

LIGHTLY EDITED CART FILE

Tort Suits & Financial Compensation for Domestic

Violence Survivors: A Webinar for Attorneys

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>> Kari: I'm going to go ahead and get started.

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I'm Kari Sonmore with the Battered Women's Justice

Project and before we get started with our content

today, I'm going to briefly go over some of the

logistics for you all.

If you are disconnected from the webinar at any time,

you can go back to the email with the join information

and click on that link again.

It should log you right back in.

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You can reach them at 1-800-799-4510.

And I put that into the chat box for you all.

You can find the chat box at the lower left-hand

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To use this feature, put your cursor on the bottom
right-hand corner rectangle, type your text in there
and then hit the enter key on your keyboard to send
the effects.

We have muted all speakers.

For those folks that are only on the audio portion, if
you want to join in for any questions or comments, you
can, just send me an email at Ksonmore@BWJP.org.

And I sent out the reminder and confirmation email so
you'll have that, as well.

Let's see. 3

Let's try out the public chat for those folks on their
computers so you can get a feel for that.

Let us know where you're joining us from or anything
else you would like to share.

Now would be a great time.

We are recording the webinar today.

We'll have this available on our website within the

next couple of weeks, so look out for that.

I will be sending out an email to everybody who joined

us today.

That's going to go out about 30 minutes after we

finish up.

This email serves as verification of your attendance,

so please hang on to that for your records.

We'll have the link in there to where the PowerPoint

is posted and where recordings are posted, so you can

access those.

And then we also have a brief survey and welds a

appreciate any feedback that you can give us so we can

continue to improve our webinars and cater to what

you're looking for.

For those folks that are on the only telephone, please

send me an email if you would like to receive that

follow-up email, as well, and then I'll just send it

right over to you.

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And that covers everything for me, so I'm going to

send it over to Anton.

>>

>> Anton: Good afternoon, everyone.

Today we welcome Amira Samuels, the legal director of

free from.

Amira received her J.D. from the Benjamin Cardozo

school of law in 2010.

Throughout law school, she devoted herself to helping survivors.

She volunteered to meet with survivors in Rikers' island to help them ascertain the whereabouts of their children.

She also served as a courtroom advocate for those appearing in family court.

After graduation, Amira was named the first judge Gertrude Mindsir memorial fellow, an award she was given for her dedication in public interest law work throughout law school.

She took the fellowship to the legal assistance group where she worked exclusively on domestic violence cases.

In 2011, she was hired by the legal assistance group

as an equal -- Americorps legal fellow and was named a coordinator of project Eden which serves orthodox

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Jewish survivors of violence escaping abuse.

In addition to her work on the project, she litigated

matrimonial law throughout the five burroughs of New

York City.

She was hired by the New York legal assistance group

both to continue coordinating project Eden and to work

for the matrimonial unit.

Throughout her term, she litigated many cases on

behalf of domestic violence survivors.

As a senior staff attorney, Amira led trainings for

law students and pro bono counsel on domestic

violence, protective orders and uncontested divorces,

and supervised law students, junior staff attorneys

and pro bono counsel on their cases.

In both 2014 and 2015, Amira provided best practice

trainings for attorneys and social workers at the

TEhell conference in Jerusalem, Israel, focusing on

helping survivors navigate the rabbinical court, civil

court and criminal court simultaneously.

She concluded her tenure at the New York legal

assistance group as a supervising attorney for the

family and mat money y'all law unit.

, joined from free in 2016 to serve as legal director.

Welcome again.

>> Thank you so much, Anton, and thank you, Kari.

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It's a pleasure to be with you all today.

It's still morning here in California but I wish you

all a wonderful afternoon or in central and east side

of our country.

So Free From was formed and established to establish

what we call the missing link.

As many of you probably know, one in four women in the

United States will experience severe domestic violence

in their lifetime.

And the number one reason that survivors of domestic

violence say that they stay in abusive situations is

because they cannot afford to leave.

The number one reason survivors say they return to

abuser is financial insecurity, and domestic violence

is the leading cause of homelessness in women and

children in this country.

There were advocates and attorneys available to assist

survivors petitioning for protective orders.

There's also legal counsel available for survivors

dealing with custody and visitation matters.

But those emergency services and the assistance and

resources that might be available around protective

orders are usual Lee -- and custody litigation matters

are really not as available for things like child

support and spousal support and distribution of

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marital assets and a lot of times, the financial

issues survivors are having to navigate on their own.

We know that survivors face a tremendous financial

burden escaping abuse.

They're really shouldered with the entirety burden of

rebuilding their life and that that's a biggest

barrier to being able to sustain security, safety

moving forward and out of the abusive situation.

So why does financial insecurity play such a critical role?

Well, even if -- for any person, survivor or not, it's a tremendous challenge to meetly uproot your life and move across the country.

I did that very recently when I switched from my job at the New York legal assistance group to my work at Free From.

It's expensive to uproot your life, takes a lot of time and planning and ends up being more expensive than you calculated or that you might think, and that's just for an average person.

It can be infinitely more expensive for an abuser because abuse occurs in 90% of the domestic violence

incidences and they're likely to have little or no

resources available for a move to replace clothing and
furniture and bedding and other linens and pots and

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pans and to have a security deposit for the a new

apartment, to pay for a car or public trans transit

and parking.

All these things create tremendous barriers to

survivors being able to actually rebuild that your

lives immediately after leaving an abusive situation

but even in the long term, there are a lot of

challenges to remaining financially secure when having

to navigate all of the systems for -- that survivors

have to navigate when just trying to stay safe and

also just the tremendous cost of rebuilding one's

life.

So what is financial abuse?

Financial abuse can be credit fraud or coerced debt.

Our founder and CEO, Sonya worked with a client

relatively recently who -- whose husband took out 40

or 50 magazine subscriptions in her name and had them

sent to various places, and she never knew about them

and she had no access to her own credit information

while she was with him.

And when she finally said, she learned that she had

over \$20,000 in debt related to magazine subscriptions

alone.

Obviously that put her in a really compromised

position when trying to establish -- to take out any 9

bills in her name or utilities in her name or just

trying to figure out what to do with all of this debt

that she didn't encumber herself with but she was now

stuck with dealing with.

Many survivors have no access to bank accounts and

cash.

We have a -- worked with a survivor recently who was

employed throughout the entirety of her relationship.

Her spouse had her paycheck go to a joint account that

she had absolutely no access to, so even though she

was working, she never saw her own pay.

Similarly, we have worked with a client who had --

never had access to more cash than she needed to

exactly purchase -- to purchase exactly what it is

that she said that she needed, and it's very extreme

example but one of the most horrifying things I've

heard over the last many years was this woman said

that she needed money to get some feminine hygiene

supplies and her spouse said, no, I have gave you

money last month for that, and by my calculation, you

should have two sanitary pads left so you're not

getting any more money for that until tomorrow or

until the next day.

Which is just goes to show how atrocious the power and

control of cash can be and how significantly it can 10

limit someone's ability to imagine taking a step to

leave.

There's lost wages and lost employment that could

result from too many days taken off work, to nurse

wounds, to let bruises recover.

There could also be issues related to abusers coming

to survivors' place of work and creating disturbances
and disruptions such that survivors are let go because
employers just don't want that around the office space
or the company.

There can be lack of access to the workforce, so
survivors being told that they can't work, they
shouldn't work, they need to be at home.

Their spouses will support them and not giving them
opportunities to work, and there's control in
monitoring of spending, and that could be -- we had a
client who, when she came home from the grocery store
was required to enter into an excel spread sheet each
and every thing that she purchased and like how
long -- for instance, a jar of PREGO tomato sauce, how
much it cost, whether or not it was on sale, how long

she anticipated it would last, what she intended to

use it for, so each and every thing that she purchased

was monitored and controlled.

And these are just a few examples.

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There are many other ways in which financial abuse

could manifest and of course impact survivors in their

lives.

And that's what Free From is trying to focus on,

taking survivors from the situations of horrific

financial abuse and helping them rebuild financially.

The impact of financial abuse is -- can be just

poverty and homelessness, lack of access to stable

housing and loans as a result of poor credit.

Many survivors have lost custody of their children as

a result of being financially unstable so the

financially -- the more financially stable is often

the abuser and we hear countless stories of survivors

losing touch with their children because they can't

afford to provide the same kinds of housing and

financial security that the abuser can.

There's lost opportunity to gain skills and

reputation, career history and trajectory from being

prevented from entering the workforce or progressing

in the workforce.

Of course, that has an impact on self-esteem and, of

course, lost past, present and future income.

So Free From's mission is to make safety inform for

all survivors of domestic violence so that they can

build safe lives free from abuse from themselves and

their children.

And we have a three-pronged approach to that mission.

We have a legal program which helps survivors to win

compensation and hold their abusers financially

accountable for the harm that they suffered by

bringing civil suits for damages.

We have -- of course there are other forms of

compensation that we can help survivors try to pursue,

as well.

If there is a criminal case, we're in the -- there is

a conviction and sentencing or we have some resources

around helping survivors request criminal restitution.

Of course we encourage the people who we speak to to

consider pursuing victims of crime funding for losses

that are easily quantifiable so they would be able to

easily provide some evidence because each state has money that's allotted to that.

And then in addition to civil torts, there's also

small claims court which is a forum that survivors

rarely avail themselves of but that could be a

wonderful resource for survivors so we'll talk

survivors through what the small claims process is and

their jurisdiction, what kind of information they need

to collect, how a case could be prepared, what to

consider, how to do the -- how to go through the 13

process safely and gather information and of course we

have the civil tort program.

Our policy program advocates for public policy reforms

to better protect the economic rights and resources of

survivors.

So, for example, making it easier to repair credit

after credit fraud and making it easier to bring a

civil suit for damages.

Right now, it's a challenge to bring a civil suit for

damages in most jurisdictions because the statute of

limitations is very short and there isn't a huge

practice of civil tort or domestic violence survivors

but we hope to impact that for the better.

And then right now, to -- for a survivor to repair her

credit that was damaged as a result of fraud by her

spouse is very complicated.

The evidentiary burden is almost insurmountable.

You have to be able to get a police report that says

they are not only a survivor of domestic violence but

that you -- part of the abuse was financial and that

there was credit fraud on behalf -- on the part of

your spouse.

I'm sure as many of you working in domestic violence

know, it's hard to get a police report that accurately
describes that someone was pushed or hit, let alone to

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have one that acknowledges financial abuse and that

attests to that in a meaningful way.

So survivors are really have a tremendous challenge in

trying to repair credit and we would love to see an

improvement there.

And finally, we have an entrepreneurship program and

that helps survivors start their own small businesses.

It's an incubator program essentially and it takes

survivors from concept to profitability over the

course of nine months through lots of course work,

support, one-on-one meetings, branding consultation,

marketing consultation, financial advisors come in,

tax advisors comes in, there's legal support for sort

of legal documents that need to be drafted and, of

course, self-esteem workshops, et cetera.

And that's being piloted in California right now at

three locations, and it's really exciting and going

beautifully and we're so glad to be working with such

extraordinary women in this program.

Let's see.

We hope to expand the entrepreneurship program in 2018

and bring it to some other jurisdictions, as well.

Our theory of change.

So abuse brings -- the chart works as follows.

Survivors escape in the negative from a financial

perspective, they're burdened with the financial debts

of being abused, which has been compounded by their

inability to create sustainable income.

So programs have two main goals.

One is to bring survivors back to zero, to help

survivors get compensation for the harm that they've

suffered so they're finally restored to zero, as if

promote economic -- if the abuse didn't occur.

And the third goal, they work alongside one another,

is to help survivors create income, build assets and

build wealth through their skills, and that's the goal

of our small business entrepreneurship program.

So through our three departments, we hope to

effectuate change.

So the status quo.

The status quo is that survivors are shouldered with

the financial burden of being abused and in fact

abusers are financially benefiting from abusing them.

That is to say they don't -- there's no financial

consequence to abusing them.

Often the abuse means that they're profiting off --

avail themselves of the wages or the unpaid work

that's being done in the home, survivors are

shouldered with the totality of the burden of

rebuilding their lives and because abusers are paying 16

nothing, they're essentially gaining profit from

committing atrocities that they have.

And the long-term financial instability that results

from the abuse means safety is ultimately unaffordable

and, for that reason, survivors can't stay Safe.

So tort law can help survivors.

Tort law shifts responsibility and can change the

norm.

So it puts the cost of abuse on the perpetrator and it

can make the survivors whole through compensatory

damages.

It can deter future violence through punitive damages

and it's a very important other avenue of justice, so

we know that safety requires more than a protective

order.

In order to stay safe, the survivors have to be able

to afford to stay away and the criminal justice

response is often insufficient.

There was a famous case out of Ohio a few years ago,

the Bailey case, and in that case, the survivor wept

through the entire criminal justice process and we'll

talk about it more in detail in a few slides down the

road but said that she didn't really have any

[indiscernible] until she pursued a civil case.

So it's important to have civil law available for

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survivors.

So this all sounds really great, right?

Why is it such an untouched area of the law?

Why isn't there a big practice around this?

It seems pretty obvious, at least to us.

We think that that's because there is a lack of

societal understanding that domestic violence is an

injury that warrants compensation.

It's seen as something that should be dealt with by

the police or survivors should just leave, and that

there are women's, quote, services available and

indicators of that and it's not really something a

civil court would need to be involved in for the

purpose of damages.

There's a myth of domestic violence and poverty and by

that we mean, it's assumed that domestic violence

survivors are impoverished and they're spouses are

impoverished and there's no resources to collect on

their behalf and nothing that would be -- you know,

that this would be the -- there wouldn't be any money

in cases like these.

So we know that just because survivors are

impoverished doesn't mean that abusers are.

In fact, abusers often have plenty of money, they just divest survivors of all access to it. 18

Either reason this is an untouched area of the law is because of OVW funding limitations.

So many, if not most of domestic violence service providers and specifically legal service programs are at least in part funded by the office of violence against women and they're specifically prevented from pursuing civil tort cases on behalf of survivors.

So the plaintiff bar that litigates most personal injury cases are often going after insurance, which is sort of guaranteed payout.

It's not going to require the same kind of collection effort that litigating against an individual would, and so the plaintiff's bars are often reluctant to

take cases against individuals because collections would require a lot more, and unless there's a clear seven-figure settlement or really significant amount of money that could be collected, it's not necessarily an enticing case to take from the plaintiff's bar perspective.

But we know that there are personal injury attorneys who have been taking these cases and have found them to be profitable and have not had such a difficult time collecting on behalf of survivors, and we're hoping that we'll show many, many more attorneys that these are compelling, important and profitable cases to take.

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And then there's the fear of negatively impacting the family law cases.

So where custody and visitation are involved or where there are children involved or complex equitable and distribution issues, there is a concern that filing a tort case will just make the survivor seem like she's a gold digger or other sorts of horrible stereotypical things about how this is just about money and not about the children or not about real safety concerns, et cetera.

So Free From is working to change the norm.

So in terms of the lack of societal understanding that domestic violence is an injury which warrants compensation, we're working to raise awareness of the cost of domestic violence on individuals and our society so that people are educated that this should be -- that this is an injury that warrants

compensation.

In terms of the myth of domestic violence and poverty,

we're of course working to unpack the myths that

abusers are living in poverty just because survivors

are.

In terms of OVW funding limitations, we're working to

recruit attorneys outside of the domestic violence 20

community to represent survivors.

There is a lot of relationship building that could

happen between survivor -- D.V. attorneys and

attorneys who work outside of the D.V. community, in

terms of case referrals and helping build knowledge

and understanding about the dynamics of domestic

violence and why these cases are great cases to take,

and how they can be profitable for the plaintiff's

bar.

Along those lines, working with the plaintiff's bar to

take these cases and to help collect judgments, so

that can be overwhelming and, you know, having to hire

someone to help with collecting judgment could reduce

the fees that attorneys are seeking to collect even

more than they -- than they might have hoped or

expected.

And so all of that kind of can be a deterrent but

working -- having our services to assist in collecting

judgment or having the advice and assistance of the

attorneys who have volunteered to work with us and

coach, counsel through those challenges we hope will

be really helpful and encouraging.

And in terms of fear of negatively impacting family

law cases, we're hoping to really engage the family
bar.

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We're working and connecting with many, many family

families to bring tort cases in conjunction with other

cases and explaining the domestic violence for the

tort matter alongside all of the findings that the

testimony that they would want to present for findings

in custody cases and where it's relevant, equitable

distribution cases because they really do work well

alongside one another and some of the preparation will

even be quite duplicative, so we would like to get

more relief for our clients.

Our tort litigation program works as follows.

We pair eligible lit gaps with pro bono or contingency

fee attorneys to litigate their tort claims.

So we'll start the cases and from start to finish,

provide our partnering attorneys with technical

assistance, resources and support and our mission is

to go beyond just providing sort of white papers or

forms and to relevantly offer eave of the attorneys

who takes -- each of the attorneys that takes a case

with us, strategic planning, or if something comes up

they need research assistance, we're glad to do that.

They want us to find expert witnesses, we have a whole

database of expert witnesses who are working with us,

some on sliding scales, and we try our best to offer

as much support as we can and whatever comes up.

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>> Amira, can I ask a few questions?

>> Absolutely.

>> How do you kind of work with those attorneys that are concerned about the impact of torts on family law cases?

How do you assuage their concerns and the survivors concerns, as well, to overcome those unfortunate myths that do have an impact in real-world situations?

So thank you for that question.

The reality is that as with most things related to family law, it's always going to be really case specific and going to depend on the specific circumstances.

If custody and visitation are hotly contested and there are compromising facts to the survivor and this is just going to be another thing for them to use against her and the statute of limitations isn't going

to prevent the survivor from bringing a case after
custody is determined and the survivor -- we wouldn't
want to do anything to undermine the custody case and
we wouldn't encourage the survivor or the attorney to
try to pursue a tort claim alongside the family court
case but we wouldn't want that to happen but we -- but
they're not -- but at the conclusion of a case, you
might want to bring one if there was really a lot of
concern around negatively impacting the family law
case.

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If it's not possible because of the statute of
limitations and we know that survivor really wants to
try to pursue a claim, we of course want to leverage
experts to really talk about the cost of the impact on
the survivor's life and on the children's lives.

As is relevant, and then present a picture to the court that's well-determined, D.V. informed, survivor-censored to the extent that we can with the facts that we have so that this survivor can present her claim in hopefully a way that won't be compromising at all to the application.

>> Anton: Thank you.

Can I ask another question kind of related to that?

How do you form partnership with attorneys in local communities as an organization that works nationally?

Are you looking for any specific jurisdictions to find attorneys in that you feel that you have a deficit in finding folks and how do you encourage other kind of domestic violence professionals to find professionals

in the plaintiff's bar that they can work with?

Sure.

Were interested in looking for attorneys anywhere, so
if you are interested in working with us or if you can 24

think of someone that would be interested and thrilled

to connect, we would love to connect with them.

We tend to reach out to the local domestic violence

organizations, ask them if they've seen cases like

these, ask who the attorneys are who represented them

and try to reach out that way.

We'll also contact the plaintiff's bar, the family bar

to try to do that.

We've been doing as much outreach as possible to do

that via webinar and national conferences and -- at

every opportunity just looking to talk about Free

From's work with attorneys and talk to them about how

we can support them if they're interested in taking

some of thigs casts and build some expertise in these

areas, so I guess the short answer is, we love to

continue to meet attorneys from all over the United

States.

We certainly -- there isn't any place that we have an

over-abundance of attorneys who we can work with and

of course the more attorneys who are available to us,

the more survivors we'll all be able to help which is

fantastic but I -- it will depend on the place.

I've kind of just been -- some places more remote or

had more of a difficult time locating an attorney

through online research or through contacts that we

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have, there have just been utilizing the local

expertise of other D.V. colleagues and service

providers to see what they can recommend and what

happens generally is they recommend an attorney who

recommends another attorney who recommends a colleague

and eventually I get connected with someone but we're

happy to do that leg work.

[Chuckling]

>> Anton: This is Anton again.

I ask about that because the common problem of that,

I'll call it, nationally is finding attorneys that can

work in rural communities, especially, and when I

found helpful there is matching basically survivors in

rural communities with attorneys that are unfamiliar

with or kind of -- my colleagues are familiar with

this metropolitan areas in that state and seeing if

those folks in a bigger city that we just know of

already because they handle more cases can go out to

those rural communities.

I wonder if you do something like that or if you have

other kind of strategies for finding representation

for people outside, you know, of the coast in large

cities.

>> Yeah, absolutely, thank you.

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So -- so recently I had a case that I ended up trying

to locate -- I was successful in locating counsel in

just the way that you said, there was a small survivor

from a small town and I contacted someone in a larger

city nearby and they referred me to an attorney who

referred me to an attorney who referred me to an

attorney who was interested in the case.

And I think that that's a great strategy but, you

know, it's -- it can definitely be a challenge.

That's my approach, as well.

>> Anton: Thank you, Amira, that's all the questions

we have right now.

>> Thank you.

I'm continue and provide a little bit of context about

domestic violence tort litigation.

So the Violence Against Women Act was enacted in 1994

and Congress took a lot of testimony on the lack of

remedies for survivors of abuse, which led to the

inclusion of a federal civil rights remedy against

abusers in VAWA.

And that was overturned in the matter of U.S.

V. Morrison, where the court determined -- the Court

determined that it was unconstitutional to have a
civil -- a federal civil rights remedy against abusers 27

in the Violence Against Women Act because the

constitution requires a distinction between what is

national and what is local and civil remedies belong

in state court.

So it's the police power of each court -- each state

that has to be honored and so it's up to each state to

determine what they want to do in terms of a civil

remedy for domestic violence survivors against their

abusers, if anything.

Currently.

Where is my slide?

Currently, there are only two states in the entire

U.S. that have domestic violence tort law, that's

California and Illinois.

In California, it's civil code 1708.6.

There is a three-year statute of limitations and a --

the statute essentially says a person who commits

domestic violence against the mother is liable for

general punitive and special damages and the Court may

award attorney fees, which is of course helpful.

The...

Are you still there Amira?

Looks like we lost her sound so hold tight while we

get her back.

Are you still there Amira?

Looks like we lost her sound so hold tight while we

get her back.

This is a test, testing the captioning.

This is a test, testing the captioning.

>> Am I on?

Okay.

Sorry about that, everybody.

I don't know what happened.

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Okay.

Back to hurdles with utilizing intentional torts for

the purpose of filing D.V. tort cases on behalf of a

survivor.

Most restrictions the statute of limitations is

impossibly short.

As I was saying, I'm actually not sure how much of

this you heard so I'm sorry if this is duplicative but

in most jurisdictions, the statute of limitations is

one, maybe two years.

There are some steps that have Juers diagnosis like

Massachusetts to have a three-year statute of

limitations for intentional torts which is helpful but

by and large, a pretty short amount of time and it's a

tremendous challenge to find a place to live, deal

with custody and visitation matters, find work U be in

compliance with all the various programs that

survivors are often utilizing and then find an

attorney who wants to represent you in a civil tort

action and file that case within a year.

The criminal case could be ongoing, a family law case

could be ongoing and while those are taking place, the

statute of limitations is running and it becomes

really challenging for survivors to take advantage of

the cause of action in the limited time that they 30

have.

Another hurdle is whether a jurisdiction would look at

domestic violence as a continuous tort and most places

don't, so they're primarily concerned with what the

most recent incident was versus the totality of the

domestic violence in the course of conduct that really

impacted survivor's life.

For example, if the most recent incident of physical

abuse happened in 2015 and this is a one-year statute

of limitations and the verbal and emotional abuse was ongoing, to bring a claim, the survivor wouldn't be able to avail herself of an assault -- of the cause of action of assault because the Court couldn't consider it, it would only look at what happened most recently, which is the emotional and verbal abuse and, you know, in most places, that wouldn't result in -- wouldn't be a viable claim.

In California and in Illinois, thankfully, domestic violence is seen as a continuous tort and so the court will look at not only the most recent thing that transpired which was -- which could be less severe than something that happened one to five, eight years ago but look at all of the conduct when determining -- charge the jury with looking at all of the contact

when determining what damages would be.

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And then another hurdle is attorney's fees.

So if attorneys are taking these cases and they aren't

clear that they're going to be receiving fees or that

they would be entitled to fees, it becomes each more

of a disincentive to take these cases because

obviously attorneys need to be paid for their work.

And so that's a hurdle, as well.

Okay.

So D.V. torts in the news.

I referred to one of these cases earlier, we'll go

into it in a little bit more detail but these three

cases, the Byrd case out of northern California, the

Bailey case out of Ohio and the Farren case out of

Connecticut are really the most [indiscernible] cases

that have come out in recent memory in the last few

years so we'll go over them and learn from them.

Together.

So in the Farren case.

This is a headline from the newspaper or online news,

I should say, and it's a jury awarded \$28.6 million in

damages to wife for brutal beating by Washington power

play husband.

The facts of that case.

Mary Margaret farren was a former scad den attorney

and the deft income, her ex-husband was a general 32

counsel of xerox and former deputy white house counsel

under George W. bush.

According to her allegations, her husband brutally

attacked her, grabbing her by the throat, banging her

head against the hard wood floor, beating her with his

bare hands and then with a metal flashlight and left

her for dead, essentially, while her two young kids

were in the other room.

She managed somehow to grab her children and escape to

a neighbor's front door where she collapsed.

She was taken to the hospital for her injuries and

she -- her husband was arrested.

There's a "2020" special on this matter if you're ever

interested in looking at, the imagery is pretty

gruesome but she speaks, she's interviewed and kind of

goes over the case which is really compelling and

interesting.

In that case, the jury held the defendant liable for

assault, battery and intentional infliction of

emotional distress.

He didn't show up for the civil trial so the survivor

and 19 of her fellow witnesses testified without

cross-examination.

So the jury really deliberated mostly about damages

and they calculated the damages in this case based on 33

the brain injury that Ms. Farren suffered and the

emotional trauma that she suffered so she was earning

at Skadden flows to \$500,000 annually and she was on a

trajectory to continue to grow in her practice there.

She could have made partner if she hadn't sustained

this brain injury and so part of what they looked at

was her likely never being able to practice law again.

In that case, the criminal matter, the family matter

and the civil tort case were all kind of happening simultaneously and the attorneys worked together, the family law attorneys, the civil tort attorney and the district attorney's office sort of worked together in coordinating that, which was a tremendous for Ms. Farren and ultimately resulted in her being able to get the equitable distribution that she -- that she was entitled to in addition -- the custody that she wanted, the protective order that she needed and ultimately the \$28.6 million settlement, as well.

The Bailey case out of Ohio I referenced earlier, and this was the first successful domestic violence tort case ever brought in Ohio and the survivor in this case got a \$21 million award in a lawsuit against her ex-husband, punitive damages are limited in Ohio so

that was reduced but the -- Ms. Bailey was brutally
attacked by her ex-husband who broke a bone in her

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face and caused her tremendous injury.

She spent over a year looking for an attorney to help

her with a tort matter and the attorney who ended up

helping her, Michael King, who's on our advisory board

and available to help attorneys who take cases with

us, only agreed to take the case on the third ask

because he was compelled by the facts but didn't

really know what to do and if it would work and was

this kind of at first just not inclined to take a case

that wasn't in his practice area.

But he ended up taking the case and ended up being

really -- being successful.

I think they filed right up against the statute of

limitations, I think there was like two weeks to spare, and so just shows how long it can take to find an attorney who's interested in taking a case in an area that they is not -- this isn't their practice area or area of expertise but how extraordinary it can be to try one of these cases and to have a success like this.

So she was awarded compensatory damages in the amount of \$1.58 million and punitive damages in the amount of \$20 million.

And like I said before, Ohio puts a limit on non-economic damages so the actual ward ended up being \$3.5 million.

The survivor said that this is the first time that she felt empowered throughout the entire process,

throughout everything that she had been through, from making the 9-1-1 call and having him arrested through going through the entire criminal court process, being able to tell her story in a civil case and getting the award that she did was the first time she actually felt empowered and part of that is related to what happened in the earlier criminal matter.

He -- her ex was found guilty of misdemeanor domestic violence.

His charges were reduced to a misdemeanor, they were previously felony charges, and he was sentenced to 180 days in jail.

178 of those were suspended.

So he did two years in jail and two years probation.

And to her, Wah what that meant was the value that society places on, you know, my husband abusing me and breaking my face is two days in jail and two years' probation, and so to learn that, no, the damages that society placed on that kind of conduct were so much more significant made her feel justified in trying so hard to find someone to take the civil case.

And it's a wonderful victory for her. 36

And then finally the Berg case.

Clyde and Elena Berg.

Clyde Berg was a silicone -- is a silicone valley

millionaire.

His wife was -- is 30 years his junior, a Russian

immigrant, blondes and all of that played out with the

jury.

Which is why I'm mentioning it.

She alleged that her -- when she was 9 months

pregnant, her ex chained her to a bed and raped her

with a golf club, and she was there for days.

She managed to escape.

She had a safety phone hidden under her mattress, she

used that to contact the police.

She -- the police came, she was taken to the hospital

so there was a 9-1-1 call, they have a medical record

and there were photographs of swelling and bruising,

and he was found not guilty in the criminal court and

actually she ended up being found guilty for malicious

prosecution and the attorney who represented Elena in

the civil case had the opportunity to speak to the

jury to try to ascertain how this could have happened

with the evidence that was presented and with how

atrocious the allegations were, what was it that made things go so terribly wrong. 37

One juror said, I had a hard time believing Elena, her

answers were so evasive, so what that tells us is

there really was no understanding at all by the jury

of the dynamics of trauma or why someone would not be

able to testify as, quote, unquote, perfect victim

witness and what would, you know, the impact of that

kind of trauma in an individual and what it would be

like to testify.

And a second juror said, equally disturbing, is if

things aren't working out, just walk away.

So more victim blaming, really speaks to the

misconceptions about the dynamics of domestic violence

and beyond that, the jury wasn't charged with figuring

why she didn't leave an abuser, they were charged with

figuring out what the price would be for tying someone

to a bed and raping them with a golf club.

But that was, you know, not at the forefront of their

mind, right?

It was just to -- the allegations were, I guess, not

credible for them, notwithstanding all of the...

>> Are you there Amira?

>> I'm here, I just can't see my slide anymore.

>> Oh, there you are.

Sorry.

Sorry for all the technical things, I don't know why 38

any of this is happening but I'm with you.

In any event, obviously not charged with figuring out

why she didn't leave bus charged with figuring out

with what the price would be for those kinds of

atrocities.

And it's just really unfortunate that -- to learn that

those were the kinds of thoughts being shared amongst

the jurors.

We're hopeful to utilize experts to better educate

juries on the dynamics of abuse, on what trauma looks

like and on why these kinds of injuries didn't warrant

compensation.

So we'll just talk about a few cases around the

country that are encouraging after that last one.

So here you go.

I picked just from around the board so that they could

talk more broadly than in the cases I just presented

about what's happening and what could be useful.

So in Henricksen case from Maine, the defendant in

that case tried to persuade the court that an

emotional distress claim brought on the part of his

wife was barred by inter -- the doctrine of

inter-spousal immunity and the Court determined -- the

court affirmed the lower court's earlier judgment

which awarded the wife in that case \$75,000 in 39

compensatory damages and \$40,000 in punitive damages.

Which is of course encouraging because we want

survivors to be successful in these kinds of

applications, and what this case did was make clear

that the doctrine of interspousal immunity wouldn't

apply in this kind of circumstance.

In the...

Let's see.

In the matter of MALWITZ, that was a really exciting

case to read.

I encourage you to look at it if you're interested,

but the parties in that case lived in Texas and as a

result of abuse, wife and young child fled to Colorado

where she was originally from and filed suit in

Colorado and the defendant husband claimed that the

proper jurisdiction was with Texas and Colorado

couldn't take jurisdiction over the case.

The matter had to be heard there.

And the Colorado court in that case said that the

husband had established minimum contacts with the

state of Colorado such that the case could be brought

there.

And specifically said that the reason the wife and child were in Colorado was because they fled his conduct.

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I'm sure that you can think of, you know, cases just

off the top of your head in which clients left one

jurisdiction to go to another jurisdiction in which

they would feel more safe and so for a court to

recognize that fleeing abuse is a normal thing for a

survivor to do when they want to stay safe is -- was a

wonderful thing.

Another thing that they said was that because of his

conduct, wife and child were forced to apply for

public benefit in Colorado and that created a debt for

the husband in the State of Colorado.

So he had -- he caused them to flee and he had created

a debt there as a result of his behavior, and he

should have foreseen the possibility of litigation in

this forum based on his conduct.

He knew that this is where she was from originally and

that it was likely as a result of his abuse she would

go back there.

And ultimately because of those things, the Court

determined that the minimum context satisfied the

standard for fair play and substantial justice and

continued to hear the case in Colorado.

And so that case was encouraging because we know so

many survivors have to flee to places where they'll be

safer and though I can't say that I've seen any other

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case like this, I was surprised to learn that that was

something that benefited the survivor in California --

sorry, in Colorado and I'm hopeful that maybe we'll

see more of that going forward.

It's not authoritative for other places but certainly

encouraging.

Cater versus cater, this Arkansas case from 1993, the

Court determined that the wife in that case was not

required to bring a tort case with her divorce.

They stated that divorce and personal injuries are two

separate cases and two separate rights to be

vindicated and that where survivors make allegations

that what they're regarding abuse in a family or

matrimonial matter, that doesn't preclude her from

bringing a case -- a civil tort matter because they're

two distinct rights of hers to be vindicated.

And in that case, the survivor was awarded \$350,000 in

punitive damages, the defendant tried to argue that

that should shock the conscious of the Court and the

Court said, well, the abuse was so severe that the

award was supported.

So nice result for the survivor in that case, as well.

And then in Adam M. versus Christina B., this is a

case out of Alaska.

If you look it up, you will see there is a big notice 42

on top that says it's a memorandum of decision,

doesn't create precedent but still an encouraging case

and worth a read and good to know that advocacy

results in these kinds of decisions for survivors.

It seemed that this was just a total -- a really

challenging, really messy, really tragic case but

ultimately the survivor prevailed in her tort action.

She brought it alongside -- she brought it along with

her divorce case and the court in that case said that,

though they usually caution litigants not to bring

tort matters along with divorce cases, because they

don't want to unduly delay resolutions specifically

where custody and visitation are an issue.

It's permissible and not an abuse of discretion for

the Court to hear both cases together under some

circumstances.

In that case, the survivor was awarded \$120,000 for

medical costs, \$240,000 for general damages and

\$500,000 in punitive damages.

And the whole case history is just laden with, you

know, just all of the ways in which the justice system

can be used to further abuse where a survivor actually

manages to leave the relationship.

But some helpful broad themes that I saw in these cases and that I've seen in many other cases that I've 43

looked at are that tort claims are not barred by res

judicata after divorce, so the rights in dissolution

and right to be free from personal injury are distinct

rights to be vindicated.

Another helpful theme that came up in more than one

case was that testimony about acts that occurred

outside of the statute of limitations could be used to

help establish plaintiff's fear of violence during the

limitations period.

So of course we're -- domestic violence isn't

perceived as a continuous tort or isn't understood as

a continuous tort from a legal perspective, it's great

that survivors are given leeway and can testify about

the history of abuse to help shed light and provide

further information about their fears.

So the benefits of cod anything domestic violence

authority law.

It's been 30 minutes, Anton, do you want to stop for

any questions if one came in?

>> Anton: Yeah, one question I have is what you were

just talking about actually, about bringing in

testimony or evidence outside of the -- that occurred

outside of the statute of limitations to strengthen

the case.

Besides -- besides the question of apprehension of the

survivor and why she would act a certain way, what

other ways can that evidence that's otherwise limited

be brought in?

>> Good question.

So obviously rules of evidence will really limit

testimony in this area, or can really limit testimony

in this area.

Aside from shedding light about the survivor's own

experience and the bases for her fear and concern,

sometimes it's useful for setting a timeline, for

explaining not necessarily her fear or concern with

respect to the specific incident that's being alleged

but just in terms of laying out relationship history,

moving from point A to point B.

I'm sorry, I'm thinking about a specific case in which
prior to the time the child wasn't living with the
other parent, for part of the time the child was,
being able to sort of use some of the details of other
abusive incidents to explain the history of the case
can be helpful to the extent that that's permissible.

But by and large, it's really helpful to talk about
why the survivor's state of mind in reference to the
most recent related to the incident being litigated
because in it's not going to be considered for the
issuance of any compensatory or punitive awards

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related to what happened in the past, at least it
informs the severity of the fear or trauma
response at present, particularly if you're dealing
with something like PTSD responses like nightmares

that are recurring or flashbacks that are recurring.

If you can't have the jury consider something that

happened six or seven years ago, you can at least use

it for the purpose of talking about the compounding

effect of repeated trauma.

In relation to the most recent incident.

>> Anton: Uh-huh.

And how do you work -- how do you explain to

attorneys, you know, a lot of us, we know a lot about

a wide range of topics but then when we have little

experience with specifics, we assume that a lot of the

times common sense will get us through but what

resources are most effective in educating attorneys

that don't often work in the field about trauma,

course of control and how that relates to bringing a

civil action.

>> Right.

So we do domestic violence 110 training with all the

attorneys that we work with and trauma 101 training

with all the attorneys that we work with but I'm not a
psychologist and I'm not a -- though I've been working

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with survivors of upwards of almost 10 years, I'm not

the -- I can't offer the same kind of expertise that a

mental health professional could.

And I have will utilized a lot of wonderful webinars

over the years from the ABA, from Battered Women's

Justice Project to a lot of different locations so a

lot of times if I'm looking for a specific issue that

they want a little bit more on, I'll refer to that,

our colleagues -- there are so many wonderful

resources out there and so many wonderful experts, as

well, but there's also tremendous reading materials

that are available.

We have a list of those and then we really, really

encourage attorneys to spend some time talking to

experts not necessarily about the specific

[indiscernible] but more generally, can you explain to

me the concept of flashbacks, what is disassociating,

how common is it, what are things that I'm -- can you

help me understand things that I'm seeing as I work

with this person that I think are related to the

D.V. that I don't quite understand and we try to be

extremely hands-one with the assistance that we

provide so we'll check in and say, are you seeing

something that's new to you?

Are you -- is there something that you think -- that 47

you don't completely understand?

Can you talk to us about any challenges that have been

presented to you, anything you think you might need

some more information on?

So that we can help support them with whatever

additional resources we might have in house or can

find for them with some research or with a call to one

of our experts or other colleagues.

But we -- sort of at the outset of every case make

sure to talk about what trauma could look like, what

the impacts of domestic violence are and how important

it is when we're trying to do no harm throughout our

advocacy to ask questions, to not assume that we know

the answer to something and instead talk to the survivor about what the experience actually was or how she's perceiving it or might be feeling and then utilize experts to put that in context.

>> Anton: Thank you.

You know, a lot of the times I found that evidence will reveal itself once an attorney spends time just getting to know her client and a lot of the time we essentially assume that there's no more evidence available or we assume that we know the facts of the case when we haven't spent enough time in conversation and I think that's borne out so that's what I would

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encourage folks to do.

>> Yeah.

Thank you for that.

That's so true.

To really dedicate the time necessary to have

conversations and follow-up conversations and open

line of communication throughout.

The memory can be jarred or new facts can come or a

recollection of something that could be available,

like you said, for additional evidence, so it's so

important to keep that communication open and

continuing.

If there are no more questions, I'll continue to

codifying domestic violence toward laws.

>> Anton: Thank you.

>> Okay.

So the importance of codifying domestic violence tort

laws.

What we find, some of the cases I had referenced over

the last few minutes is that there have been

domestic -- successful domestic violence tort

litigation in various jurisdictions that do not have

codified domestic violence authority and had so

there's been success utilizing intentional torts

and why invest in codifying for domestic violence

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tort.

So as we touched on earlier, domestic violence is not

equal to assault by a stranger, it's not akin to being

punched in a bar.

By someone you don't know.

So a statute that contemplates the dynamics of

domestic violence will better address the totality of

the harm so that, you know, from the very first

incident to the incident that might have transpired

several years later, the entire course of conduct is

being evaluated by the Court and juries are being

encouraged to consider all of the ways in which the

domestic violence is impacted the survivor's life

prior to her bringing suit.

This is critical in raising awareness about the fact

that this is a societal problem that is not tolerated.

If you think back to your law school days or your bar

preparation, the whole purpose of tort law is to

compensate the survivor for harm that the tortfeasor

caused but also to send a social message that this

behavior isn't tolerated and codifying a tort that

creates a distinct cause of action for survivors,

sends that message.

It sends a message that there is a price to be paid
for it and encourages survivors to bring suit. 50

And if there is a delineated cause of action, likely a

cause of action if they're already contemplating the

domestic violence tort, more survivors will be able to

bring suit and if there is a delineated tort and

hopefully an attorney's fees provision, more attorneys

will be incentivized to build the practice and so more

survivors will have representation, more attorneys can

build robust expertise in this area and more social

messages can be sent that indicate that domestic

violence is not going to be tolerated.

So here's a little bit about how our program works,

just so that you know.

We built partnerships with many different domestic violence service providers, shelter providers, domestic violence attorneys, family law attorneys and we encourage them to send cases to us.

We've developed a one-page screening tool that's a flow chart, essentially starts with a statute of limitations, the did the most recent incidents occur within the last year for those jurisdictions where it's a year or two years, for those jurisdictions where it's two years, three years, et cetera.

If so, they move on to a question about where the most recent incident happened and where the defendant resides.

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Where the parties reside, excuse me, so that we know where the case would be filed and what our attorney

resources are in that location.

And then what evidence the survivor has of the abuse

that she alleges.

Was there police involvement, is there a report

report, is there a protective order, is it criminal,

is it civil?

Is there -- are there photographs where there are

eyewitnesses?

Were there medical diagnoses.

Mental health diagnoses following the event, was there

property damage?

Was it assessed?

Were there any receipts or images of that and we ask

for all of that information because it's helpful for

us to know at the outset.

None of it is required, obviously sometimes the evidence is available as testimony and that wouldn't preclude our moving forward go with [indiscernible] take on the case but it's helpful to know particularly because some of the attorneys we work with have a tremendous risk appetite and are totally happy to take a case where there is very little evidence and others are not as inclined to take a case that there hasn't been a criminal conviction or plea or something that would serve as, you know, pretty unequivocal evidence of liability.

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And then finally we ask about what the assets are that the defendant has, assets and wages the defendant might have that would be -- we'd be able to pursue.

The reason for that is, of course, because we

wouldn't -- we don't want to take survivors through

the agony of another case to be litigated with little

promise for any return, so we can't pursue

compensation where there's nothing to be collected.

In those cases where there really are no garnishable

wages, no assets of any kind, no resources on the

other side, we can't place the case, and that's not to

say that we need to be able to find something that

would have -- a case where we'd expect some

seven-figure settlement at minimum, we've placed cases

where the abusers were earning 60, \$70,000, we just

need to make sure that wages can be garnished or

there's something that can be levied to help the

survivor get the compensation that she deserves and

not just a piece of paper and judgment-proof

defendant.

So cases will -- after the referral [indiscernible]

goes through that brief questionnaire, they sends it 53

over to us.

We'll do a full intake.

If the case is eligible, we will place the case with

an attorney.

Sometimes that can take quite a while but we're really

communicative with the clients who we meet and let

them know where we are in terms of stages.

And progress and what the concerns of attorneys are.

We'll keep them informed throughout the entirety of

that process.

Once we place a case, we do our initial training, the

one that I just referred to that's got the D.V. 101,
trauma 101 sort of basic outline of the dynamics of
domestic violence physical challenges to the attorneys
to just think about myths that they've encountered,
things that they might have seen, how to undo or
unpack some of that, how to be a really meaningful
advocate for a survivor and other tips, et cetera.

And then we contract with the attorney that we placed
the case with, where the client retains that attorney,
we contract with them to provide them training
mentorship, technical assistance and here are just
some of the things, sample pleadings, case research,
sample briefs, we have a few white papers that we can
send over, expert witnesses.

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We have a database of resumés and sort of

interapplication that experts have filled out when they want to work with us or getting referrals from us.

We have some sample examinations, we'll do strategic consultations to the extent that we can.

We're happy to help with some of the specific issues related to witness preparation and then guiding on collecting judgment.

We're really happy to help in any other way that we can.

I shared this -- recently, I had a case where the attorney reached out and said, I really need to figure out how to file a LIS pen dense in riverside county, California by the end of the day and I can't do it, I'm in court and I need you to help me do it.

So we figured out how to do that and got back to the attorney on it and that's just to say we want the attorneys we work with to feel really supported by our office so that as they're building expertise in a new area of law, for them, they feel encouraged the case goes well for them and they're inclined to take more and more cases for survivors in the future.

Here's -- sorry -- a little image of our screening tool.

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As you can see, it goes through the four questions that I had shared with you.

And then here's my contact information.

If you have specific questions, I would welcome them,

that you didn't get to ask over the course of the

webinar, that you think of later.

I would welcome them.

Please feel free to reach out any time.

We have all of our social media at the bottom of that

slide, as well.

You can follow us and keep abreast of all the things

that we're working on.

Thank you so much for your participation in this

webinar and I'll welcome any final questions.

>> Anton: Thank you so much, Amira.

A final question I have is, what do you see as

necessary to really encourage the development of tort

law in this country that's sensitive to the needs of

domestic violence survivors and to develop legislation

that's less -- we'll call it incident-specific and

more context-specific.

>> Well, thankfully, we have the two jurisdictions

that have already codified and successfully utilized

the tort law.

And having that enables -- having that, having those 56

successes, having the challenges, being able to build

from that place is really helpful but what we -- what

we hope to do is through a lot of -- many research

efforts and a lot of diligent work, talking to

attorneys, talking to legislators and talking to

survivors and D.V. advocates, craft proposed language

and bring it to the various D.V. coalitions in every

jurisdiction and ask about what would work, what

wouldn't work, what the challenges they think are,

whether things would need to be modified for that

place specifically and then try to really bring
some -- find someone who can help push this forward in
that state and rally around them to support them with
the kind of statistics and facts about the prevalence
of domestic violence and the cost of domestic violence
in that state to encourage legislation.

With that being said, obviously it's a tremendous
challenge to -- it's not a surprise to anyone that
domestic violence is often minimized -- the impact of
domestic violence is of minimized and the -- it's not
seen as an individual issue, more as a social issue.

In many contexts and so a big barrier to passing -- a
big barrier to really mobilizing around this is
education on the real cost of domestic violence in
each state and that's requiring a ton of research but

there are a lot of wonderful people who are working on

that and doing that and we can cull some of that to

help flee try to effectuate change state by state but

a really big barrier is, generally, tort-wise

defendant friendly and generally our society is

inclined to blame victims and at least in their -- the

way that we penalize survivors for the abuse that

they've suffered and so with those two things in mind,

there is a big social education that needs to take

place in terms of the cost benefit analysis of

creating this cause of action and how much of an

impact it could have socially and in individual lives

in terms of having real consequences for people's

actions and helping people -- helping survivors

sustain their own safety.

>> Anton: Thanks, Amira.

We had another question come in about whether or not

Free From takes or refers to other attorneys for civil

rights violations by law enforcement and I wonder who

you work with on those questions, if you do.

>> We haven't.

If a case came in and that was -- and that was a

relevant issue, you know, with every case that comes

in even if it's not something that we encounter or are

working with directly, we try to make meaningful 58

referrals, reach out to colleagues and help but that

isn't something that we've worked with.

That we're -- that we have anticipated working with

yet.

>> Anton: For the person writing in about that, I

would really encourage you to contact your local ACLU

chapter who typically have experience in handle what

are called section 1983 claims, so civil rights

violations claims for failure to enforce or for

affirmatively violating civil rights but also, Amira, I

would like to thank you for this webinar, for both

webinars, to both you and Sonya and also for that

encouraging call to work with state coalitions and a

lot of stakeholders in effectuating change will at the

State houses to essentially allow survivors more

latitude to bring justice for themselves and allow us

to bring -- to work with them to bring justice

because, as you pointed out very well, tort law in

this country is a very narrow thing and not allowing

for many implements but it still allows for more possibilities than us as attorneys and certainly us as advocates allow ourselves to think about and we really need to look at tort law as an avenue for effectuating change and tolls bring justice for individual clients.

Absolutely.

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Thank you so much.

I really appreciate everyone who participated.

Thank you, Anton and Kari and it's an open invitation

to reach out to us.

We're glad to be connected with you and get to know

you.

Thank you.

>> Thank you.

>> Kari: Thanks so much.

I just wanted to remind everybody to look out for the email from me that will have a link to the recording and the materials and we also have a brief survey on there and we would appreciate feedback.

But thank you all again for joining us today and we'll see you soon.

Bye-bye.

[Webinar concluded]

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