe in D.V., they're not gonna see

it.

If they believe that D.V. exists, they're gonna see it.

Simple as that.

You have to screen out who's doing these evaluations

and look at it.

Now, you can't second guess each individual case, but

if you look at the pattern and find out there's a court  
custody evaluator who never sees D.V. admissions, the  
chances are he shouldn't be a court custody evaluator.

Somebody's got to do that evaluation.

We're still -- I mean, who would have known 30 years  
after the model domestic violence code that we're  
still -- legislators are still grappling with trying to  
get legislation to get judges to take D.V. seriously  
when it comes to custody and visitation.

These are all last -- in 2015, Texas passed a law  
saying evaluators must complete at least eight hours of  
D.V. education.

Requires courts to consider D.V. in determination of  
custody.

Must determine if the party has a history or pattern in

D.V. or child abuse.

Whether protective orders have been issued.

In other words, you need a law to get judges to look at

a protective order.

You'd think that's the first thing they'd want to be

issued, to find out whether there's been a history of

this.

Minnesota had to pass a law telling judges that if they

found D.V., then they have to ignore the so-called

friendly parent provision.

And there's a rebuttable presumption against joint

custody of domestic violence if the person's a

batterer.

Convicted of domestic violence.

There used to be a whole fake science out there called

parental alienation syndrome, which is really what

these friendly parent preventional -- I'm sorry, Jess,

would you say it for me, please?

[ Laughter ]

>> Friendly parent provisions.

>> Friendly parent provisions, there you go.

>> Yeah.

And what that basically says, which is the parent

that's most likely to not undermine the other parent?

Well, obviously, if you're being beaten up by your

husband, you're less likely than he is to tell your

kids, he's a wonderful person and they should feel

comfortable seeing him.

So you're an unfriendly parent.

Well, there's a reason why certain people are hostile

or unfriendly, but you look beyond that because we

ignore domestic violence.

The ambivalence still prevails.

Here it is, 2017.

In Nevada, for example, they say joint physical custody

is not in the child's best interest if domestic

violence is found by clear and convincing evidence.

That the higher standard than presumption.

So it's not enough that the chances are that the guy

is, you know, more likely than not that he's a

batterer.

That doesn't -- that's not the legal threshold for a

decision on custody.

Further, they make it a class D felony to conceal or

remove child from joint custody unless to protect child

from imminent danger of abuse or protect self from

imminent physical harm and reported the matter to law

enforcement or child protective services within 24

hours or as soon as circumstances allow.

So if you flee with your children for your life, you

have to remember to call police even if they're part of

the problem or they haven't acted before, or child

protective services for 24 hours, or else you'll be

guilty of a class D felony.

Okay.

So we still haven't convinced particularly the civil

side of the criminal justice system that batterers --

the default position is batterers don't make great

dads.

The third biggest challenge is criminal justice

agencies suffer from attention deficit disorder when it

comes to D.V.

If you look at the rise and fall of criminal justice

programs out there for D.V., you'll find some wonderful

programs.

One year, and ten years later, they're not.

One of the -- when I was big in this field at the

beginning, national was always held up as a national

model.

[ Inaudible ]

Before 2005, the arrest rates for police, for example

was exceptionally.

High.

Exceptionally clear cases are cases where the police

think the person's committed a crime, but there are

exceptional reasons that they can't clear it through an arrest, such as the victim refused to cooperate or the prosecution is declined.

Now, they had a stalk the stalkers program.

A guy named Casey Gwynn became a prominent national police star because he --

[ Inaudible ]

Fast forward.

From 2001 to 2005.

Instead of 134 cases, being exceptionally clear, it was up to 3,866 cases were exceptionally cleared in 2005.

Only 1,352 out of more than 10,000 incidents led to an arrest.

That's way about below the national average of 50%.

So they went from above average to below average.

And then things got worse from there.

In 2010, they exceptionally cleared 5,600 cases.

They had one of the lowest D.V. arrest rates in the entire country.

From one of the highest -- why?

Well, according to the Tennessean, which is a newspaper, the police officers were closing cases that weren't even waiting for victims to get out of the hospital, to contact them, and closing the cases, exceptionally cleared saying the victim wouldn't cooperate.

Case was closed, for example, the newspaper -- the police report, they failed to mention that the husband threatened to stab his wife.

Because later in fact the husband did stab his wife,

killing her two days later.

But this just explains how these cases were

exceptionally cleared.

The reason given, it doesn't say why.

Why did this behavior change?

And it turned out, if you go back and look at it, you

see that in the meantime, there was a new police chief

and he announced mission one was traffic enforcement

because there was a fiscal crisis in the town and the

town could make more money through traffic enforcement

than they could through enforcing domestic violence

laws.

And so you realize in that department that you weren't

gonna be promoted or get anywhere if you concentrated

on domestic violence.

And he was clear in taking people off detectives to put them on traffic duty to increase -- and obviously the city bothered to agree with that and encouraged that.

Of course, they're the ones who hired the new police chief.

The good news is, it's the fall -- we had the rise and the fall.

Now in 2014, things began to turn around.

In fact the mayor had a commission and he invited Casey Gwynn back to be on the commission to go over and look at it.

And as a result they cleared in 2015, they cleared 8,251 cases with an arrest.

Not exceptionally cleared.

So they were turning things around.

So they actually were clearing -- arresting 73%,

whereas statewide in Tennessee, they only had a 48%

clear -- clearance by arrest rate.

>> Andy, I just want to clarify.

You've given the wrong name.

Casey Gwynn is the San Diego prosecutor.

Mark Wynn --

>> Stephanie, thank you very much.

Hey, at my age, I've been at this too long.

All these names.

But they were close.

Casey Gwynn and mark Wynn, a wonderful guy.

Still very active.

And it's Casey Gwynn was the Pioneering no drop

prosecutor from San Diego.

Okay, two new programs that now are becoming the newest

innovations and what they tell us about the criminal

justice response to D.V.

You've probably heard of lethality assessment programs.

It started in Maryland.

And what they are is developed by a -- at Johns

Hopkins, very famous researcher now, Jacquie Campbell.

And it's basically 11 questions that police officers go

through with the victims and based how she answers

these 11 questions, they alert her whether she's in

danger or not.

And generally the way it's calibrated is the majority

of victims turn out to be high risk for lethality based

on this scale.

And so it encourages victims to reach out and utilize

services and some of them actually have phones and will

dial the hot line or the D.V. service agency and

connect the victim right away with services and

support.

And so that program as a result in Maryland, they claim

that domestic violence homicides have gone way down in

the various counties and statewide.

And lethality assessment programs have probably spread

to your jurisdiction for many of you who are on this

webinar.

Then there's another program called offender

accountability programs, and that starts in high point,

North Carolina, and that's the exact opposite of the

lethality assessment program.

Instead of being victim oriented.

That's defender oriented.

Of all the people they know, who are most likely to  
kill their victims?

And they go after the oftener and hold them  
accountable.

Tell them, listen, we have our eye on you.

If you have any outstanding paper, any other warrants,  
et cetera, they serve them right away.

They'll show them the file.

So if you are arrested, this will go right into court  
to make sure that you're held on bail and here's the  
sentencing recommendation.

You will go to prison.

Because we know you.

We don't, you know, if you do it again, this is your

last chance.

And they rate the risk of the offender, so some they

see in person.

Some they just send letters too.

And that also shows an amazingly high effective

deterrent rated for domestic violence.

But when you look at these two programs, something

strikes you is that they're exactly opposite theories.

One is a victim oriented program and one is an offender

program.

And based on what we know, you would think that the

lethality assessment programs would be absolute

failures because after all, if the victim were in

control of her safety or in control of the abuse, she

wouldn't be a victim.

If she could control the offender, she wouldn't be a  
victim.

So the deterrent -- it's not the victims's  
responsibility or their capability to protect  
themselves.

That should be the key.

But what you look at when you see these programs and  
the first formal evaluations is that there was a line  
in the first evaluation was in Oklahoma law enforcement  
program and it talked about how successful L.A.P.  
programs were of getting victims into shelters or into  
treatment or reaching out to hot lines and stuff.

And then there was a little thrower line that looked at  
reabuse rates went down and it said, and in those cases  
with lethality assessment programs, the offender was

least likely -- was less likely to be available because

they were in jail.

So, really, the genius of the lethality assessment

programs is not only does it alert the victim that this

is a serious case, but it alerts the police officer --

so if the police officer is doing this interview and

says to the victim, hey, he's in danger of killing you,

that also sends a message to the police officer so the

police officer is more likely to arrest, more likely to

tell the prosecutor, hey, I'm afraid about this guy.

We better ask for bail.

So -- so it in effect, it does the same sort of thing

as the accountability program does.

It gets the system to take domestic violence seriously.

And that seems to be the bottom line.

Those programs, those jurisdictions, by whatever means,

get the criminal justice actors, I'm sorry, the

criminal -- yeah, the criminal system -- criminal

justice system actors, as well as the D.V. perpetrators

themselves to take this seriously, you'll get the kind

of results you need to get to protect victims of crime.

When the victim -- when the system fails, victims

suffer.

Obviously.

And this is -- oh, I don't even want to go into this.

Jessica, do you have a good example?

>> I do.

I prepared one because I know you didn't want to end on

too much of a negative note here.

So in contrast to the story that you can see on the

last slide, I don't know if you want to go back to it

just in case people want to read it.

This is one where a habitual abuser was actually tried

as one.

So in June 2016, the Supreme Court upheld a ruling by

the northern Cheyenne tribal courts which had convicted

Michael Bryant -- a member of the tribe, that tribe,

Bryant had been convicted of several different acts

of domestic violence in tribal court since 1995.

So back in 2011, tribal court sentenced Bryant to 40

years in prison for two counts of domestic assault.

Bryant appealed the case and the ninth circuit court

said his conviction wasn't constitutional by federal

standards because tribal courts don't have to present

the sentence --

[ Inaudible ]

However, the Supreme Court ultimately said nothing on unconstitutional took place because tribal courts are, and this is a quote from Ruth Bader Ginsburg, separate, sovereign, preexisting the constitution.

So the court also said the case highlighted the overall problem of native women experiencing high rates of domestic violence and sexual violation.

So -- for addressing this violence.

And hopefully saved this victim from a state like that of Bertram Lee's wife which you can either read in the slide or look at later.

>> I mean, that Supreme Court case was a really important case because the most abused population in this country are Indian women and native Alaskans.

So for the Supreme Court to allow the native court to

hold somebody as an habitual offender is important.

[ siren wailing ]

>> And very important.

Is that you in New York, Jessica?

>> Oh, yeah, you can hear the sirens, huh?

>> Well, that's what happens when you live in Brooklyn.

But it's very important and it's essential given who

we're dealing with.

By the time a man reaches a court, we're not talking

about the situational violence first offender who's not

gonna do it again.

We're talking the majority of them are gonna do it

again.

for years.

So particularly -- and given the high number that are not arrested or diverted or dismissed or where charges are reduced, we've created these perpetual first offenders so then if somebody actually finally charged and comes in a second time, we're asked to treat them like first offenders again, it's just appalling and sends the wrong message.

>> Right, and this case that I just talked about, he's in, you know, tribal court for domestic assault since 1995 and it was 2016 when the Supreme Court made this decision.

>> Yeah.

But, you know, it's not unique to these tribal courts.

That case I talked about in Seattle that the man who killed the victim was arrested 22 times, had 14

convictions.

And on his very first conviction for possession of

marijuana, he got a suspended sentence.

It took until his third conviction of domestic violence

before he even got a guilty sentence as opposed to a

dismissal or a diversion.

and on his 14th conviction he got a probationary

sentence and the only reason he went to jail is because

he of course violated his probation because for the

14th time he'd been ordered to go to a batterers

program which he never went to.

So they just were not taking it seriously.

And that's the state of Washington in 2015.

In fact the grandmother who's raising her two

grandchildren now sued the state of Washington for

\$20 million, and that case was just thrown out.

I don't know why.

Probably on procedural grounds.

Any rate.

So that completes our presentation.

If you want to read this at your leisure without us

yakking at you, you're cordially invited to steal this

book, as Abbey Hoffman used to say.

But any rate, Stephanie, any kind of questions, or are

we through now?

>> I think we're just about out of time.

There's been a pretty lively chat going on, but there

are kind of comments back and forth.

So I think we're going to end on time here.

I want to thank you so much for taking the time to do

this presentation, and I urge people to get ahold of

the book by -- you know, they could use the library and

avoid stealing.

[ Laughter ]

And -- so thank you so much.

>> Okay, thank you.

>> Thank you.

>> Thank you so much, Jessica, and Andy and Stephanie

as well.

And thank you to all the participants who joined in

today.

Just a reminder that you'll all receive an email from

me shortly.

Then those folks that are only on the telephone, please

send me an email requesting that if you'd like it.

This will be posted on our website soon, so keep your

eye open for that and part one is already up there.

So if you didn't listen to that, check it out.

All right, take care, everybody.

Bye-bye.

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