

**DAY 1 – OCTOBER 13, 2022****KEYNOTE PANEL 3: ALIGNING THE LAW WITH TODAY’S CONCEPTIONS OF DOMESTIC VIOLENCE: COERCIVE CONTROL, LETHALITY, AND FEMICIDE<sup>1</sup>****JENNIFER FRIEDMAN****DIRECTOR, BRONX AND MANHATTAN LEGAL PROJECT AND POLICY, SANCTUARY FOR FAMILIES****DR. CHITRA RAGHAVAN****PROFESSOR OF PSYCHOLOGY AND DIRECTOR OF THE FORENSIC MENTAL HEALTH COUNSELING PROGRAM, JOHN JAY COLLEGE****TANYA SELVARATNAM****SENIOR DIRECTOR, GENDER JUSTICE NARRATIVES, POP CULTURE COLLABORATIVE****PAULA COHEN****SENIOR ATTORNEY, SUPPORTING FAMILIES WORKGROUP, LEGAL AID FOUNDATION OF LOS ANGELES (LAFLA)****ANNA MARIA DIAMANTI****DIRECTOR, FAMILY AND MATRIMONIAL PRACTICE, HER JUSTICE****JENNIFER FRIEDMAN:**

Hi, everyone. So, we have two elements that we have not had yet in this panel. We have a PowerPoint in the room, and we have a speaker coming to us from California. I hope that the technology is working, and I am looking forward to starting. So, good afternoon. I am honored to be joined by this stellar expert panel, and to begin this conversation about coercive control, lethality, and femicide. And we could not have had a more perfect introduction, by the amazing Stephanie McGraw, that we just heard.

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<sup>1</sup> See Sanctuary for Families, *Aligning the Law w/ Today’s Conceptions of Domestic Violence: Coercive Control, Lethality, and Femicide*, YOUTUBE (Oct. 24, 2022) <https://www.youtube.com/watch?v=HCsYGu5yKpo> [<https://perma.cc/H4D8-TD6R>].

I would just like to reiterate, first of all, the trigger warnings that we have already given earlier today. As it should be clear, from the name of this panel, we are certainly addressing traumatic topics and personal experiences. And I urge folks to engage in self-care.

And I would just like to briefly introduce our esteemed.

To my left, Chitra Raghavan is a Professor of Psychology and Director of the Forensic Mental Health Counseling Program at John Jay College. She is a leader in the field, conducts groundbreaking research, and testifies regularly as an expert witness.

Tanya Selvaratnam is the Senior Director for Gender Justice Narratives, for the Pop Culture Collaborative. Tanya is also the author of *Assume Nothing: A Story of Intimate Violence*,<sup>2</sup> about her experience being in an abusive relationship with the then New York State Attorney General, Eric Schneiderman.

Anna Maria Diamanti has dedicated her legal career to Justice for Survivors. She is a member of the Family Law Roundtable, an expert in family law litigation, and the Director of the Family and Matrimonial Practice at Her Justice.

Paula Cohen, joining us from California, is also an expert practitioner in this field. She is a Senior Attorney in the Supporting Families Workgroup at the Legal Aid Foundation of Los Angeles, where she has served survivors for over twenty-five years.

So, I would like to dive right in.

Okay. I'm turning first to Dr. Raghavan. Can you start us off by talking about coercive control? What is it? How do you define it? And how do survivors experience it?

DR. CHITRA RAGHAVAN:

Hi, folks, I am delighted to be here. I would like to start very quickly with a historical definition of partner violence, because that will actually help inform why we are stuck.

Historically, we defined it as essentially physical or psychological abuse. And we counted it. So, how many times did he hit you? Five times in the last six

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<sup>2</sup> TANYA SELVARATNAM, *ASSUME NOTHING: A STORY OF INTIMATE VIOLENCE* (2020).

months? Let's add that up, with how many times did he yell at you? Twice? All right, seven. How about you, fifteen, okay. You had it worse than her. And this remains, by the way, the dominant way of measuring partner violence in most parts of the world, and many parts of the United States.

And it is problematic because there's lots of missing data. You miss the nuances of abuse dynamics. You miss classified perpetrators. You misidentify victims. For example, when women use violence, and many do, it is seen as evidence that partner violence is not gendered. Or, we are often dismissive of same sex violence simply because we don't know how to measure it.

And we misclassify incidence as minor, but if we actually understood the context, we would know that those—the cold look, the silence, the breaking of the teacup—was not minor, but extremely severe.

And dismissing data results in partner violence situations being invisible to police and the courts. This then essentially leads to the victim's credibility, because the data are missing, so we ask questions. And these are questions I am asked in court all the time: Why stay if the abuse was so bad? Or why disclose sexual abuse so late in the investigation? I am currently working on multiple cases with the latter.

Which brings us to the utility of coercive control. In a nutshell, it increases sensitivity to partner violence, and very importantly, it really gives us a better framework for understanding what might seem like incomprehensible victim behaviors but also traumatic outcomes.

I would like us to pull back a tiny bit and conceptually think about what undergirds coercive control as a power dynamic. And it is a power imbalance that is continuously exploited. In other words, it doesn't come and go. It's not a one act thing. It's in the relationship throughout. And a way, perhaps, that might be helpful to think about it is that it's like an electrical current. It's always there. It's aversive. It's the woman, or sometimes the man, or the non-binary or transgender individual, who is in pain, but every now and then there is kind of like a voltage that goes up, and there is an act that is really frightening and intimidating, and then it goes back to a level where it is unpleasant, but it reminds the person of what's happening.

So, my students might call that looping and autocatalyzing. What we mean is one act goes to another, to another, to another. It is always looping. It doesn't stop. And sometimes one act can catalyze another, and sort of get the other tactic to start to feel important. It happens in all situations. It's pervasive. And importantly, the abuser has privileged knowledge. He knows what she is really

frightened about, what hurts her, what embarrasses her, what humiliates her, and those are the areas in which he really pushes down deep.

Some coercive tactics are very obvious, like having injuries from being beaten, or screaming loudly. But many are invisible. And those little invisible things are the glue that eventually trap the man or woman. And of course, it is context dependent.

Coercive control is not the same as a controlling behavior. It's different. It targets all domains. It's not just that the abuser is having a bad day, or, as a lawyer once said to me, "he was feeling kind of moody," and "you're so histrionic, you don't get it." You know, give the guy a chance. No. In healthy relationships, when there is control, there should be negotiation. There is give and take. You might lose today, but you might win tomorrow.

In a coercively controlling relationship, there is no negotiation. Or, if you try, the resistance is met with increased coercion and increased retaliation. Things get worse for you. And so, you eventually stop, right? That's a big difference between coercive control and normal control.

Another important difference is the end goal of coercive control. What undergirds this power imbalance? And we know one, but we forget the other. We know that the end goal is dependency and submission, so that she stays, or she behaves, or that she—in some cases, he—is obedient. But there is another really important goal, where the abuser needs to be validated as correct. That is internal to the psychology of abuse. The abuser needs to know that he is correct. He wants to be affirmed. And a great deal of what happens in coercive control is to get that affirmation. Well, if the abuser is affirmed as correct, then automatically the victim is seen as unreliable.

My students and I divide the coercive control tactics into eight categories. There are differing ways to do it. We do it this way because we want it to be available and accessible to first responders. And by that, we mean law enforcement, people in emergency rooms, the first time you are evaluating a client, young lawyers, but also social workers doing the first screen. So, it needs to be accessible and usable. It is a very complex construct.

And I am going to run through these five quickly [surveillance, isolation, micro-regulation, deprivation, degradation], and then I will try to give you an illustration of how they look, catalyze, and work together.

So, what is surveillance? Essentially, it is keeping tabs on, and accordingly reducing, the woman or the victim's private and public space. And by being reduced, she feels that she is being watched all the time. So, this could be

physically stalking her, or also checking social media, phone, car GPS, all sorts of different ways. This then creates a feeling that he is constantly present.

Isolation is essentially that you have difficulty reaching out for help because you don't have a very good social network. And this can happen because he surveils you. This can happen because he sweet talks you, seduces you. This can happen because he makes himself a nuisance. He embarrasses you at parties. He blows up when you are on the phone. He makes it so difficult that you just stop. He does not even have to take the phone away. He can just make it impossible.

But there is another form of isolation that we don't much talk about, which is internal. If you start to be surveilled and you start to be anxious and nervous around him, at some point, you stop feeling that anybody can actually help you. You might have people you could call, but you start believing that they won't help you. They won't believe you. And the sort of inward facing isolation is just as important as the outward facing.

Micro-regulation, as the name suggests, is constant, trivial, unpredictable demands, strict rules, or details that you can never get right, because you are not supposed to get them right. And they are little things, like how you walk, how you talk, how you wear your hair, your lipstick, the way you tell jokes, which leads to deprivation—another tactic. It is rarely measured, and it is easy for lawyers to measure this. Access to shelter, money, medical care, sleep is an important tactic. And typically, these happen, and they are woven through the relationship so that the woman is often not in a place to resist.

Degradation, sometimes known as psychological abuse. We call it degradation because really what happens here is the core of who the woman, or the victim is, is attacked and degraded until they lose the sense of who they are. And this could be done by name calling, blackmail, but also a lot of the other methods I've talked about.

Let me put together a composite of the last ten cases or so I've done. They've all had intimidation, manipulation, and sexual abuse.

Intimidation, what is it? At its core, it is the creation of fear. So, how somebody creates fear, but also how you create dread and anxiety. Dread is really undervalued. Dread is when you are afraid something will happen. And dread is a much more powerful emotion than fear, because what it does is it paralyzes you and keeps you from doing anything. If I do this, will he hit me? If I do this, will he rape me? If I do this, will he embarrass me? So, you pull back. And intimidation is essentially the creation of fear and dread—with or without physical violence, the threats of force, often past remembrances, which leads into manipulation. Very simply, manipulation is rewriting your reality, so you

doubt yourself, you question yourself, or you sort of stop—you give up trying to present your perspective.

And what does it do? Essentially, you give in because you are afraid, or you give in because you don't know how to act. You doubt your reality. Which means you are losing autonomy and agency. You blame yourself for what is happening. And little by little, you rely on your abuser, either because of paralysis, because you are afraid, or because you doubt your judgement. It sort of doesn't matter how you get there. It's sort of like being attacked in different ways, which validates and is correct. No matter how you get there, if you ask him for something, you are validating him, and that's what he wants.

Sexual abuse is very powerful. It happens, we know, in about forty percent of abusive relationships. It's invisible. It happens in the private domain. And women typically don't have language to describe it. And most women don't know that it's against the law. Why should you? And because of that, women start by feeling confused, overwhelmed—"is this really happening to me?" It's often interspersed with tenderness, making it more confusing. What many courts perhaps don't know is that when there is any kind of sexual violation and there is a loss of bodily autonomy, shame will creep in. This is an evolutionarily programmed emotion. With that comes emotional paralysis. And with that comes covering up the abuse. These things happen not just because often women don't know, and often women are deeply embarrassed, but it is also because we are programmed to cover up things that we are ashamed of. And that is automatically a loss of agency.

If we put this all together—you're ashamed, you're paralyzed, you're hesitant—it's coming at you in all different angles. And one thing catalyzes the other. And the end goal is you're silent. And if you are silent, he is validated.

Why go to so much trouble? Why not just, you know, hit her hard, and many times? Because psychological captivity is much more powerful. And it is much more durable. And it confuses free will. And woman, and other victims, start to wonder, did I ask for it? Why did I not protest? You know, did I consent? And throughout this kind of confusion, one, you don't look good in court. Two, you don't know what to tell your lawyers or your social workers. You tell them much later in the process, which then weakens your credibility, and makes him look good.

So, to summarize, we should measure it as a dynamic. It is possible. And why? Because we actually get the victim's experience in a much more accurate way. And I say this everywhere, every time, with anybody I can tell—the burden of establishing partner violence should be with the evaluator, not the victim. We would never ask a man or a woman who has been embezzled, on the

stand, “hey can you please work out the legal ways in which you got embarrassed to make my job of prosecuting easier?” But why do we ask women, and why do we then tell them that they are not credible, when we ask them to make the case on the stand. This is bias and double standard. So, you know, as inspiration, and maybe a little challenge, we should be the ones doing the evaluation and properly. Thank you.

JENNIFER FRIEDMAN:

I could listen to Chitra all day, and also, I just had my mind simply blown right there. So, thank you for that. That was amazing.

Tanya, I would like to turn now to you, and your experience. You came forward publicly and exposed the domestic violence that you were experiencing, in your relationship with Eric Schneiderman. Can you tell us about that, and how coercive control played a role in it?

TANYA SELVARATNAM:

I mean I picked excerpts from my book<sup>3</sup>, not knowing what you were going to talk about. And I’m kind of shuddering on the inside. In a good way. You know, this is the comradery. But it was a little over five years ago that I first spoke with you, Jennifer, about what was happening. And I remember you said to me, many times, that I have to go through an un-brainwashing. Because the coercive control had sunk in so deep. And when you were talking that just came to my mind.

So, I’m just going to read a few excerpts from the book, that illustrate, kind of coincidentally, what you were talking about.

“Early in our relationship, he told me that he could tap my phone and have me followed. Because he was the Attorney General of New York State, I knew he had the power to do it. His power was a threat that ran throughout our relationship. Over the course of about a year, I had been broken down by the slapping, spitting, and choking that he had inflicted on me during sex, never with my consent, and by his gaslighting, which had destroyed my self-esteem.

Often, when he looked at my chest, he would tell me to see his plastic surgeon and get rid of my scars. [I have scars that run down my torso from surgery.] In the early days of our relationship, he had spoken about my scars as if they were a badge of courage. But then he also suggested that I get a boob job and get into shape. He made me think that I have to change how I look.

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<sup>3</sup> TANYA SELVARATNAM, *ASSUME NOTHING: A STORY OF INTIMATE VIOLENCE* (2020).

He didn't like me talking on the phone, even though he was often on the phone himself. If he heard me on the phone, in another room, with the door closed, he would come, open the door, glare at me, and shake his head. I would try to wrap up the call quickly. During one call, with my mother, she said, you get very quiet when he's around. My friends notice when I tried to talk to you.

And there was his preventing me from eating certain foods. At a dinner party that coincided with Valentine's Day, waiters came by with plates of beautifully arranged hors d'oeuvres. One came by with a chicken dish. I really wanted to eat it, but because he was a pescatarian, and was there, I didn't. He wouldn't let me eat meat in his presence. He glared at me, and out of earshot of anyone else, said, I saw the way you were looking at that."

It's almost ludicrous reading these words now.

"Another time, we were having dinner at a seafood restaurant on the Upper West Side. Complimentary chocolate pudding was served at the end of the meal. Chocolate pudding is one of my favorite desserts. Eric wasn't eating his, so, after I finished mine, I asked if I could have the second one. The cup was quite small. He looked at me as though I were a misbehaving child, and said, bad turnip. I felt as though I couldn't eat sweets, and couldn't eat meat, with him around. I cherished the nights I met friends for dinner. Whether I was in the mood for meat or dessert, or not, I ordered both.

His need to subjugate me extended to our sexual interactions. When he first slapped me in the face while we were making love, it happened in the blink of an eye. No man had ever done that to me. He seemed to be testing me. I didn't know what to do. I tried to make sense of it. I had thought of him as a mediator, someone who espoused spirituality, and who fought on behalf of vulnerable people. At that moment, I became aware that he could inflict great harm on me. Over time, the slaps got harder and began to be accompanied by demands. In bed, he would slap me until I agreed to find him a young girl for a three-way. I told him what he wanted to hear, even though I knew it was never going to happen.

He would slap me until I agreed to call him Master or Daddy. He recounted his fantasies of finding me somewhere far away to be his slave, his brown girl. I wondered what he called his previous girlfriends. The ones I was aware of were white. With me, he said I had wild hair and unsightly scars, and he wanted me to be his slave.

Publicly, he was a friend and ally to communities of color. He was a big supporter and fan of jazz artists. But in the bedroom, he wanted to be Master



and slap around his slave. He would hurl spit into my mouth and mash his lips against mine so that it was hard for me to breathe. A few times, he put his hands around my throat and tried to choke me. When I tried to move his hands, he ordered me to let go. I would say, hey, that hurts. I would tell him to stop. But he didn't respond to my protests. Each time, he looked at me as if he were possessed, and then the moment quickly passed. I felt as if I had vertigo.

I didn't realize it at the time, but I was dealing with the kind of abuse that can go on between people in committed relationships, intimate violence. I tolerated the situation because it was disorienting and so disconnected from the person he presented as in public. By day, he was the crusading attorney general, and he had to be nimble and sober. At night, as soon as he got home, he would start swigging from a bottle, usually wine, but sometimes vodka. I tried to get him to pour it into a glass so he could keep track of how much he was consuming. He would pour me a glass of bourbon and push it toward me saying, drink your bourbon.

Sometimes I would be woken up by his fingers inside me, or his hand squeezing parts of my body. He seemed to be moving in his sleep, and would say things like, I love you, or my bad, bad, girl, daddy's going to rape you. I remember, on a few occasions, after he had passed out, I would go to the guest room and sit down, with tears rolling down my cheeks. He started asking me to hide the bottles from him. I took the task seriously but found it increasingly difficult to find a hiding place he wouldn't discover. Under the couch, behind the television, nowhere seemed safe. And then, I thought, I'll put the vodka bottle deep in my bag of dirty laundry. But in the morning, the bottle was empty. He said smugly, you didn't do your job.

Don't be afraid. Don't be ashamed. I told myself every day in the months before my story of abuse became public. I had decided to come forward after I had realized I was part of a pattern. It wasn't just my story, other women shared it. And I had to tell it to help prevent still others from having it become their story too.

In early January 2018, I spoke with David Remnick, the editor of *The New Yorker*, about my experience with Eric. I gave Remnick my word that I wouldn't talk to other publications while he decided how to proceed. He told me that if I were alone in coming forward, I could be in peril.

On March 20, my birthday, *New Yorker* staff writer Jane Mayer called me, at Remnick's request, wanting to hear about my experience in my own words. Then she echoed Remnick's opinion. If I were alone in coming forward, I could be in peril. She asked me to give her time while she tried to contact previous girlfriends of Eric. Within two weeks she had spoken with two of them. And

their stories were eerily similar to mine. At that point, I knew that the story's coming out was inevitable.

Eric would often say, assume nothing. He would also say trust no one. In my relationship with him, I went through the classic stages that structure intimate partner violence, stages that many victims go through [and that Jennifer helped me understand]. Entrapment, isolation, control, demeaning, and abuse.

After *The New Yorker* article came out, I worked hard to understand how I had gotten into a relationship with a man who had made me feel so bad about myself. I had a long bridge to cross before I could be in an intimate relationship again. As a child, I had witnessed domestic violence in my home, my father beating my mother. I had never thought I would become a victim.

A friend said he had been shocked about what had happened to me, because he thought of me as fierce, independent, and an advocate for women's rights and safety. But when I met Eric, I was on a trajectory of recovering from a series of health issues—multiple miscarriages and cancer, followed by a divorce. I was secure with regard to my work, and my friendships, but I was weakened with regard to romance. Then my path intersected with that of Eric, whom I would later discover had a history of breaking strong women down. I was ripe for the breaking. It was the perfect storm.

I wish I didn't have memories of being a victim myself. No one wants such memories. But I feel that somehow the universe intended for me to encounter him and eventually end a cycle with his intimate partners that had been going on for a long time. [I would later find out that it had actually been going on for at least four decades, which was much longer than the about ten years I knew at the time *The New Yorker* story came out.]

In *When Women Were Birds*, Terry Tempest Williams cited the poet Muriel Rukeyser, 'What would happen if one woman told the truth about her life? The world would split open.'"

Thank you for listening to my story. By doing so, you have helped me realize the power of my voice. Let's split the world open together.

JENNIFER FRIEDMAN:

Tanya, thank you so much for sharing your story. I feel like we all need to take a deep breath. We can all do that. I did. Thank you. We spoke a lot about your situation, at the time. And one of the things that you debated was should I come forward? Should I go to the police? Should I go to family court?

And one of the things we talked about was the fact that, well, there were a lot of reasons that he would be particularly hard to face, in court. But also, many of the things he was doing came under the heading of coercive control and were not as easy to allege and not as easy to prove, and that you would be really scrutinized.

TANYA SELVARATNAM:

Well, I'm still being scrutinized.

JENNIFER FRIEDMAN:

Yes.

TANYA SELVARATNAM:

But I can take it.

JENNIFER FRIEDMAN:

Yeah, of course. But fortunately, coming forward was a good way for you to ultimately tell your story, versus going to the police, for example.

TANYA SELVARATNAM:

Yeah, that was a non-starter.

JENNIFER FRIEDMAN:

Yes.

TANYA SELVARATNAM:

And also, I recognized, very much, then and now, that I am privileged to have been able to speak out, because most people suffer in silence. And most stories wouldn't have gotten that kind of coverage. So, it was a strategic move on my part.

JENNIFER FRIEDMAN:

Yes.

TANYA SELVARATNAM:

I knew it. And you and I discussed that a lot.

JENNIFER FRIEDMAN:

Yes.

TANYA SELVARATNAM:

In those months.

JENNIFER FRIEDMAN:

And I would just like to say that I know that Tanya has received many, many, like thousands almost, of emails and letters and communications, from victims who have thanked her for telling her story. So, we thank you, and I know they thank you as well.

TANYA SELVARATNAM:

Oh, I thank you.

JENNIFER FRIEDMAN:

So, I am going to turn to Anna Maria. Tanya's experience, I'm sure, resonates with many of the stories of survivors that you have served in your legal practice. The name of this panel, I think, is something about, "Aligning the Law with Today's Understanding of Domestic Violence." We understand coercive control. We have just heard about it. Do judges understand coercive control?

ANNA MARIA DIAMANTI

Thanks, Jen. I am very happy to be here, and to be on this panel. I am also in the very unfortunate position of following Chitra and Tanya, so I am going to apologize in advance for not being nearly as compelling. This is the dry technical part of the panel.

So, in New York State, coercive control is not a family offense. And for those who are not New York practitioners, just by way of quick background, in family court, in order to obtain an Order of Protection against someone, you have to have a certain type of relationship—be related by blood, marriage, or formerly married, have a child in common, or be in an intimate partnership with them. And in addition to that, you have to allege and prove what is called a family offense. And this is a list of specifically enumerated crimes or violations

that are in the New York State Penal Code that have been incorporated into the New York State Family Court Act.

So, in order to get an Order of Protection, you have to prove that an actual crime or a violation occurred. Something that violates the Penal Code. There is a crime of coercion, but it's not related. That's forcing someone to commit a crime or do something they don't want to do, essentially. But coercive control, in and of itself, is not a crime.

The law, as it is written, in New York, is very incident focused. As Chitra was talking about, it really relies on the victim, or the petitioner, alleging a series of incidents, that are time and place specific and that are crimes. And, as we all know, in reality, domestic violence, intimate partner violence, is about a pattern of conduct.

So, under the current framework, there would have to be enumerated, as a crime or violation in the Penal Code, the crime of coercive control. It would have to be spelled out, defined. And then, it would have to be explicitly incorporated into Section 812 of the Family Court Act, as a family offense.

We could also imagine an alternate framework where it is not necessarily a crime, but it is enumerated, in the Family Court Act, or in the Domestic Relations Law, and is defined and explicitly made a family offense, or at least made a factor to consider in determining whether to grant an Order of Protection, or in custody determinations, etc.. So, those are the two sort of possibilities as to how we could legislatively bring the issue of coercive control into our family courts.

And in either framework, they could be made a factor in, not just custody, but also in divorce cases, equitable distribution, and child or spousal support, etc.

Now, the law, as it presently stands, has some room for addressing coercive controlling behavior. But it is very limited. What is typically not actionable, unless you can somehow creatively squeeze it into a crime—something in the Penal Code—are things like threatening suicide, withholding food, checking someone's emails, phone, social media, etc.. Withholding a get or a religious divorce. Or refusing to apply to adjust the immigration status of your spouse. Those are all part and parcel of typical coercive controlling behavior, but none of those things will get you an Order of Protection.

Also, this series of incidents model, does not account for big picture factors, such as is the abuse—the behavior that is occurring—escalating? Or are there high-risk factors in the background? Such as the abuser being unemployed, the

presence of someone else's child in the home, etc. There are a number of high-risk factors, which we are going to talk about in a bit, that again, this incident model does not account for.

So, and as Chitra mentioned at the end, which blew all of our minds, the burden is entirely on the victim to prove the case. If you are the petitioner, you are the one who has to bring all the evidence. And if you don't know what your rights are, you don't know how to do this creative lawyering, or maybe your lawyer isn't well versed in this issue and you don't make that case, your judge or adjudicator is not obligated to ask you anything. They can sit back and say, "I'm sorry, the story you have told me is not sufficient, you don't get your Order of Protection." And that's that.

Now, having said that, there is some room. Many family offenses do not require any physical contact, let alone physical violence. And you can fit, again in this creative way, a lot of controlling behavior into harassment, disorderly conduct, menacing, reckless endangerment, stalking, coercion, and sexual misconduct, etc.

So, there are a number of enumerated family offenses that you can try to make work, depending on the specifics of your case. There is also an opportunity, in family offense cases, to show aggravating circumstances. That is behavior that could get you, instead of an up to two-year Order of Protection, an Order of Protection of up to five years.

And one of the enumerated aggravating circumstances is any incidences, occurrences, behaviors, etc., that constitute immediate and ongoing danger, to the petitioner. This is very broad language. It is meant to be broad. And there is an opportunity to say, to the adjudicator, okay here is some context you need to know that makes the situation more serious.

Now, the disadvantage to using aggravating circumstances is that determination comes after your trial. You have already had to have established and proven that at least one family offense occurred. This is in the dispositional phase.

The advantage though is that because it is in the dispositional phase, your evidentiary rules are a little bit relaxed. So, if you can afford to hire an amazing expert, like Chitra, to testify in your trial, then in your dispositional phase, you might be able to introduce one of her publications, about coercive control, and why it is so dangerous and much more serious than it might appear on its face.

Another opportunity is, in New York, we allow extensions for Orders of Protection for good cause. And good cause is whatever you can convince the

judge good cause is. So, if you can convince the judge that coercive controlling behavior is good cause to extend your Order, there is an opportunity there.

Also, in the child custody context, domestic violence is a factor, a mandatory factor that the courts must consider, when determining custody. And domestic violence, in that context, is not defined as family offenses. It's the much broader social services law definition of domestic violence. So, there is an opportunity to show a much broader pattern of behavior than that limited family offense context.

JENNIFER FRIEDMAN:

And actually, Anna Maria, I'm going to stop you there, is that okay?

ANNA MARIA DIAMANTI:

Yes.

JENNIFER FRIEDMAN:

Okay, great. Because I want to turn to California, where there is coercive control legislation. And that is where we are joined by Paula Cohen. And that last thing you just said, Anna Maria, is the perfect segue because one question is, do we need coercive control legislation in New York, in order to get Orders of Protection? Maybe yes. Maybe no. When, or why would we need it? And perhaps one of the best uses for it would be, in regard to the following, custody case, which we know often happens. So, Paula, I am going to turn to you.

PAULA COHEN:

Yes, can you hear me?

JENNIFER FRIEDMAN:

Yes, we can hear you. Thank you. And I'd just ask, what has your experience been, in California, with having this legislation, as a practitioner?

PAULA COHEN:

Yes, so first, thank you so much for having me. My view isn't quite as spectacular as yours, but we did have rain here this week, in California. So, we are very excited. That's our first rain since last winter. So, greetings from California. I can share my screen, and you can tell me if you can see this. Can you see that?

JENNIFER FRIEDMAN:

Yes.

PAULA COHEN:

Okay. So, yes, it is definitely helpful. I bring you greetings from California, from a state where we have coercive control now on the books, and we use it regularly.

What I would say is, as domestic violence advocates, we have always understood what coercive control is, even if we didn't actually call it coercive control. We have talked, for decades, about isolation and manipulation, perhaps somewhat to deaf ears. And obviously, I very much appreciate Chitra and Tanya's words. I feel like both of you have been sitting in our domestic violence clinic and listening to all the cases, because each case is completely unique, but has certain markers that make them almost the same as all the other cases. And Chitra succinctly listed those eight markers of coercive control that we talk about in our domestic violence restraining order applications every day.

What I am hoping you can see, on the screen, is the first part of the statute<sup>4</sup>, which talks about the totality of circumstances and that is huge because it provides context, which is what Chitra was talking about. It's very miserable, but at the same time very easy to describe a client who is threatened with a loaded gun. We can do that in two sentences. We can make it terrifying. We can make it visually very imaginable, almost touchable. We can do it in very few words.

But coercive control, we can't do in very few words, because as Chitra explained, it is the whole pattern of the relationship. And the clients come to us without the vocabulary to describe it. So, having a checklist like the one provided this morning, or having one of the many other coercive control checklists you can find online, and asking the client softly, quietly, patiently if any of these things have happened, slowly you begin to paint a picture of coercive control.

What I love about our California statute—and I hope you can see it on the screen, the bold is my bold [it's not highlighted and bold in the statute]—but what I love is our statute uses particular vocabulary that we can cite to in our applications. So, it gives a non-limiting list of examples of what coercive

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<sup>4</sup> Cal. Fam. Code, § 6320(c) (Deering, Lexis Advance through the 2022 Regular Session).



control might include. And look, you can see on the screen, that list includes isolating, depriving, controlling, regulating, monitoring, compelling, etc. You will see words that you saw and heard in Chitra's list, a checklist of coercive control. And we use those words in our declarations.

So, if we are describing the isolation, we can spend a few sentences talking about how he never let her out. He didn't let her look at the clerk in the grocery store. He didn't let her work. All of those things. And we can actually cite to the statute. So, if you are proposing a statute, in New York, I would say the vocabulary and the non-exhaustive list of examples is super, super helpful.

I also want to address, and I would like to show you some photographs of text messages. We almost always use text messages now, in our applications for restraining orders, because it is such a fertile ground, for examples of violence, abuse, and coercive control.

This one, on the screen, [text reads: "I better never see him or I'll kill him with my bare hands. I've already done it with one punch."] you will recognize as a very sadly, typical kind of domestic violence threat. Any restraining order that we have that kind of text to attach, is going to be granted. In California, we have to show actual violence or a specific threat of imminent harm. And obviously, that qualifies.

But when it comes to coercive control, I thought this one was a good example. I realize you may not be able to see it on your screen. So, I am going to explain that this text came from a client who was a doctor in her country of origin, as was her husband, from the same country. And they came to the United States. He came first, was already licensed in California, and then he married her in their home country, and brought her out, with the promise that she would also get licensed, and they would both be able to practice medicine in California.

Well, he pretty much locked her in the house. There was horrendous sexual abuse that she definitely did not have the vocabulary to describe, and certainly didn't want to, at any length, on the stand. But we have this text that I thought was so helpful for coercive control. He says when he is coming home from work. She says let me know when you're on your way. And then he sends her a message, "Why you open the door?" Well, first of all, how did he know she opened the door? Because he had cameras everywhere. This is a doctor working in a hospital, with a very important and impressive job, in California. But he had cameras on his wife at home, to find out what she was doing. To know every moment what she was doing. And she was not allowed to open the door. So, he sent her a text message, "Why you open the door?" She said, "I thought my package came." And he sends her that emoji [angry face emoji]. Now, it's only

an emoji, but I think that's a pretty terrifying emoji, and we made that argument in court. That emoji holds in it, the whole, if you look at the totality of circumstances, the whole threat of how he might be responding and treating her and abusing her, when he gets home.

He sends that emoji, and she clarifies about the package, from USPS, from the United States Postal Service. And he resent the angry emoji with a "What" and all those question marks, if you can see them. Like super angry, as if he's shouting, as if it's in all caps. And then, "Don't open the door when I'm not there." And we used this as an example of him isolating her, even though she was—well, there's no excuse. We used this as an example of him isolating her, and the judge totally got it.

I have one more text from that relationship, which is about how she was studying for the exam to become a licensed doctor in California. But when he went to work, he cut off the internet so that she could not study while he was gone. And there is a series of texts when she starts getting stronger and bolder and starts kind of standing up for herself. For a long time this happened, and she didn't do anything. But then there is a series of texts where she says "I'll never forget that you did this to me." And he tells her she has to learn to speak respectfully, to talk with people respectfully, and it carries on with him telling her about how she is supposed to dress, and how she is supposed to speak with clerks in stores, and things like that.

So, I am going to stop sharing, so I can hopefully see you, or at least see the panel, and say that it is extremely valuable to have the code. Just so you know, the first countries to enact coercive control as part of domestic violence, were the U.K. and Wales. So, proud of my home country. That was in 2015. And then, Hawaii in 2020. And then California in 2021. So, there are several countries and states that New York can reference to see how we have done this. I would say we haven't had it long enough yet to know exactly what the problems are with the language, but using the language of the code is extremely helpful. And I certainly encourage New York to press forward. Because I think it is easy for us to say, oh the judge doesn't get it. But it is our job to educate the judge, and to tell our client's story in a way that helps the judge to understand.

Before I finish, I did want to share one other thing. So, let me just share this screen. And then I will finish, Jennifer.

This is an extract from a book called, *In the Dream House*, by Carmen Maria Machado.<sup>5</sup> I actually tend not to read a lot of things about domestic violence, or watch movies about domestic violence, because my whole career is

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<sup>5</sup> CARMEN MARIA MACHADO, *IN THE DREAM HOUSE: A MEMOIR* (2019).

filled with it, and I like to have my off time be off. But I felt that this book so powerfully explains, and gives context to coercive control, that if you wanted to understand it better, and if you wanted to understand how to express yourself, to a judge, Carmen Maria Machado's book is just so powerful. She really is wrenching in the way she describes the psychological abuse.

And this example, I'm not sure if you can see it, I can read to you a couple of sentences. She says, "You have this fantasy, this fucked up fantasy, of being able to whip out your phone and pull some awful photo of yourself, looking glazed and disinterested, and half of your face covered in a pulsing star. This is, as you said, fucked up. There are probably millions of people on the blunt end of a lover's fist, who pray for the opposite, daily, or even hourly. And to put that sort of wish into the universe is demented in the extreme. But you will wish for it anyway. Clarity is an intoxicating drug, and you spent almost two years without it."

I think that quote, and so many things in that book, help us understand how all encompassing, how controlling, how paralyzing coercive control is. And it is our job, as advocates, now, in California, to use the legislation. To use the code that we have, to help bench officers understand the psychological abuse that our clients are suffering, and to get them the protection they need. Thank you so much for including me. Back to you, Jennifer.

JENNIFER FRIEDMAN:

Thank you, Paula. And I'm just going to chime in that when Paula and I were talking about putting together this panel, we spoke with an attorney in California who had used the new coercive control legislation to get an Order of Protection on behalf of an Orthodox woman, whose husband was denying her the Get. And she litigated the denial of the Get thoroughly, and showed that it constituted coercive control. And that was the basis of getting the Order of Protection, which was quite extraordinary. That attorney, by the way, is amazing, and it would have been too far off the field to have her join us for this panel, but I encourage folks to look at that decision, which I believe we have in the CLE materials. And that is just another example of a creative or interesting way that New York could potentially use coercive control legislation.

I'm going to move on to lethality, because this panel packs in a lot of really intense concepts. So, understanding lethality has become crucial to our understanding of domestic violence, and the level of risk that survivors face. And those of us from domestic agencies here, most of our agencies have incorporated utilizing some kind of an assessment. Dr. Raghavan, I am going to start with you again.

DR. CHITRA RAGHAVAN:

Yes.

JENNIFER FRIEDMAN:

Can you define lethality, and talk about what it means for victims?

DR. CHITRA RAGHAVAN:

I can, and I need to be near my PowerPoint, because I won't be able to read it. A long time ago I gave up doing unstructured talks, because my mind digresses like a river tributary. And if I don't have a PowerPoint, you will hear many stories and all quite irrelevant to lethality.

So, what is lethality? We define it as severe aggression with the capacity to injure or kill the victim. And I think it is important to note that for every completed femicide, there were nine near-lethal incidents. In other words, there are many more incidents than we think, but one person died and nine didn't. One woman typically.

There is no difference in the level of violence between the one woman who died and the nine who didn't die. The difference was chance. He was interrupted. Somebody called the police. Or she just didn't die because she fought hard. And this is so important because it's not as infrequent as we think. If, for every one completed femicide, nine didn't die, then lethality is very, very high.

In the United States, sixty percent are by gun. That's not surprising. But what is equally interesting is that sixteen percent are by a sharp instrument. Anything that he can find in the house. Typically a knife, but also bottle shards, anything sharp. And another twenty percent is by strangulation, beaten to death, or in very rare incidents, being run over repeatedly by a car, or thrown out of a balcony, or drowned. Those are so rare that for our purposes, the percentages we should think about are sixty by gun, twenty by sharp instrument, and twenty strangled, so using his hands.

I want to point out that there is a very high number of unknown, serious, lasting physical injuries that might qualify as near lethal, that we don't know about. This includes brain damage, chronic pain, or various kinds of pelvic damage from very rough and violent rape. And it doesn't show up in the data.

What are the risk factors? There are no risk factors for women. That's really important to know. What are the risk factors for men? They are so vague it is

unhelpful: unemployment and substance abuse. But lots of men are unemployed, and lots of men drink. So, if you come very close to it—it's important; but it is unimportant in the bigger scheme. However, there are many different pattern risks that are important. And I think the way to think about this is when those violent risks begin. So, one thing that we see over and over again is that the control escalates and so does the jealousy. And so measuring escalating, not just escalating control, but escalating jealousy, is useful, depending on how close you are. And repeated threats to kill or injure. There are going to be repeated threats. And sometimes it is veiled, but other times it is direct.

Such as, “do you remember the last time I did this?” “Do you really want that to happen again?” And the last time might be when he choked her. Using, of course, a gun. Pointing a gun, touching a gun, looking at a gun, those kinds of things. Or even access to firearms in the house. He doesn't have to have ever used it. I've had lots of perpetrators just put the gun by the bedside, for example, and smile.

And choking or strangulation, we don't have the odds ratios, but it happens more often than we think, in women who would later on survive it. Also, by the way, if you work with same-sex violence, and I do considerably, there is a great deal of choking and strangulation.

Rape and stalking. This tends to have two patterns. One is the rape started early on. And I am using the term rape loosely, and psychologically, rather than precisely as a lawyer would. But I am referring to sex that you didn't like, in the way that you didn't want, that you didn't ask for, but you felt you couldn't say no to.

The second pattern is either in a ho hum sex, or intimate sex that starts to turn violent in the middle. And then there is jealousy around this. The jealousy starts to come out in different ways. There's a pattern change in rape. And if you have a child from another man, and or if he was violent during pregnancy, these are very high risks as well.

So, I want to quickly talk about triggers. What are triggers? These are consistent across genders. They are even consistent across countries and cultures. They occur when you are trying to leave him, or when he thinks you are trying to leave him. So, both of these are equal.

Trying to leave him applies if you start taking steps to leave. The violence explodes. That's when the jealousy, the stalking, the rage is. When he thinks you are trying to leave him is often sort of the pathology of the abuser and the

paranoia and the jealousy that go into it. But it really doesn't matter. If he thinks you are, then there is an escalation of violence.

JENNIFER FRIEDMAN:

Thank you. Tanya, can you tell us how an understanding of lethality impacted your situation?

TANYA SELVARATNAM:

Lethality felt like a very distant concept to me, while I was in the relationship. But that was when you and I were in a lot of communication, and I decided rather than have an active breakup, or announce that I was leaving, to drift. It was one of the most bizarre breakups, actually, because I just drifted. I started going away. We felt that the best scenario would be that he ended things. So, that he had agency over it.

But what became very clear to me, in conversations with many friends who had situations far more horrific than mine, is that it was at that point of leaving that they felt they were most in danger. You know, one friend would sleep with a kitchen knife beside her, scared that she was going to be attacked. Another friend had gotten her ex-husband arrested and he was giving her number to inmates, to taunt her.

And so, these stories were fresh in my mind when I was trying to figure out what to do. Did I think I was in actual, physical danger? I think you can't anticipate how far somebody might go once they snap, once they feel everything is being taken away from them. And we have seen, time and time again, how those situations weren't anticipated, and ended up with tragic results. So, for me, I was preparing myself for all possible scenarios. The optimal being the drift. The worse being the snap. And I was very fortunate that I had people around me, who had my back. That I had you. That I had my friends. That I had work to go to. I was in an office where I felt safe. But so many people don't have those outlets. So, I learned a lot about how to keep myself safe. And one of the reasons I wrote the book was—and you and I collaborated on the resources—to help people learn how to protect themselves.

And one thing that I did, at the encouragement of another friend, was a physical and virtual safety training. And that was mind-blowing to me. When I did that and realized all the potential danger points, both physically and digitally, that I could be susceptible to. In particular, because of the position that my abuser was in, the resources that he had at his disposal. And we have seen how so many perpetrators in positions of power have used their resources for really insidious and nefarious results.

JENNIFER FRIEDMAN:

It was ironic, because on the one hand, you know, he made that joke, “Well I can have your phones tapped and I can have you arrested.”

TANYA SELVARATNAM:

Well, he would also ask, many times, if he would have to kill me if we broke up. Which we say was a joke.

JENNIFER FRIEDMAN:

Yeah. So, that’s frightening.

TANYA SELVARATNAM:

Yes.

JENNIFER FRIEDMAN:

Yes. So, thank you for sharing that, Tanya. Anna Maria, so we are talking all about lethality. We have also talked about coercive control. But these are understandings, within the domestic violence field. Like this is basic. Again, I had to ask, maybe an obvious question, do family court judges understand lethality? Is this understanding of what makes a situation so frightening actionable?

ANNA MARIA DIAMANTI:

So, similarly to coercive control, there is room in the law, as written, to address some of these lethality indicators. But it is not explicit. And so much depends on our judges’, our referees’, or adjudicators’ understanding of the issue. They have great deference here. And the reality is, even though our laws are written with some flexibility, and the intent is to provide the strongest protections for victims of intimate partner violence, our judges vary so widely in their understanding, and their willingness to take these issues seriously. You will find people have widely different experiences in family court, ranging from the pretty good to the absolutely horrific. And we have heard some of the most horrific today.

Many judges still focus on physical violence at the expense of other abusive behavior. The idea being that if you can stop the physical violence, then we’re good. We’re in a good place. So, if I give you an Order of Protection, you are

safe now, and we can move on, right? Now, we can move forward. And that focus also extends to the impact on children. The focus is often on what actual physical violence the children saw or experienced, as opposed to the bigger picture of what is this family's dynamic. And there is still a lot of deference to the authoritarian parenting style in family court, which can provide a lot of cover for controlling, abusive behavior. The idea being, this is just a really tough, strong parent, and that's what we need, because otherwise kids can get wild and out of control. So, again, while there is lot of room, you can find yourself making these arguments in court, and feeling like you are just coming up against a brick wall, over and over again. And it's not just an issue with judges. This is an issue at every level—attorneys, forensic evaluators, police, ACS, all kinds of important players in the system, have this similar lack of understanding. Where again, their focus is what physical violence there is, and how to stop that. And once that's resolved, in their minds, they're good.

The other problem is, even for a judge who has some understanding of the issue, there is nothing in the law that says "okay, judge, here is the time and place you must assess lethality or other high-risk factors, and here's how you do it." Right? So, it can just be put off. So, even if you have a judge who gets that, at some point we are going to have to sit down and talk about the risk situation, when is that supposed to happen? Ex-parte when one person goes in alone asking for help? The first return date? The first time you discuss custody? The first time you discuss visits? When? That's not really clear. And so, it can be delayed. And that delay can lessen the urgency of the situation.

So, you have a client who is now self-helping, right, because they are not getting what they need from the court. They have now moved into a shelter, and they are in hiding. So, from the judge's perspective, you are safe now. You are at a shelter. You're at a confidential location. And as the advocate, I am saying, wait a minute. If safety depends on my client being in hiding, that's not safety. That hasn't changed any behavior. That hasn't changed the mind of the abuser or held them accountable. That's just changed the circumstances. That's not real safety.

You may find yourself arguing things, but again, so much depends on your judge's understanding of the issue. So, if you can't fit the behavior that is raising concern, into a family offense, or connect it to physical violence, you may be facing a judge who just isn't seeing it.

So, you may be arguing: "Judge, I am very concerned. The abuser is unemployed. He is facing financial ruin. There is very controlling, jealous behavior that is escalating. My client is being surveilled. I am very concerned for my client's safety." Some judges will get it. They will say, "Okay, this is a very volatile situation. We have to proceed very carefully." But many judges



will push back, “Counsel, being unemployed is not a crime. Why am I hearing this? Tell me what the family offense is. Tell me what the actual abuse is. That’s what I have jurisdiction over. I don’t want to hear this other stuff.” And so, you’re stuck, because you no longer have that opportunity to say, here’s why the situation is so volatile and dangerous.

So, again, even where there is room, our clients are entirely dependent on us, as advocates, understanding the issue and making that case, as well as all these other players understanding the issue and taking it seriously.

JENNIFER FRIEDMAN:

So, we heard from Jacqueline Franchetti this morning, about Kyra’s Law, which is a bill that is pending in the state legislature, and it requires an initial safety assessment. And there is interesting language around what that might entail. It is primarily intended for safety of children in custody cases, but it would require judges to consider multiple factors, a variety of factors, and not just whether a family offense has been committed. Anna Maria, how do you think that would impact what you just described?

ANNA MARIA DIAMANTI:

I think it could be very helpful in a couple respects. One, again, is the timing. The idea in this proposed legislation is this has to happen immediately with some urgency. So, it gives judges a sense of here is when you are supposed to do this. That can make a huge difference, especially in a very overburdened court where there are constant adjournments. You have very little time. If the judge knows, I have to do this risk assessment on this appearance, then they have to make the time for it.

The other important thing about it is that legislation can sometimes force an issue and force a judge, who might otherwise be very recalcitrant on an issue, to take it seriously. You may have a judge who says look, I don’t get this coercive control stuff, but I follow the law. If I have to have this hearing, and I have to look at these factors, I’m going to do it. There are many judges who are very formulistic that way.

Another thing is that having that legislation can really prompt judges, other adjudicators, and other players, to say okay, we have to do this thing now so I want to understand it better. How can I do this, if I don’t understand the issue. And that encourages them to be more involved in training. And I’m not just talking about the formal judicial training process. There are a number of task force working groups and other advocacy type groups, that judges participate in, attend, and pay attention to. And hopefully that can foster some communication

there as well. If there is this new coercive control law, or new risk assessment law, I need to learn more about it because I have to start using it.

I will say, though, I'm very skeptical about relying too heavily on legislation in this manner. Because I feel very strongly that we are only setting ourselves up to fail if we get legislation like this passed, but do not correspondingly provide courts the resources to do the work we want them to do. Even the best judge cannot do a proper risk assessment, or assess for coercive controlling behavior, if they only have about ten minutes per case. Even the best judge can't do what we need them to do if adjournments are six months apart. Even the best judge cannot do what we need them to do if they know what I say in this courtroom is not going to be reflected outside this courtroom. This family needs certain services, this victim needs certain services, these children need certain services, but when they leave this courtroom, they are not available.

So, one very strong hesitancy I have is that legislation is great. But resources are equally, if not more important.

JENNIFER FRIEDMAN:

Thank you. So, we are moving fast and furious through a lot of very intense topics, which we could have an entire conference on. But I do want to also talk about femicide. And Stephanie did an amazing job educating us and forcing us to think about the thing that we are all the most afraid of, which is that our clients will be killed. And that a femicide will take place.

Domestically, we know that this is a critical issue of gender and racial justice, as well as trans rights. Rates of femicide are higher among trans women, Black and Brown women, and Native American women. Domestically, there have been important campaigns shining a light on the disappearance and murders of Native American women and girls, in particular. And I encourage folks to read the CLE materials to learn more about this phenomenon.

Here in the United States, we have very intentionally begun using the term femicide to join the global movement. In New York City, practically a week does not go by without a domestic violence related murder reported. Yet they all seem to be described, in the media, as discrete individual instances of random acts of violence, and not as part of a pattern of gender-based violence.

So, Chitra, turning back to you. As our educator, can you talk with us a little bit about your research and how we can understand femicide?

DR. CHITRA RAGHAVAN:

Sure. I want to make maybe three points. Let's see if I can do that. The first is that femicide, which is the murder of women, is not as a result of the escalation of physical violence. That is an error. It is as a result of a lost escalation of control. So, if you think back to the abuser, the abuser needs to be correct. And the abuser needs to be affirmed. If he can no longer be correct, and he can no longer be affirmed, what does he do? Many men get younger wives. Others go to prostitutes or sex workers. Others drink. But a handful kill the source of what makes them feel that they are wrong.

So, it is an escalation of control. And so we have the beginning of studies showing that coercive control is a much better predictor of lethality than is physical violence alone.

And I have just completed a study with a brilliant young Spanish psychologist, looking at Spanish femicides in Spain. It is eerily similar. We find the same data. That what predicts women dying in this sample, is the escalation of jealousy, stalking, control. So, look at coercion, not just physical violence.

The second point bolsters the first, which is that in about thirty percent of femicides, the women had no discernible signs of physical violence. So the investigators talked to family, in both studies, friends, networks, they talked to everybody that they could. And all of them said, either we didn't see it, we didn't know it, or it didn't happen. That percentage is from the Chicago dataset, which is what we base a lot of our information from, but we also replicated the same thing in the Spanish dataset.

And some of it, of course, wasn't recorded because the woman was afraid. But some of it is that there probably wasn't that kind of physical violence. A little bit like Tanya Selvaratnam's case. What there was, was control in sexual violence, which wasn't reported.

And so, you will have cases where there is no physical violence, but there is increasing control. And you need to look at that pattern together, and maybe keep at the back of your mind this idea that the abuser doesn't want to lose. Not because he is controlling, right, that's circular. That doesn't help you think. It is because he needs to be affirmed that he is correct. And if he is not affirmed as correct, then what does he do? He sets about to make sure that that source of affirmation goes away, is silenced, is humiliated, goes to jail, is counter-charged or is killed.

I have a minute left and I will stop.

JENNIFER FRIEDMAN:

Oh, yes. That's the time before the Q&A. But I think we will take a little bit of the Q&A time, because we have a little more left to discuss.

So, thank you for describing femicide and some of the warning signs or evidence-based factors that may give us a sense of the more at-risk cases. Anna Maria, how do you see connecting femicide with your work with survivors?

ANNA MARIA DIAMANTI:

Well, it's interesting. I actually wanted to talk about something else that's a very big issue of mine. And that is that there is a major connection between domestic violence and intimate partner violence, femicide and mass shooting. And it is something that we just don't address. We don't talk about it. And by we, in this room, I mean culturally.

We are a gun culture. Again, not this room, but unfortunately, we are a mass shooting culture. And we are a culture that, generally speaking, does not take abuse seriously, especially abuse against women. And so, when you have this backdrop, there is a reason that while other types of violent crime have gone down, the rates of IPV [Intimate Partner Violence] and IPV-related homicides sort of stay stubbornly consistent.

And so, there is this very direct connection between intimate partner violence and mass shootings. And once you see it, you can't unsee it. In the CLE materials, there is an article about this, including some research. And I also linked a podcast that did a deep dive into the D.C. sniper case. Which received a tremendous amount of coverage when it occurred in the late 90s. But very little coverage about the fact that it originated as a domestic violence case.

Mildred Muhammad, the wife of the D.C. sniper, John Allen Muhammad, had gotten a divorce and then an Order of Protection against him. She did so because he had been very controlling, very emotionally and verbally abusive, and she was quite scared of him. In response, he kidnapped their children. And when she finally tracked them down and got custody of her children back, she went into hiding in D.C. and that's when the murders started. The police finally pieced together that he was hunting her down and killing people as cover so that when he finally found her and murdered her, it would just look like a random act of violence.

The podcast goes into real detail about the whole history of the case. But for me, what is so striking is that part of the story always gets sort of pasted over, ignored, not really explored. But it is the whole impetus behind the entire thing. And it is amazing to me that we don't want to talk through and address the

connections that exist there. A few voices in the media sometimes raise it, but it dissipates very quickly. And there is little, to no attention, paid to it, politically.

Thank you. So, how it connects to my work, to our work is that we don't make these connections in the courtroom either. We don't say "Your Honor, if we don't address this violence here, now, in this family, where else might this go?" And that part always sort of gets the short shrift. Violence in the family is always treated as this very narrow, contained thing. And again, once we can stop the physical violence, we can move on and start talking about more important stuff. We can normalize the situation. We can normalize visitation. And we can just move on as if nothing happened. And in fact we need to think more about the larger consequences to our neighborhoods, to our communities, to our culture, when we allow this kind of violence to go unchecked.

JENNIFER FRIEDMAN:

So, thank you for pulling the camera back a little bit, and looking at culture is a perfect segue. Tanya, you are a producer and writer in the arts, and Anna Maria is talking broadly about culture, and our culture is becoming more and more visual. So we are focused on video, looking at videos on our phones, a lot. How do you see today's themes, all the things we have talked about, as manifesting in pop culture?

TANYA SELVARATNAM:

I think until we get at the root of the normalization of violence, which begins from the time we are born, until we do a collective mass healing, to excavate the generational trauma that we are born into, and that we perpetuate, I think that we are doomed. I think pop culture, like popular memory, needs to keep being reminded about the ways in which it conditions people to accept violence. And for every stride that is made, when people celebrated a film like *Promising Young Woman*, or a series like *Dirty John*, which was incredibly highly rated, that showed domestic violence and femicide, these shows are celebrated, but they largely center white characters. And I think too often popular culture, popular narratives forget the disproportionate impact that these issues—health, safety, rights—have on people of color, and women of color.

And so, when you look at, for example, the fact that many mass shooters are also perpetrators of domestic violence, you also have to consider that the majority of homeless people are victims of domestic violence. The majority of incarcerated women are victims of domestic violence. And these facts are not a coincidence. And gender justice is, for me, a very integral component of racial justice. And until we can really begin to envelope those from all sides, you

know, there is subjective reality, and there is objective reality. And in these situations that have been described, there can be many subjective realities.

In my case, there were many subjective realities. There was his reality and my reality. And it was hard for me to see what was the true reality. But objective reality starts to emerge when you see the patterns. When you can talk to experts outside yourself.

So, where I feel the story tellers really need to step in is in accurately representing these stories, to show all the different perspectives. And not to be scared to keep reintroducing the issues. Because repetitive messaging is super effective. And it's something that those who are opponents of gender justice are really, really smart about. And that those who support gender justice, who support reproductive freedoms, have been a real disaster at, have really failed. Because they haven't gone to the root, inculcating people when they are young. When they are in preschool. When they are in kindergarten. Like we need a whole bunch of children's books that advocate for gender justice and reproductive freedom.

So, that's where I feel like popular culture needs to step in, and also to stop glorifying these white-centered stories of violence and femicide that kind of ignore the vast majority of the reality of these cases. And also, we have to recognize that popular culture, like popular memory, is also very short lived. So, where people might celebrate a win, like with Harvey Weinstein, or Bill Cosby going to jail, a few years later, M.J.'s nominated for like a bunch of Tony awards. Felicia Rashad is accepting a Tony. I mean all respect for her craft, but she enabled a predator. So, like we have to be willing to call out the enablers and to encourage bystanders to be upstanders. But I have a pretty cynical view of how much we actually, you know, walk the walk.

PAULA COHEN:

I just wanted to jump in with one really interesting resource. So, there is a project in Israel that's called "Listen to My Voice." They use artificial intelligence to create videos of women who are murdered by their abusers. So, they work with the families of women who are murdered. They get photographs and video of the woman who was murdered, and they use actresses for her voice. And they have created a series of videos that have been seen all over Israel, that has the woman appearing to be alive, and telling her own story about how she was murdered. It's absolutely fascinating. The website is [listentomyvoice.net](https://www.listentomyvoice.net).<sup>6</sup> And they have some sample videos on the website. There are women of all ages, backgrounds, religions, cultures, ethnicities. At least one

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<sup>6</sup> LISTEN TO MY VOICE, <https://www.listentomyvoice.net/> [ <https://perma.cc/U8R9-SXZW>].

of the videos is in English, and hers was a kind of well-known media addressed murder, because she was a social worker, educated, middle class, etc.

But in terms of getting stories out about victims, I was thinking about what Stephanie McGraw spoke about earlier. The project is looking for other families to work with, to expand to the United States. They told me that they are not looking for money. They are looking to work with families of murdered women from domestic violence, to be able to tell their stories. So, it certainly may be something of interest to this audience. I have no stake in it whatsoever. But it is another way of telling these stories.

TANYA SELVARATNAM:

Can I say one quick thing that I want to bring up?

JENNIFER FRIEDMAN:

Sure.

TANYA SELVARATNAM:

In the last few months, we have seen such an erosion of gender justice, on so many fronts. We are heading in a very, very, very dangerous direction. I mean, with the loss of the Constitutional right to reproductive freedom, with the brutal murder of Mahsa Amini by the morality police, with the judge in Pieper Lewis's case ordering her to pay restitution to the family of the man who trafficked her and raped her, who she killed in self-defense. Like these stories, and these are all just in the last few months. But what these stories do is, thinking from a cultural perspective, they bring a lot of attention to these issues.

So, there are some positive signs. Like with the surge of women registering to vote, after the leak of the *Dobbs* memo. With the Kansas vote overwhelmingly going against that abortion ban. And with women worldwide taking to the streets, in solidarity with Mahsa Amini. So, I feel like these are things we have to harness more. Like we need a global war, between feminists and patriarchs.

JENNIFER FRIEDMAN:

I agree. Amen. I have sadly four minutes left for questions, because this was such a rich conversation that I just didn't want to rush us. Stephanie, do we have some questions that we should acknowledge from our audience?

STEPHANIE:

We do. We have one that was asked a few times. So, maybe we should start with that question.

Okay. So, we got this a few times, regarding what we talked about earlier today. Bias in the court, lack of training, and understanding among judges. Is there a concern that criminalizing this new, broad, concept of coercive control will result in clients, or victim clients having Orders of Protection issued against them? And to Paula, are you seeing this in California?

PAULA COHEN:

So, first I would say yes, it is always a double-edged sword. It's always a risk. And yes, we see clients being arrested and prosecuted for crimes related to domestic violence where we believe they are clearly the victim. I have not yet seen one that is focused only on coercive control. Typically, what happens, and if you think about a typical relationship, our client isn't going to be using the manipulating, isolating, degradation tactics. Our client is going to fight back, probably physically, and that's what she will be arrested for.

So, I haven't yet seen coercive control used in that way, but every single time there is legislation about domestic violence, it is used as a double-edged sword, and our clients do get arrested and prosecuted for it.

JENNIFER FRIEDMAN:

And Anna Maria, I am going to ask you, do you see a way to consider coercive control legislation that would not involve the criminal justice system? In other words, do you see a way to include it in Article 8 of the Family Court Act, without making it a crime, in the Penal Code?

ANNA MARIA DIAMANTI:

Yes, absolutely. It doesn't necessarily have to be made a criminal offense. It could be made part and parcel of the Domestic Relations Law and Family Court Act as a pattern of conduct, a factor for courts to consider, in custody, in divorces, in disposition of an Order of Protection, or even a neglect action.

So, a criminal statute is not required for us to act on it. I will say, Tanya and I are the founding members of the Cynical Critics of the Pop Culture Club, because I do think any good can be used and manipulated by abusers to their own advantage. So, yes, it is very possible. Whatever good we can do, in getting movement on this issue can be manipulated by abusers to their own advantage,



because that's what always happens. So, yes, it is very possible. That doesn't mean we don't still strive for progress.

STEPHANIE:

A question we also got a couple times is regarding lethality factors, which we have discussed, are based on femicide rights. Should lethality be assessed differently when it comes to other victims? Male victims? Victims in same-gender relationships? Or children?

DR. CHITRA RAGHAVAN:

We don't have good predictive studies on same-sex. So, we have to use clinical data, for the moment. And I think we should be assessed the same way for now. I don't know if we can ever actually get good statistical, predictive data, because for that to happen, you need large populations of men who are abusive to men, and who kill them. And large populations of women who are abusive to women and kill them. And just given the breakdown of, the stats say ten, but I'm going to say fifteen, gay to non-gay, I think we are just not going to get that.

But to sort of preface that, you should be doing it, clinically is not the right term. Lawyers can do it too. Close to the person, so statistics just tell you a rate. But when you are actually doing assessments, you should be doing threat assessments, which are different from risk. And look at those threat assessments closely. So, I would use the same factors as you use male to female, as you would male to trans, or male to male.

JENNIFER FRIEDMAN:

I am going to have to stop us here, because we need a break before our next panel. So, thank you so much to our panelists. Thank you.