| 8th Annual Domestic Violence Symposium: Deepening the Dialogue<br>WORKSHOPS – Session 5<br>9/9/2016 | |
|---|---|
| 5A | **DV Case Prep Refresher Course**<br>– Speakers: Christopher Anderson, Brie Hopkins |
| 5B | **The Neurobiology of Domestic Violence, Part II: The Workshop**<br>– Speaker: Christopher Wilson |
| 5C | **Throwing Victims a Lifeline: What We've learned from Implementing Lethality Assessment**<br>– Speakers: Justin Boardman, Donna Kelly |
| 5D | **Cross-cultural Capacity Building**<br>– Speaker: Monique Morris |
| 5E | **We Really Mean It: Reforming the Child Welfare Response to Survivors as Parents**<br>– Speaker: Sara Ainsworth |
| 5F | **Visibility at the Intersections: Supporting Trans* and Gender Non-Conforming Survivors**<br>– Speaker: Amarinthia Torres |

Gu1

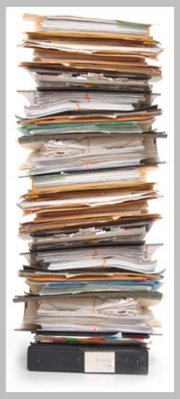
# Today we will cover:

- Common Issues in Misdemeanor DV Prosecution
  - Management of DV Caseload
- Voir Dire
- Opening Statements
- Common Themes in Misdemeanor DV
  - Victim Cooperation Issues
  - Victim's Rights in Interview, Discovery, Immigration Issues & Working with DV Victim Advocates
  - Victimless Prosecution, Types of Evidence (including 911 Recordings & Jail Recordings)
  - Defendant's Statements & Effective Cross of Defendant
- Closing

## What is Domestic Violence?

## Common Issues in Misdemeanor Domestic Violence Cases

- Prosecuting DV cases requires specific skills and different mindset than prosecuting other areas of criminal law.
- High Volume Case Load
- Lack of Resources
- Lack of Evidence
- Key witness – the victim – is often reluctant or unwilling to cooperate.
  - Refuse to provide a statement or recant.
  - Minimize the incident or self-blame.



# Domestic Violence
## Case Prep Refresher
## 2016 DV Symposium

**Brie Ann Hopkins (City of Bellevue) &**
**Christopher Anderson (City of Seattle)**

DISCLAIMER: This presentation is not representative of the opinions or views of agencies that Hopkins and Anderson work.

# Management of Heavy DV Caseload

- Working up your cases
  - Look at evidence – Can I prove without my victim? Can I prove if my victim recants?
- Where to focus resources
  - Locating Victims
  - Utilizing Detectives when necessary
- Identify what cases are going to trial
  - Towing the line if you can prove your case
- Determining which cases have the highest lethality concerns
  - History, Guns, Suicide Threats, Kids, Alcohol/drugs

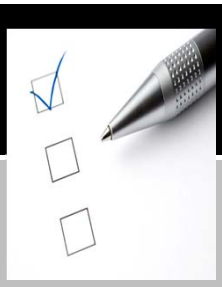
## Voir Dire

- DV cases are won and lost in *Voir Dire*
- Picking a Misdemeanor DV Jury Boils down to 5 things:
  - 1. Making a good impression.
  - 2. Finding (and striking) the worse 3 jurors.
  - 3. Getting the jury to see things our way.
  - 4. Getting better through practice and honesty.
  - 5. Getting them to understand DV issues.

## Techniques/ Strategy in Jury Selection

- Your introduction will set the tone.
- Serious but personable. *Never* trick questions. Always honest. *Never* argumentative with juror – just move on.
- Don't waste precious minutes re-hashing Court's intro questions. Try to ask every juror a question.
- Trust your gut. Read body language and tone and listen to their responses.
- Ask yourself: What are your biggest witnesses and strengths in case? Then focus on those in your hypos.
- From the beginning tell the jury you are going to ask that they find the defendant guilty. Get them comfortable with this concept. End with the same concept.

## Key Concepts to ALWAYS Discuss in Voir Dire



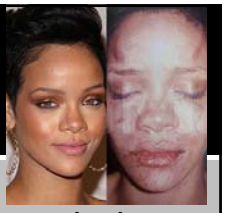
- What is Evidence (CSI effect)
  - Testimony IS evidence
  - Recanting victim/ Victim not present – best evidence
  - Circumstantial evidence – cookie crumble
- Reasonable Doubt
  - Conflicting stories
  - Not beyond all shadow of a doubt – it is <u>not</u> *Law and Order*
  - Ask whether juror will hold City/State to a higher burden of proof than required?
  - Job of jurors is to determine credibility of witnesses
  - Jurors can use common sense
- Accountability/ Guilt
  - Who presses charges?
  - Get jurors comfortable w/ the "guilty" concept
  - They will want to find the defendant not guilty in misdemeanor prosecution
  - Ask every juror any reason couldn't follow the law? If City/State meets burden of proof beyond r'ble doubt, could find the defendant guilty? Ask everyone in pool.

## Opening Statements

## Opening Statements

- Purpose of opening is to provide a road map of the evidence State/City intends to prove.
- Tell jury what you have to prove and disprove, and what the evidence will show.
- Appear confident and organized to make a "good impression."
- Generally, discuss any shortcomings in your case such as hostile or recanting victim – you will appear "up front" and the jury won't be surprised by defense's opening.
- Work in a theme. i.e., sometimes domestic violence spills into the street and some citizen is left with no other choice by to call 911 to report a crime.

## Victim Cooperation Issues



- It in not necessarily bad for the case when victim or witness is uncooperative or recants.
- The key is whether you can get the victim there.
- Prepare or expect victim will recant.
- Prepare to present the case to the jury within this context.

## Victim's Rights in Interviews

- CrRLJ 4.7(g)(1) prohibit an attorney from advising witness to refrain from discussing a case or showing relevant material to opposing counsel.
- In DV cases, prosecutors should routinely advise victim's of their right to have a prosecutor present at a defense interview but tread lightly. (Rights of Victim RCW 7.69 et seq). Victim's also have a right to have an advocate or support person present in defense and/or prosecutor interviews.
- It is also proper to advise victims that they are in control of the time and place for a defense interview. The victim should also be advised of her right to refuse to have the interview taped. State v. Mankin, 158 Wn. App. 111 (2010).
- Should have a 3rd party present during the interview who you could call to testify or recording made of the interview.

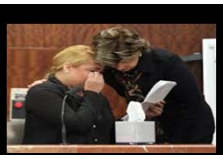
## Discovery

- Prosecutors have a constitutional obligation to **disclose all material exculpatory and impeaching evidence** to the defense. *Brady*, 273 U.S. 83 (1963).
- Including the names and address of witness, witness statements, prior convictions and records of prior criminal convictions of the defendant and other witnesses.
- CrRLJ 4.7(g)(7) "willful violation" or "gross negligence" could authorize a dismissal. Typical remedies mistrial or a continuance.
- Basic rule is "if it hurts turn it over, if it hurts bad turn it over faster." **Remember: Your integrity as a prosecutor is paramount so don't jeopardize it or your bar license for a case.**

## Victim Immigration Issues

- Discovery rules require discovery of information material to the defendant's defense (CrR 4.7)
- Defense must show that info sought is (1) material to the preparation of the defense and (2) reasonable
- Law requires all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity (RCW 7.68.010)
- U-VISA obtained as result of incident may be discoverable
- Guidance on U-VISA/ Immigration - *See Department of Homeland Security law enforcement resource guide:* http://www.dhs.gov/files/resources/u-visa-law-enforcement-guide.shtm

## Working with Victim Advocates



- Victim advocates are a critical component of domestic violence prosecution.
- Prosecutors should work in close conjunction with victim advocates.
- This helps to facilitate communication between the prosecutor and the victim and brings a higher level of justice for the victim.
- It is common for advocates employed by prosecutor's office or police department to keep notes.
- Those notes are not confidential under RCW 5.60.060 but could be non-discoverable under CrR 4.7 (however when in doubt disclose unless jeopardizes safety of victim then consider protection order).
- Victim's advocates must be well trained to disclose all *Brady* material.

## Victimless Prosecution

***Can the prosecution be done without the victim?***

- "**Evidence based**" or "**victimless**" prosecutions
  - 6th Amendment Right to Confront (Michigan v. Bryant, 562 US 344 (2011).
  - Only "testimonial" hearsay is **inadmissible** (Crawford v. WA, 541 US 36 (2004).
  - "Primary purpose test" (Davis v. WA, 547 US 813 (2006).

## Crawford Issues

- Whether the "**primary purpose**" of an interrogation is to enable police (or fire or medics) to meet an **ongoing emergency** is an objective inquiry.
- **Totality of the circumstances**
- **Factors**: (1) **timing** of statements relative to when the described events occurred, (2) **nature** of what was asked/answered and purpose, (3) **threat of harm** posed by the situation as judged by "reasonable listener," and (4) evaluate the **level of formality** of the interrogation.
- Then, if non-testimonial the issue is whether or not it meets an **exception to the hearsay rules** (i.e., excited utterance ER 803(a)(2) or present sense impression ER 803(a)(1)).

## 911 Tapes

- The key in many victimless prosecutions is the admissibility of the 911 tape.
- If admissible pursuant to *Davis v. WA*, 911 will often accurately reflect the victim's fear and demeanor at the time of the incident.
- 911 tapes promptly ordered and reviewed because many jurisdictions destroy the tapes after 90 days.
- Pre-trial case prep to determine *Crawford* issues to note for a motion.
- 911 tape business record under RCW 5.45.020 and contents admissible under hearsay exception.

## Uncooperative or Recanting Victim

- **I don't remember?**
  - Refresh Recollection - ER 612
  - Recorded Recollection - ER 803(1)(5) – substantive evidence read into record
- **No did not happen or I don't know.**
  - Impeach - ER 613
  - Smith Affidavits - Prior Inconsistent Statements- ER 801(d)(1)(i) – substantive evidence marked and admitted with foundation

I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING WRITTEN STATEMENT, CONSISTING OF _____ PAGES, IS TRUTHFUL AND ACCURATE TO THE BEST OF MY PERSONAL KNOWLEDGE. EACH PAGE AND ALL CORRECTIONS, IF ANY, BEAR MY INITIALS. **I HAVE READ [ ] / HAVE BEEN READ [ ] THE FOREGOING DECLARATION AND UNDERSTAND THAT THIS DOCUMENT MAY BE USED IN A COURT OF LAW. (____)**

## 404 (b) Evidence – Other Crimes, Wrongs, Acts

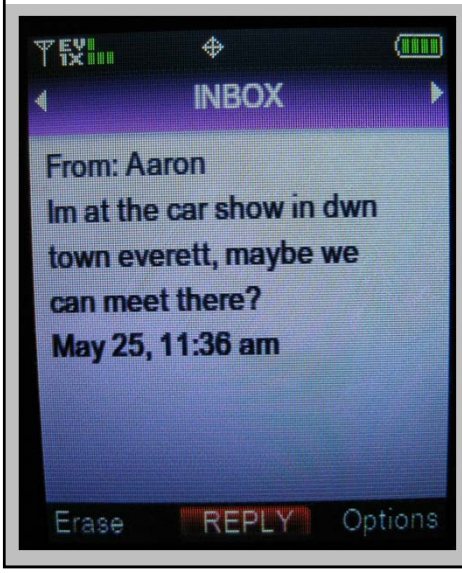
- Typically not admissible, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- In DV case the ability to explain the victim's behavior with the history of domestic violence is a critical factor in proving a DV case with a recanting or minimizing victim.
  - State v. Grant, 83 Wn. Ap.. 98 (1996) (prior DV assaults)
  - State v. Magers, 164 Wn.2d 174 (2008) (recanting victim)
  - State v. Baker, 162 Wn. App. 468 (2011)(defense opens door)

## Evidence-Based Prosecution of DV

## Photos of Crime Scene

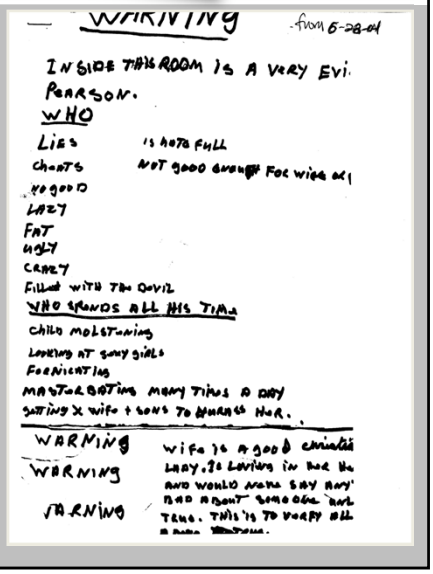
## Photos of Intimidation

# Evidence of the Crime



# Other Evidence

- E-mails, letters, texts
- Facebook posts
- Recorded messages
- Damaged property
- Phone records



## Jail Phone Calls

- Jail calls have become important evidence in DV prosecution.
- Witness tampering is a significant problem in DV Cases.
- Use when recanting or minimizing victim.
- Making jail calls a key part of pre-trial preparation & will result in greater accountability for offenders and safety for victims.

## Public Records

- RCW 5.44.040 creates a statutory exception to the hearsay rule for public records.
- Return of Service filed with the court during the protection order to established knowledge is admissible as a **public record**. State v. Phillips, 94 Wn. App. 829 (1999).
- DOL photos are also public records.
- Violation of NCO or Protection order **only need** police officer.

## Direct Examination of Uncooperative Victim

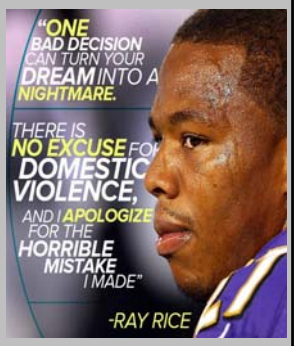
- Prosecutor cannot call victim to stand so the victim can commit perjury and therefore be impeached (*State v. Lavaris*, 106 Wn.2d 340)
- Hostile or recanting victim called to ID defendant, her location and defendant's location when police called, ID 911 call, ID photos, establish "family or household member," financial dependence (motive)

## Sample Questions of DV Victim

- Name? Address (City/County)?
- What is r'ship?
- Would it be fair to say you don't want to be here in court testifying today?
- Did you call 911 on date of incident? Why? Were you afraid and upset when you called? (play 911 call provided foundation)
- Did an officer arrive? Hong long? Were you upset when you talk w/ officer? Did you show the officer any injuries? Can you describe the injuries you pointed out to the officer? Does this picture accurately show how you looked on the day of the incident?
- Now you told the officers that you were (i.e., hit by the defendant)? Smith Affidavit: You wrote it? Signed it under penalty of perjury? Shortly after incident? No one forced you?
- Would it be fair to say you love the defendant? Don't want him/her to get in trouble? Children w/ defendant? Financially dependent? Defendant apologize?

## Defendant's Statements

- Defendant's statements <u>are NOT</u> subject to *Crawford* analysis
- Anticipate potential defenses
  - Self-defense … lack of fear, demeanor
  - Accident … inconsistencies, history
  - Alibi … set for follow-up
- Even subtle admissions
  - Knowledge about an order
  - Argument, angry, who tried to leave
  - Lack of reasonable fear in self-defense




## Cross Examination of Defendant

## Effective Cross Examination of Defendant

- Ask height and weight? If larger helps to negate self-defense.
- Ask defendant to demo how injuries were sustained. Ask to demo how he/she hit victim.
- Have defendant confirm no or minimal injuries.
- Have defendant confirm fled and didn't call 911.
- Inquire whether defendant was afraid of victim. This will negate self-defense.
- You can "go fishing" to see if you can catch defendant in inconsistencies and/or get her/him to say no memory of it.

## Closing

## Closing

- Have theory of case that fits ALL the facts.
- Explain why the victim and defendant acted the way they did in a way that jurors relate to.
- List elements of the offense and cross them out as you go through the evidence.
- Focus on reliability of 911 statements, independent wits, excited utterances – no opportunity to fabricate – best evidence.
- Focus on defendant's action – flee, didn't call 911, no injuries, no fear (force not r'ble if self-defense).
- Tie in concepts in Voir Dire with closing.
- Accountability. Hard to sit in judgement. Took oath to follow the law. Apply the law to the facts. Beyond r'ble doubt find defendant guilty.

## Other Case Preparation Tips

- Delay is the enemy of many DV prosecutions.
- Be consistent in negotiations on DV cases.
- Balance safety of victim and community and holding the offender accountable.
- Consider the seriousness of the offense, past record, likelihood of rehabilitation , likelihood of future violence and intimidation, effective impact of jail time, availability of community supervision and victim's bill of rights.
- Inform the victim of the negotiated plea process and seek input.

# Questions? Thank you.

## Great prosecutor's try tough cases!

Brie Ann Hopkins Bhopkins@bellevuewa.gov (425) 425-4469
Chris Anderson Christopher.anderson2@seattle.gov (206) 386-1078

Materials were not provided for this session by the publication deadline. If materials are provided later, they will be posted individually by the Session Number, on the materials webpage at http://law.seattleu.edu/x20576.xml.

Session **5B**

**The Neurobiology of Domestic Violence, Part II: The Workshop**

Materials were not provided for this session by the publication deadline. If materials are provided later, they will be posted individually by the Session Number, on the materials webpage at http://law.seattleu.edu/x20576.xml.

Session **5C**

**Throwing Victims a Lifeline:**

**What We've learned from Implementing Lethality Assessment**

# Understanding the Importance of Cross-Cultural Capacity Building

King County Domestic Violence Summit

September 8-9, 2016

Monique W. Morris, Ed.D.
Co-Founder, NBWJI
MoniqueWMorris

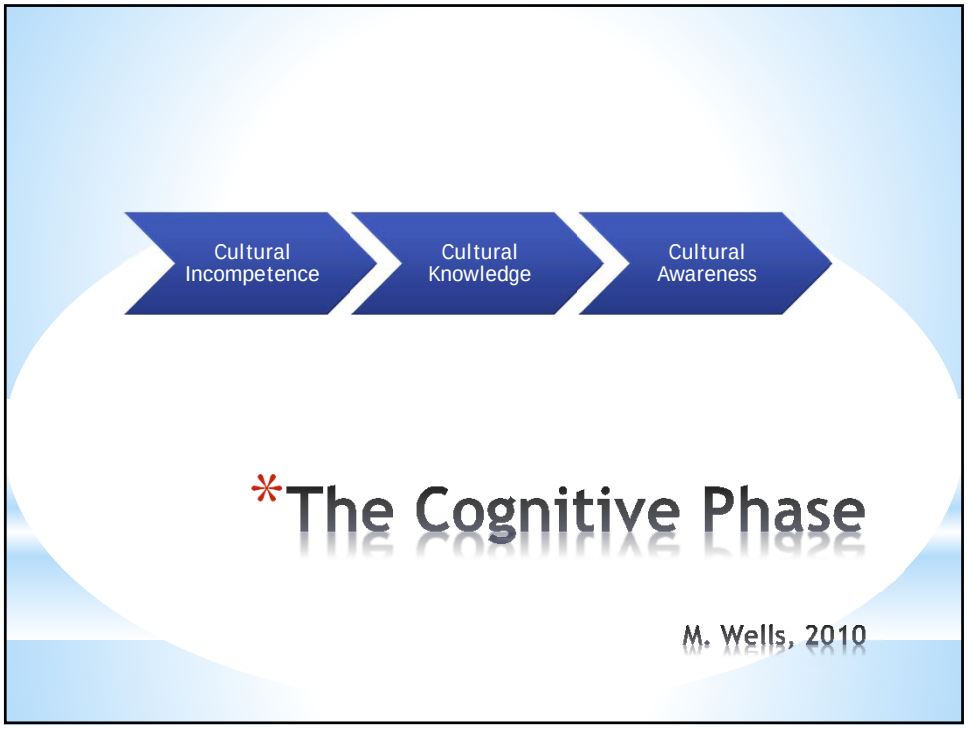
"All I'm saying is simply this, that all life is interrelated, that somehow we're caught in an inescapable network …in a single garment of destiny. Whatever affects one directly affects all indirectly. For some strange reason, I can never be what I ought to be until you are what you ought to be. You can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality."

## Dr. Martin Luther King, Jr.

## *Training Objectives

* To gain a better understanding of the intersection between cross-cultural capacity building, race, ethnicity, gender and sexual orientation in addressing the needs of survivors of sexual assault and domestic violence in African American communities;
* To deconstruct and workshop the concept of "intersectionality," privilege and power dynamics associated with responding to Domestic Violence and Sexual Assault in African American communities;
* To identify and support the capacity of agencies to engage effective communications and decision-making practices in African American communities.

## *What is Cultural Competence in the context of "Intersectionality"?


Cultural Incompetence
Cultural Knowledge
Cultural Awareness
*The Cognitive Phase
M. Wells, 2010

Cultural Sensitivity
Cultural Competence
Cultural Proficiency
*The Affective Phase
M. Wells, 2010

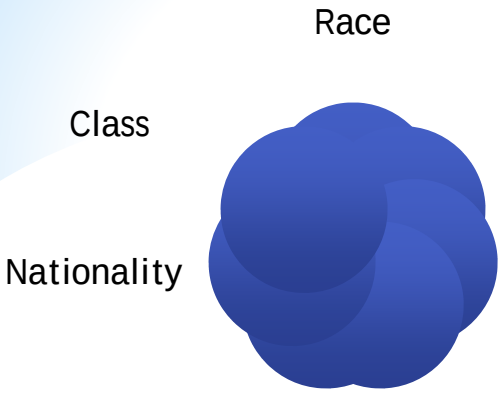
## *Intersectionality

* Rejects a single-axis analysis
* Requires the inquiry and analysis to factor intersections between multiple identities
* Allows for the examination of how people may be vulnerable to multiple forms of bias or discrimination.

"Black women's lives…cannot be captured wholly by looking at the race or gender dimensions of those experiences separately"

-Kimberlé Crenshaw, 1991

## *Intersectional Identities



Ethnocentric individuals judge other groups relative to their own ethnic group or culture, especially with concern for language/communication styles, behavior, customs, religion, and other cultural norms.

## *Ethnocentrism

Ethnorelativist individuals have an ability to see many values and behaviors as cultural rather than universal.

## *Ethnorelativism

## *Implicit Bias

Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.

* Unconscious bias:
  * Pervasive and robust
  * May or may not align with our declared beliefs
  * Works to favor our own ingroup
  * Affects real world behaviors

*Kirwan Institute, 2014*

## *Internalized Oppression

When members of marginalized groups hold an oppressive view toward their own group, or start to believe in negative stereotypes of themselves.

## *Working Toward Competence

14 skills that foster successful relationships among people of different groups

## *Basketball Awareness Test

**Becoming aware of your own cultural values and assumptions.**

* What assumptions are we making about someone else's behavior?
* Do these assumptions come from our social group memberships?

## Intergroup Competence Skill #1

Ramsey-Latting, 2005

**Committing to personal change.**

* Rather than engage in "othering" behavior that perpetuates prejudices and distancing, how can we seek to improve our own ability to contribute to the success or failure of our interactions?
* How do we hold ourselves accountable?

## Intergroup Competence Skill #2

Ramsey-Latting, 2005

**Processing Emotions.**

* How can we examine our emotions so that they do not interfere with productive interactions across differences?
* Why do we want to process our emotions so they lose their charge?

## Intergroup Competence Skill #3

Ramsey-Latting, 2005

**Reframing Mental Models.**

* How do we free ourselves from perceptual shackles that constrict our thinking?
  * Cognitive restructuring
  * Mental imagery

## Intergroup Competence Skill #4

Ramsey-Latting, 2005

**Empathizing With Multiple Perspectives.**

* How do we notice color without judging it?
* How do we avoid "not seeing color or difference" and thereby trivialize the experiences of others?
* How do we develop our capacity for "perspective taking?"

## Intergroup Competence Skill #5

Ramsey-Latting, 2005

**Differentiating Intent From Impact.**

* How do we remain sensitive to our impact on others regardless of our intent?
* How do we respond when we have triggered a response we did not intend?

## Intergroup Competence Skill #6

Ramsey-Latting, 2005

**Engaging in Inquiry and Openness.**

* How do we invite others to make their thinking processes visible so we might compare our assumptions to their assumptions?
* How do we take responsibility for making our own thinking processes visible to others and encourage them to challenge our assumptions and conclusions?

## Intergroup Competence Skill #7

Ramsey-Latting, 2005

**Engaging in Responsible Feedback.**

* How do we offer appreciative and corrective feedback?
  * Choice
  * Future-oriented
  * Self-correcting or self-reinforcing
  * Reinforcement

## Intergroup Competence Skill #8

Ramsey-Latting, 2005

**Connecting the Personal to the Cultural and Societal.**

* How can we move beyond easy explanations and search for contextual explanations by examining how cultural and societal factors infuse conflict?

## Intergroup Competence Skill #9

Ramsey-Latting, 2005

**Addressing Dominant/Nondominant Group Dynamics.**

* How are our relationships influenced by societal and historical classifications of dominance or nondominance?
* How do individuals who primarily identify with a nondominant group status overcome an inability to see themselves as also having dominant group status?

## Intergroup Competence Skill #10

Ramsey-Latting, 2005

**Identifying Systemic Processes and Patterns.**

* What, if any, organizational policies and procedures, communication channels, reporting relationships, leadership, reward systems, and other characteristics favor or penalize different social groups?

## Intergroup Competence Skill #11

Ramsey-Latting, 2005

**Identifying Own Role in Perpetuating Patterns.**

* How do our actions support systemic patterns?
* How do we contribute to the situations we decry?

## Intergroup Competence Skill #12

Ramsey-Latting, 2005

**Surfacing "Undiscussables."**

* How do we maintain an "open and truthful manner?"
* How do we avoid violent expressions as well as blaming and shaming of individuals?
* How do we surface the "undiscussable" issues during opportune times and repeatedly surface them as opportunities occur?

## Intergroup Competence Skill #13

Ramsey-Latting, 2005

**Advocating and Engaging in Systemic Change.**

* How do we initiate systemic change by making a difference in small, but steady ways and set examples from which others can learn?
* How do we remain steadfast?

## Intergroup Competence Skill #14

Ramsey-Latting, 2005

# Group Activity

* Pick a competency.
* Ask questions:
  - "What can I do to get better at this competency?"
  - "What experiments can I do to test my assumptions?"
  - "What accountability partnerships can I establish to increase my capacity in this area?

# Questions/Discussion

## *Resources

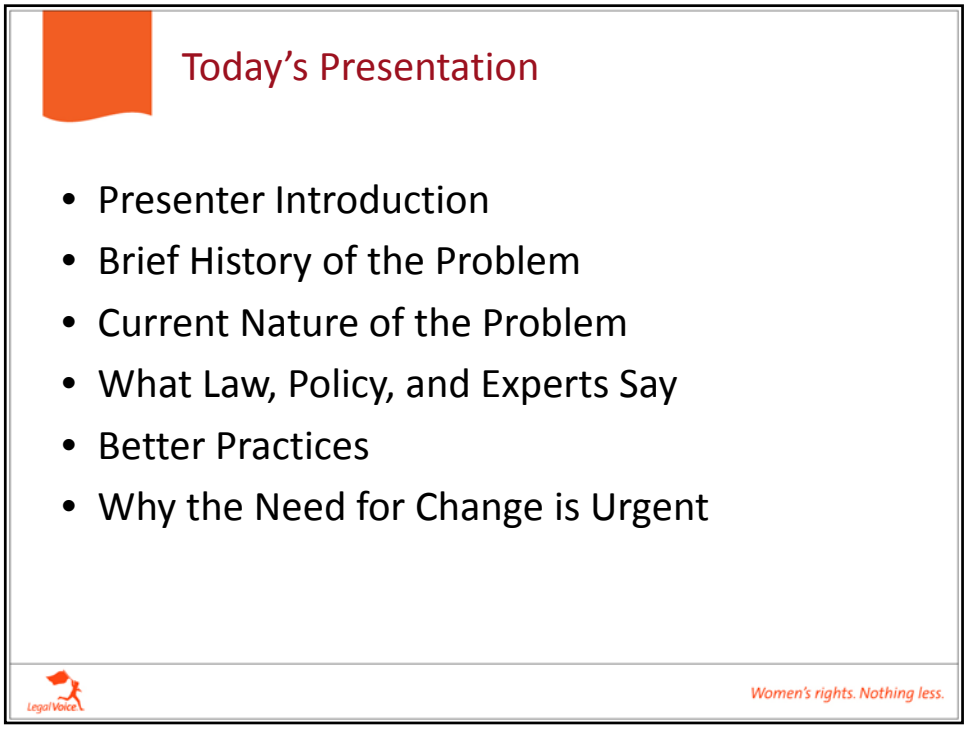
* National Center for Cultural Competence: http://nccc.georgetown.edu/
* Office of Minority Health: http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11
* National Institutes of Health: http://www.nih.gov/clearcommunication/culturalcompetency.htm

## National Black Women's Justice Institute

2703 7th Street, Suite 109
Berkeley, CA 94710
www.nbwji.org

Phone: 1-800-594-1018
mwmorris@nbwji.org

Legal Voice
Women's rights. Nothing less.
We Really Mean It!
Reforming Child Welfare to Protect Survivors of Domestic Violence and Their Families
9/2/2016
© 2014 Legal Voice. All Rights Reserved.


Today's Presentation
• Presenter Introduction
• Brief History of the Problem
• Current Nature of the Problem
• What Law, Policy, and Experts Say
• Better Practices
• Why the Need for Change is Urgent
Legal Voice
Women's rights. Nothing less.

## The Charge of Child Welfare Programs

Legal Voice

Women's rights. Nothing less.

## The Problems With the System: Racial Disparity

Legal Voice

Women's rights. Nothing less.

## The Problems with the System: Class Disparity

Legal Voice

Women's rights. Nothing less.

## The Problems with the System: Victim-Blaming

Legal Voice

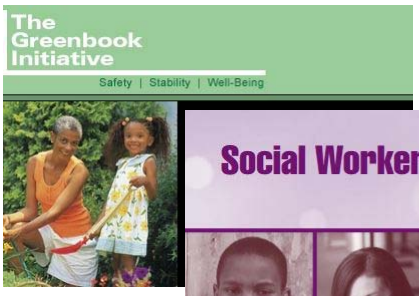
Women's rights. Nothing less.

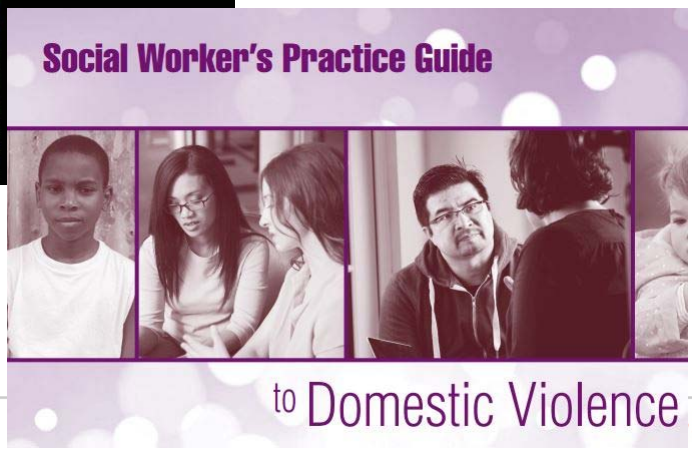
## The Seemingly Irreconcilable Differences

Legal Voice

Women's rights. Nothing less.

## Efforts to Work Together




Legal Voice

less.

## Important Moments in Legal Reform: The Indian Child Welfare Act

Legal Voice

Women's rights. Nothing less.

## Important Moments in Legal Reform: *Nicholson v. Williams,* New York

The New York Times

### *Abuse Victims And the City Settle Lawsuit*

By LESLIE KAUFMAN DEC. 18, 2004

The city settled a long-running class-action lawsuit by victims of domestic violence yesterday, essentially conceding that children could not be placed in foster care just because their mothers had been abused.

The settlement was not a surprise, as it came just months after the state's highest court had ruled explicitly that the city could not remove children in cases in which the sole problem in a family was domestic violence.

Legal Voice

Women's rights. Nothing less.

## What is Happening Now?

Legal Voice

Women's rights. Nothing less.

## What Is Happening Now?

- "Bad relationship choices"
- "Unresolved domestic violence issues"
- "History of maintaining relationships with abusive men"
- "Failure (of victim) to comply with domestic violence treatment"
- Victim "violated court orders" of protection that restrain the perpetrator
- "Relies on financial help" of the perpetrator

Legal Voice

Women's rights. Nothing less.

## What Does the Law Say About It?

"[E]xposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself."

RCW 26.44.020(16)

Legal Voice

Women's rights. Nothing less.

## What Does the Law Say About It?

Legal Voice

Women's rights. Nothing less.

## What Does the Law Say About It?

"It desecrates fundamental precepts of justice to blame a crime on the victim."

*Nicholson v. Williams,* 203 F. Supp. 2d 153, 252 (E.D.N.Y. 2002)



## What Does DSHS Policy Say About It?

"Children's safety is best served when social workers . . . work collaboratively with the victims to determine the best course of action, and engage . . . perpetrators in changing their abusive conduct and in becoming safe parents."

Anne Ganley et al., *Social Workers' Practice Guide to Domestic Violence*, Children's Administration, Washington State DSHS (revised Jan. 2016)

## What Do Experts Say About It?

"All of the experts agree that unnecessary removals harm children, and that children from homes with domestic violence are particularly sensitive to being separated from the non-abusive parent."

*Nicholson v. Williams,* 203 F. Supp. 2d at 251



## Better Practices for Child Welfare Workers

- Training/Learn
- Supervision
- Listen to Survivors
- Listen to Survivors' Advocates

## Better Practices for Child Welfare Agencies

- Follow the law
- Follow the internal guidelines
- Pay attention to the problem
- Advocate for change in resource allocation

Legal Voice

Women's rights. Nothing less.

## Better Practices for DV Advocates

- Engage with child welfare workers
- Have materials to share
- Work with public defenders
- Know your organization's rules for confidentiality and advocacy

Legal Voice

Women's rights. Nothing less.

## Better Practices for Judges

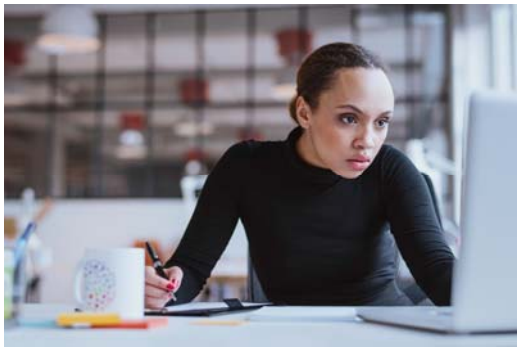
- Understand myths and realities of domestic violence and child welfare
- Do not let myths drive decisions about parental rights
- Understand the constitutional framework protecting battered parents

Legal Voice

Women's rights. Nothing less.

## Better practices for lawyers

- Understand myths and realities of domestic violence and child welfare
- Fight the myths!
- Have constitutional arguments ready
- USE EXPERTS



Legal Voice

Women's rights. Nothing less.

## Better practices for all of us as a community

- Demand better use of our state's resources
- Demand an end to victim blaming
- Support and train lawyers, caseworkers, judges, and parents about the myths, the law, and the realities of DV
- Develop cadre of experts ready/affordable for these cases

Legal Voice

Women's rights. Nothing less.

## Why is this urgent?

Legal Voice

Women's rights. Nothing less.

## Racial and Gender Justice Are At Stake

- **85% of domestic violence victims are women**

  *Bureau of Justice Statistics Crime Data Brief, Intimate Partner Violence, 1993-2001* (2003)

- **Women of color are 30-50% more likely to have been the victim of rape, physical violence, or stalking than white women.**

  *National Intimate Partner and Sexual Violence Survey, 2010 Summary Report*

Legal Voice

Women's rights. Nothing less.

## Our System of Victim Safety Is at Stake

Legal Voice

Women's rights. Nothing less.

## Children's Wellbeing Is at Stake

- **"Studies have shown that the psychological impact of being wrenched from the home and the care of the [victim] mother can cause even greater damage."**

  Lynn F. Beller, *When In Doubt, Take Them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson v. Williams*, 22 Duke Journal of Gender Law & Policy 205, 216 (2015)

- **Children (excluding those suffering severe abuse in their families) had worse outcomes in foster care than if they stayed with troubled families.**

  Joseph Doyle, Jr., *Child Protection & Child Outcomes: Measuring the Effects of Foster Care,* 97 American Economic Review 1583 (2007)

Legal Voice

*Women's rights. Nothing less.*

Legal Voice

*Women's rights. Nothing less.*

## Thank you!

Sara Ainsworth
Advocacy Director
sainsworth@legalvoice.org
(206) 682-9552, ext. 103

*9/2/2016*

*© 2014 Legal Voice. All Rights Reserved.*

# SUPPORTING TRANS* AND GENDER NON-CONFORMING SURVIVORS

NW Network of Bisexual, Trans, Lesbian & Gay Survivors of Abuse | Amarinthia Torres, CAP Manager

## Our Mission

- The Northwest Network increases our communities' ability to support the self-determination & safety of lesbian, bisexual and trans survivors of domestic & dating violence through advocacy, organizing and education. We work within a broad liberation movement dedicated to social & economic justice, equality and respect for all people & the creation of loving, inclusive and accountable communities.

## Programs and Services:

- Community Advocacy Program
- Queer & Trans Youth Program
- Community Engagement
- Training & Technical Assistance

## Goals of this training:

- Center the importance of building awareness of the context of LGBTQ people's lives in order to support creative, effective advocacy.
- Build an understanding of gender and the impact of homophobia, sexism, transphobia, etc…
- Expand our understanding of the impacts, vulnerabilities and barriers LGBTQ survivors of domestic violence face in systems and communities.

## Introductions

- Name
- Role at org
- One hope you have for the training today!

# LGBT²Q²HTSI

'Gay Alphabet Soup' Decoder
solving the age-old question:
"But what should I *say*?"

What words have you heard used respectfully in your community to refer to non-heterosexual, and non-gender conforming people?

.....

## Some notes on language…

- Almost every word that has been **used by us** respectfully, has been **used against us** hatefully.
- Use the language people use to **describe themselves**
- The words people use may **change** over time.
- These words reflect a **great diversity** of experience and identity.
- Tension of **"Insider vs Outsider"** words.

## The Fundamentals…

| | |
|---|---|
| Sex | **Gender** (identity & expression) |
| *Sexual Identity* | **Sexual Behavior** |

## The Fundamentals…

**Sex**

- Anatomical & physiological components combine to indicate the sex of an individual (i.e. genitals, reproductive organs, and primary hormonal environment).
- Words that refer to Sex: Female, Male, Intersex, Transsexual

**Gender**

- All the characteristics that are culturally constructed/ expected of an individual based on their perceived sex. (modes of dress, toys, acceptable ways of expressing emotion, etc.)
- Words that refer to Gender: Woman, Man, Masculine, Feminine, Androgynous, Genderqueer, Femme, Butch etc..

## The Fundamentals…

**Sexuality/Identity**

- The expression or contemplation of sexual feeling or attraction for other people or oneself. Sexuality can also be expressed and/or governed by different cultural rules depending on race, ethnicity, religion, etc.
- Words that refer to Sexuality: Gay, Lesbian, Heterosexual, Bisexual, Queer, Straight, Asexual

**Sexual Behavior**

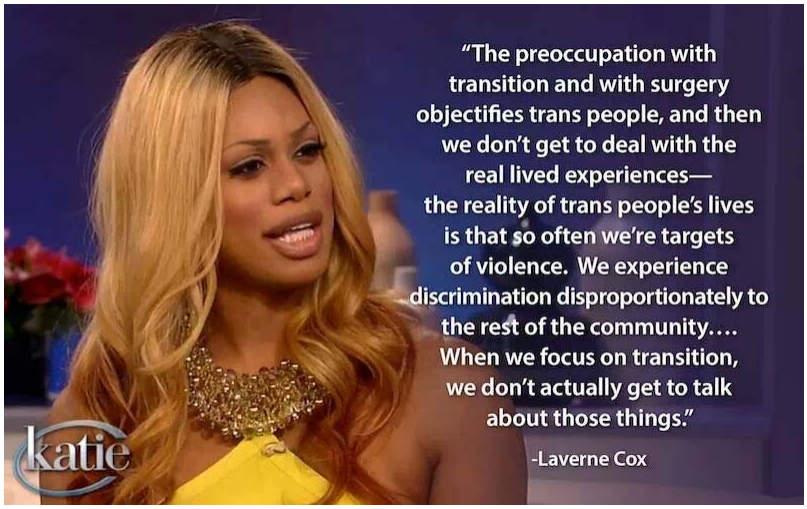
- A person's sexual choices, practices, activity, the manner in which they behave sexually etc… Will vary greatly from person to person.
- Words that refer to sexual behavior: too many to list!

## Transgender or Trans*

- An umbrella term referring to people who in some way defy traditionally acceptable ways of expressing gender (i.e. what a society says it means to be a "man" or a "woman").
- *Some may identify as transsexuals, trans*, FTM, MTF, genderqueer, gender variant, etc.*

## Transgender

- Trans*people choose to present themselves to the world in a variety of ways.
- Some may medically or surgically alter their bodies to affirm their identity
- Some may change hairstyle or dress, given name, appearance
- Some people may make no changes at all!




## Cis-gender or Non-trans

- Referring to an individual who has a match between the sex they were assigned at birth and the roles and behaviors considered by society to be appropriate to their particular gender.

See more at: http://www.revelandriot.com/resources/lgbtq-and-trans-definitions#sthash.EafKEufo.dpuf

Comments/Questions?

# "ACT LIKE A MAN"

## "Act Like a Man"

- When boys and men are told this, what does it mean?
- What is an "ideal" or "real" man?
- What names are boys and men called when they step outside of the box or are perceived as doing so?
- What is done to them?

## "ACT LIKE A LADY"/ "BE A GOOD GIRL"

## "Act like a lady" "Be a good girl"

- When girls and women are told this, what does it mean?
- What is an "ideal" or "real" woman?
- What names are girls and women called when they step outside of the box or are perceived as doing so?
- What is done to them?

Transphobia and sexism is not only about trans or gender non-conforming people but about policing all of us, limiting all of our choices to keep a system of gender oppression intact.

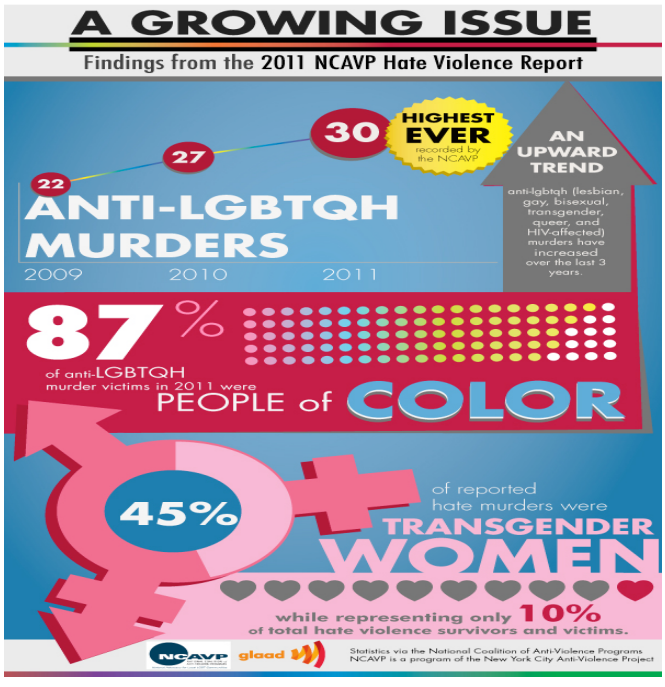
## getting to the roots of oppression:

**Patriarchy**: A system of institutional, cultural and individual beliefs and practices which establishes a binary gender system of two distinct genders ("man" and "woman"), within which men are given power and privilege at the expense of women, transgender and genderqueer folks.

## unpacking transphobia:

**Transphobia:** The irrational fear of those who are perceived to break or blur stereotypical gender roles. Expressed as negative feelings, attitudes, actions and institutional discrimination. Often directed at those perceived as expressing or presenting their gender in a transgressive way.

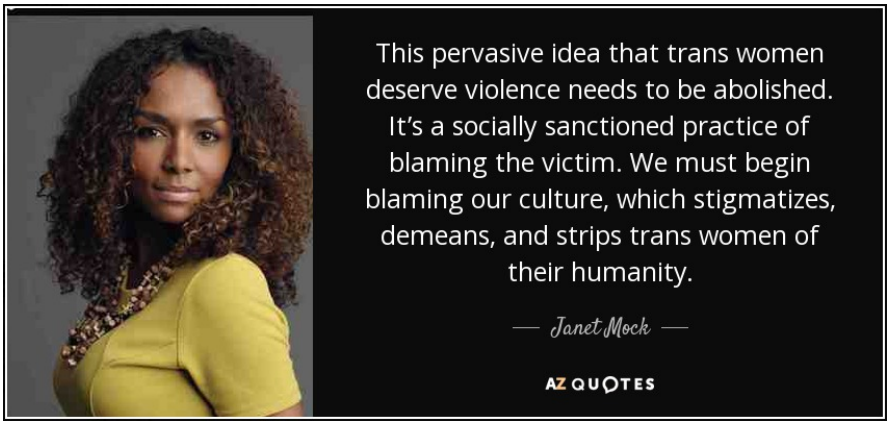
While we all function under these overarching systems of oppression, trans* & gender nonconforming people are disproportionately impacted by these systems, and face isolation, bias, and violence.



Systems of oppression are multiple and interlocking. The intersections of racism, classism, ageism, ableism, etc create compounding harms and barriers

These systems are socially constructed and supported by laws, policy, and cultural norms.

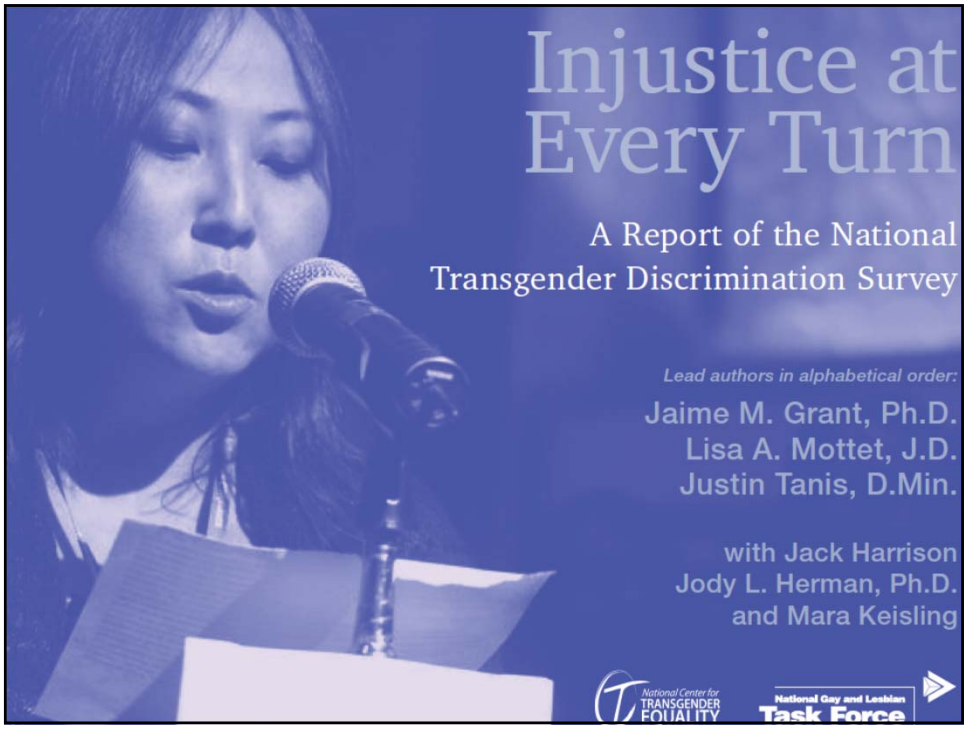
We all have a role to play in de-constructing and dismantling transphobia & other systems of oppression




## Understanding Systemic Barriers

In your small group, please brainstorm as many examples as you can of how trans and gender-non conforming people might encounter differential treatment when interacting with these systems:

- Medical
- Criminal/Legal
- Housing/Employment
- Family

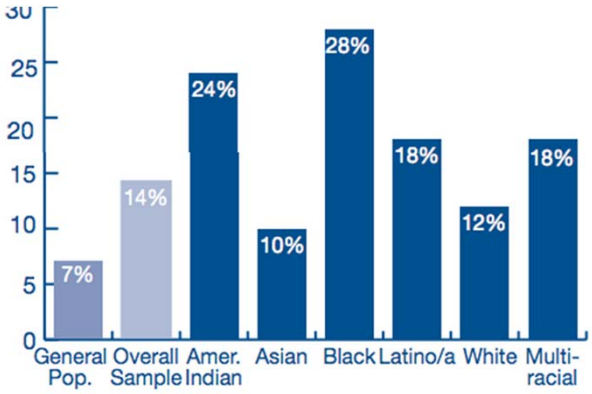



## Key Findings…

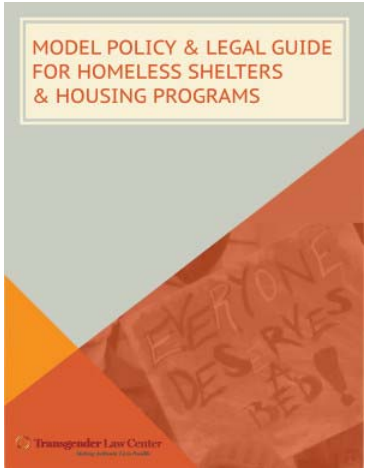
- Combination of anti-trans bias and racism
- Extreme poverty-Black trans folks 4x more likely to have household income of less than $10,000/yr
- 41% attempted suicide (increase due to job loss, SA/DV, harassment)
- Housing discrimination
- Homelessness
- Incarceration
- Substance abuse

Unemployment among transgender and gender non-conforming respondents by race.

(Grant, et al, 2011)



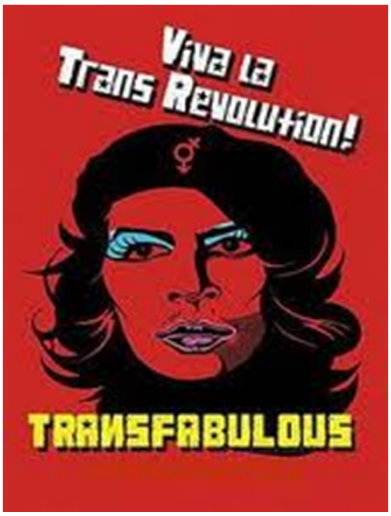

## A resource…



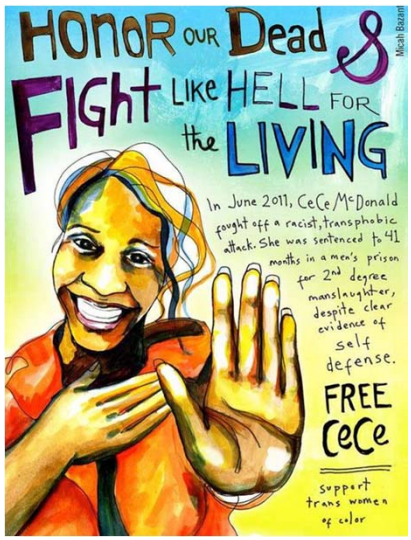

- Transgender Law Center
- Model Policy and Legal Guide for Providing Culturally Competent Services to Transgender and Gender Nonconforming Clients of Homeless Shelters and Housing Programs.

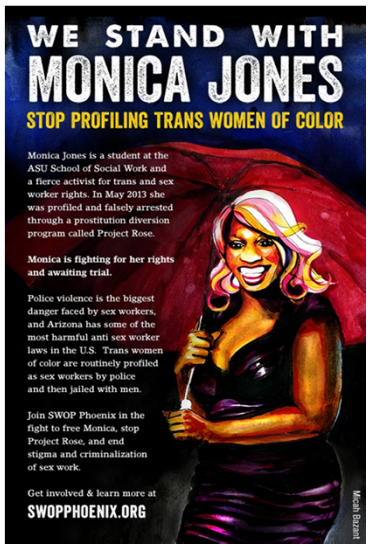
## Strengths of LGBTQ communities

- Self-Determination
- Pride
- Resilience
- Diversity
- Creativity
- Resourcefulness
- Courage




## Changing Landscapes



Comments/Questions?

## Intersections of Trans* communities and Domestic Violence

## BATTERING OBJECTIFIES SURVIVORS.

People who abuse attempt to change other people from

SUBJECTS

(people who can act,
make choices, reflect, & act again)

into

OBJECTS

(things that do not act, but are acted upon)

"Surviving" is all the ways people resist objectification.

## LGBTQ individuals are 30 times more likely to face dual arrest when law enforcement perceive same gender couples

Department of Justice, "Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases: Final Report." (2007) available at https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf

## Building a LGBTQ cultural context

- Impact of oppression on our lived experiences, relationships and communities
- Silence around domestic violence in LGBTQ communities
- Lack of relationship role-models and community supports
- Exclusion of experiences of LGBTQ survivors from the mainstream narrative of domestic violence
- Legal considerations – relationship recognition, parenting, civil protections

© Kristin Tucker for the Northwest Network 2012 DO NOT DUPLICATE

## Building a Trans cultural context

- Isolation
- Threats to out gender identity or status
- Lack of inclusion in mainstream gay & lesbian communities, policy, and advocacy priorities
- Exclusion of experiences of trans survivors from the mainstream narrative of domestic violence
- Internalized transphobia
- Leveraging institutional violence
- Medicalization of trans people

© Kristin Tucker for the Northwest Network 2012 DO NOT DUPLICATE

## LGBTQ DV: Beyond the Wheel

- Isolation and outing
- Using vulnerabilities
- Internalized oppression
- Using children
- Using small communities
- Leveraging institutional violence
- Alcohol and drug abuse

## Isolation and OUTing

When people are first coming out, *they are very vulnerable to abuse* - they may be losing friends and family, may be alienated from their cultural, ethnic, religious, familial community and institutions. The isolation that most LBTGQ people face as a result of homophobia *is useful to a batterer* who is trying to isolate their partner.

Threatening to "out" a person (which could mean losing children, ostracism, job loss etc) is a powerful tool of control.

## Using Vulnerabilities

A batterer using their own vulnerabilities to obligate or coerce their partner into staying, caring for them, and/or prioritizing batterer's needs.

Using vulnerabilities often results in survivors being exploited (resources, time, attention) and undermines survivors' attempts to negotiate boundaries or prioritize self.

## Internalized Oppression

All of us, regardless of our sexual orientation or gender identity, hear negative messages and stereotypes about the lives of LGBTQ people.

We may internalize these messages and experience the compounding impact of internalized oppression and the self-blame experienced by many survivors of domestic violence.

## Using Children

In some states, LBTGQ people are not allowed to be the legal parent of their children. Even in states where LGBT parents' rights are protected, not all individuals have access to the systems to assert their legal rights.

For a non-biological parent, the threat of having no contact with their children makes leaving an abusive relationship a complex to impossible choice.

There are often a smaller number of LGBTQ friendly social gathering spaces, neighborhoods, faith communities, social groups, businesses, bars & nightclubs.

The closeness of relationships & community spaces makes it easier to gain information about someone and use that information to increase a pattern of coercive power & control.

## Using Small Communities

Many systems engaged by survivors of domestic violence, either willingly or unwillingly, have a complex history of discrimination, targeting and violence against LGBTQ communities. Individuals or communities may have mistrust or fear of engaging with law enforcement, courts, mental health providers, immigration or medical systems.

LGBTQ people also experience discrimination and oppression based on race, class, national origin, immigration status, gender, gender identity etc.

## Institutional Violence

LBTGQ people have historically been forced to make community in "illegal" and marginalized spaces such as bars. We have higher rates of alcohol and drug use and abuse than in mainstream communities .

Batterers leverage the ongoing consequences of ways that LBTGQ people's lives have been historically criminalized AS WELL AS the realities of current drug use (and drug criminalization) when setting up/maintaining a system of power & control.

## Substance Abuse

## Scenario

Jay has been in a relationship with Cassandra for six years. Jay tells you that he is considering leaving Cassandra, but is worried about his legal rights to their two children. Things have gotten increasingly tense since their second child was born - Cassandra is concerned that if Jay is out as trans, it will negatively impact Cassandra's job as a teacher. One year ago, they moved to a small town outside of Spokane in order to be closer to Cassandra's family. Since they arrived, Cassandra has actively discouraged Jay from making friends and being connected to queer community. Jay hasn't been able to afford the costs of applying for second parent adoption after being unemployed and acting as the primary caretaker of their children.

## Scenario Questions…

- What aspects of "moving beyond the wheel" do you notice in Jay's story?
- What other information might be helpful to know?
- How might you best support Jay's self-determination and provide effective support?

Comments/Questions?

## Components of inclusive care

- Assess all forms, intakes to ensure that they are LGBTQ friendly
- Educate all staff, including front-desk workers and administration.
- Post flyers, brochures, and magazines that are diverse in age, race and gender that reflect the vast diversity of the LGBT community.
- Create an open dialogue with clients about gender identity/expression, sexual identity, sexual practices
- Practice reflective listening! Use the language someone uses to describe themselves
- Understand how to advocate for LGBT clients needs with other providers
- Be knowledgeable about referrals and resources in the LGBT community
- Have unisex bathrooms available for staff and patients
- Hire LGBT and LGBT-friendly staff and providers

## Communication: Avoiding Assumptions

Don't Assume…

- all patients use traditional labels
- all patients are heterosexual
- Sexual orientation based on appearance
- sexual behavior based on sexual identity
- sexual behavior and identity have not changed since last visit
- bisexuality is only a phase
- transgender people's sexual identity.

The Fenway Institute http://www.fenwayhealth.org

## Tips for allyship/accomplice

- Stop sensationalism and irrelevant questions
- Respect confidentiality
- "Know and tell why"
- Educate yourself about terminology
- Honor self identification
- Practice!
- Humility, patience, vulnerability

## Next Steps…

- What are the barriers for YOU right now to provide supportive services to trans* and gender non-conforming folks?
- What are the strengths of how you deliver services?
- What support would YOU need to create more supportive services for trans* and gender non-conforming people?

## Small Group Discussion…

How does your organization communicate current policies & expectations around harassment and respectful behavior to residents & staff?

*Please do not copy or distribute these slides. Thanks!

## Example Script

- This program houses a diverse community, and we ask that all residents are respectful of each other's differences. This includes diversity in age, race, gender presentations, sexual orientation, ethnicity, religion, health or physical condition, drug use history, or economic status. Can you agree to not using discriminating comments or language in the house? _____

- The house shelters all individuals who identify as women and their children. This includes heterosexual, lesbian, bisexual and transgender women. Will this be a comfortable living situation for you? _____

## Mindfulness

Be aware of the disproportionate impacts of oppressive remarks on members of the target groups on your staff

We can value the expertise & experience of LGBTQ-identified staff, but we cannot rely on them to be the only people to identify or respond to these behaviors .

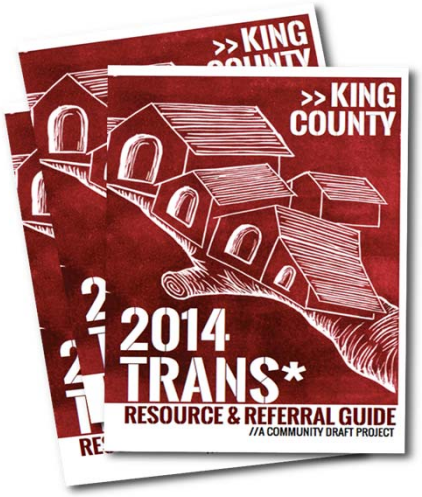
**This is EVERYONE'S responsibility.**

## An amazing local resource!

King County Trans* Resource & Referral Guide.

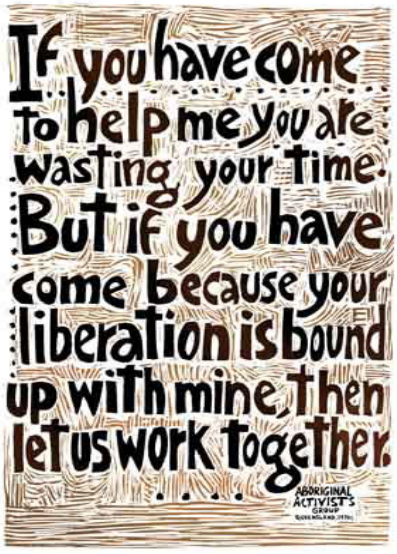
A new community collaboration with trans-led organizations and programs.

http://www.demonstrateaccess.org/2014-trans-guide/



## Resources

- National Center for Transgender Equality – www.transequality.org
- Sylvia Rivera Law Project – www.srlp.org
- Informed Consent for Access to Trans Health - http://www.icath.org/default.html
- Ingersoll Gender Center – www.ingersollcenter.org
- Gender Justice League – www.genderjusticeleague.org
- Collage – www.colage.org




Thank you for your participation!

Amarinthia Torres

206-568-7777

amarinthia@nwnetwork.org