THE SOUND OF SILENCE[1]: *RAHIMI* AND INTIMATE PARTNER VIOLENCE IN 2025

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[1] SIMON & GARFUNKEL, The Sound of Silence (Vinyl Rec., Columbia Recs. Oct. 19, 1964).

* J.D. Candidate, Rutgers Law School, Class of 2026. Thank you to my friends, who let me talk through half-formed ideas and always made time to listen. Most of all, thank you to my sister, Brooke Roberson–my biggest cheerleader, whose love and encouragement carried me through the long nights and tough days.

I. INTRODUCTION

Michelle Monson Mosure. Michelle was determined to build a better life for herself. Despite becoming a mother at 15,[2] and having her second child before the age of 18, she graduated high school on time.[3] And from the moment Kristy and Kyle were born, Michelle devoted her life to them.[4] It wasn't until both kids were in school that Michelle began pursuing her dream of becoming a nurse at Montana State University.[5]

Michelle was only 14 when she met Rocky, who was 24—an entire decade older.[6] Over the next eight years, Rocky isolated Michelle from everyone she loved.[7] He controlled what she wore, forbade her from wearing makeup, and refused to let her work, even though they desperately needed the money.[8] Rocky would even follow Michelle when she attended her classes to make sure she was not lying.[9] His control eventually escalated to threats against her life and physical abuse, sometimes even in front of their children.[10]

Michelle was always quiet about her and Rocky's relationship. It was not until after Rocky broke into her mother's home, injured her sister, and forcibly took Kristy, that Michelle finally told anyone what had been going on.[11] With Rocky in jail and the support of her mother and sister, Michelle worked up the courage to seek a restraining order.[12] But when Rocky's parents bailed him out, out of fear, Michelle recanted everything she had told the police. The prosecutor knew Michelle was lying—but without her cooperation, the case could not—and did not—[13]proceed.[14] Michelle did not

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[2] Michelle actually found out she was pregnant with Kristy, their first child, on her fifteenth birthday. RACHEL LOUISE SNYDER, NO VISIBLE BRUISES: WHAT WE DON'T KNOW ABOUT DOMESTIC VIOLENCE CAN KILL US 21, 33 (2019).

[3] *Id.* at 34-35. Michelle would walk to drop her kids off at daycare before heading to school herself. Her father, Paul Monson, is incredibly proud that she graduated high school on time—even with two kids. *Id.*

[4] *Id.* at 35. Rocky often used Kristy and Kyle as pawns knowing Michelle would do anything to protect them. *Id.* at 46.

[5] *Id.* at 48.

[6] *Id.* at 26-27. Statutory rape charges could have been brought against Rocky, in fact, Michelle's mother, Sally Sjaastad, desperately wanted to press charges against Rocky, but she was talked out of it. *Id.*

[7] *Id.* at 37-38.

[8] *Id.* at 35-36, 47-49.

[9] *Id.* at 48-49. Rocky did not like that Michelle was enrolled in college and would make it difficult for her to study. He would often tell her to either study at home with interruptions from him and the kids or the quit school all together. The compromise? Michelle lied to Rocky about taking an extra class so she could regularly sneak off to the library and study in peace. *Id.*

[10] *Id.* at 49-51.

[11] *Id.* at 51-54.

[12] *Id.*

[13] *Id.*

[14] *Id.*

recant because she wanted to stay with Rocky, she "recanted to keep her children alive."[15]

Two months later, on the Monday before Thanksgiving, Rocky shot Michelle, Kristy, and Kyle, then himself.[16] Michelle was only 23.[17] Kristy was 7.[18] Kyle was 6.[19]

Marie Sisco Varsos. Marie was selfless—a pharmacist who spent the pandemic administering COVID-19 vaccines to nursing home residents.[20] She was a devoted Tennessee Titans fan and mom of two dogs.[21] In 2006, when Marie was 17, she met 21-year-old Shaun Varsos at a movie theater where they both worked.[22] Eventually they got married and began their life together.[23]

Time and again, Marie tried to get help, but her pleas fell on deaf ears.[24] In the month before her death, Marie exhausted every option available.[25] She documented the abuse meticulously—notes, text messages, audio recordings of Shaun's threats—all saved on her laptop.[26] After Shaun strangled her and threatened her with a gun, Marie called the police but she was told no officers were available.[27] The officers had to respond to "life threatening emergencies first."[28] The operator didn't say it but the implication was clear, Marie's call *was not life threatening.*

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[15] *Id.*

[16] Rocky also attempted to light the house on fire so that their deaths would look like a tragic accident instead of the brutal murders they were. However, the house only smoldered and did not alight the way that he had hoped. Accordingly, Rocky did not die from the self-inflicted gunshot wound. Rocky died a painful death from smoke inhalation. All four of them died the Monday before Thanksgiving—a holiday known famously as a family-oriented holiday. *Id.* at 74-76.

[17] *Id.* at 3.

[18] *Id.*

[19] *Id.*

[20] *Marie Sisco Varsos's Obituary*, SPRING HILL FUNERAL HOME & CEMETERY, https://www.springhillfh.com/obituaries/marie-varsos/obituary [https://perma.cc/QV6W-58YS] (last visited Apr. 1, 2026).

[21] *Id.*

[22] Paige Pfleger, *His Mom and Sister Were Killed by Domestic Violence. Now, He's Trying to Help Others*, NATIONAL PUBLIC RADIO (Sep. 4, 2022, at 07:30 ET), https://www.npr.org/2022/08/29/1119325730/his-mom-and-sister-were-killed-now-hes-channeling-grief-to-fight-domestic-violen [https://perma.cc/3NG3-HTJC]; Erica Francis, *Court Documents Give Insight Into Couple's Troubled Past Following Double Murder Suicide*, WRKN (Apr. 13, 2021, at 17:10 CT), https://www.wkrn.com/news/court-documents-give-insight-into-couples-troubled-past-following-double-murder-suicide/ [https://perma.cc/Y2LT-9QLB]. Ironically that movie theater flooded sometime after and was turned into a shooting range that the pair frequented together. Pfleger, *supra* note 22.

[23] Pfleger, *supra* note 22.

[24] *Id.*

[25] *Id.*

[26] *Id.* The laptop was locked but she left her password on a sticky note on the laptop waiting for someone to find it. *Id.*

[27] *Id.*

[28] *Id.* ("[W]hen they called the police, they were told by dispatchers that they would have to wait. 'They're working on getting out there to you. There's just nobody in the precinct right now[.]… So what's

On April 12, 2021, weeks after Marie had filed for divorce, moved out, and obtained a protective order, Shaun gathered various guns, zip ties, and battery acid.[29] He showed up at Marie's mother's house, waited for Marie to arrive, and fatally shot her and her mother, Debbie Sisco.[30] Marrie was 31 years old.[31] Debbie was 60 years old.[32]

Megan Montgomery. Megan was a tenacious woman, a talented writer, and a cheerleader of life.[33] She was the light in every room.[34] Most of her friends and followers assumed she had a fairytale marriage—they were the type of couple who never fought.[35] But in real life, offline, Megan was not smiling.[36] Ten months after tying the knot,[37] Megan was fatally shot in a high school athletic parking lot by her estranged husband and former police officer Jason McIntosh.[38]

The day Megan died, she was in the long process of escaping McIntosh and returning to normal life.[39] For the first time in months, she had gathered with friends for a party and joined for drinks after.[40] McIntosh showed up to

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going to happen is a patrol car is going to have to free up from whatever they're doing and come to. But they do have to take those life threatening emergencies first.'").

[29] *Id.* While the court had ordered Shaun's guns to be given up, there is no documentation the guns were ever turned over. In accordance with a Tennessee law, he had said he was going to give them to his father. One of the biggest issues with the law is that it trusts the defendant's word when it comes to relinquishment. No proof is necessary, like in the case of Shaun. *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Megan Montgomery*, MEGAN MONTGOMERY FOUNDATION TO PREVENT DOMESTIC VIOLENCE, INC., https://megansfoundation.org/mission/ [https://perma.cc/STS4-GTBA] (last visited Apr. 19, 2026).

[34] *Id.*

[35] Annie Renau, *'This is the Face of Domestic Violence.' The Tragedy of Megan Montgomery Happens Far Too Often*, UPWORTHY: HEALTH (Dec. 4, 2025), https://www.upworthy.com/megan-montgomery-ex1 [https://perma.cc/P3V4-RC75].

[36] *Id.* ("But beneath her picture-perfect feed was the story of a woman in an abusive relationship with her husband—one that would start with his arrest shortly after they got married, and end 10 months later with him shooting her to death in a parking lot."); *see* Heather Buckner, *"It Was the End of the World as I Knew It"*, GOOD HOUSEKEEPING: FAMILY AND RELATIONSHIPS (Sep. 24, 2022, at 10:00 ET), https://www.goodhousekeeping.com/life/relationships/a40407340/megan-montgomery-domestic-violence-murder/ [https://perma.cc/TR9S-LTFA] ("[H]er mother sa[id,] 'She smiled on Facebook, but in reality every day, she was not smiling.'").

[37] Buckner, *supra* note 36, at 22. Although, this was just the public ceremony. Megan and Jason had a secret courthouse wedding, that excluded her family and friends, in February 2018. Their public *second* wedding, in February 2019, also excluded her family and friends much to the surprise of those who knew Megan and expected her to have a big and inclusive ceremony. *Id.*

[38] Jason McIntosh resigned from his position with the police department after he shot Megan in the arm, allegedly following an accident while they were struggling over the gun, although, the stories from that night varied each time they were told. He only did so because the police department did the admirable thing and put him on administrative leave while they investigated the incident. After he resigned, nothing came of the investigation and procedurally they had to give him his gun back. Buckner, *supra* note 36.

[39] *Id.*

[40] *Id.*

the bar without an invitation and forced Megan to leave with him.[41] He then drove to the high school athletic parking lot where he took Megan's life.[42]

Megan did everything right. She did exactly "what abused women are told to do: She[] reported him to his own police department; she[] filed for divorce; she[] moved out; she[] pursued domestic violence charges," but it was not enough.[43]

Michelle, Megan, and Marie. Three women in three different states who did everything they could do. Michelle sought a restraining order and pressed charges.[44] Marie documented her abuse meticulously.[45] Megan reported her abuser to his *own* police department.[46] In the end, none of it was enough. Each woman was failed by the very systems designed to protect her.

These deaths were not inevitable tragedies. They were preventable failures of law, policy, and societal indifference. Michelle, Marie, and Megan are not isolated cases. Intimate partner violence claims lives every day,[47] yet it remains unaddressed, under prosecuted, and misunderstood.

This Note examines how we arrived at this crisis and what must change. Part II traces the history of intimate partner violence in America, revealing how the law has both reflected and reinforced society's willingness to ignore abuse within relationships. Part III analyzes critical Supreme Court decisions that have shaped protections for IPV victims. Part IV proposes reforms and considers what still must be done in the wake of recent Supreme Court rulings.

The legal system failed Michelle, Megan, and Marie but understanding how and why is the first step toward ensuring it doesn't fail the next victim.

II. UNDERSTANDING INTIMATE PARTNER VIOLENCE

Intimate partner violence ("IPV"), or domestic violence, is not easy to define but generally refers to abuse occurring between individuals in close relationships, including married and unmarried partners, as well as certain family members and other personal relationships. According to the USDOJ IPV is:

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[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] SNYDER, *supra* note 2, at 51-54.

[45] Pfleger, *supra* note 22.

[46] Buckner, *supra* note 36.

[47] *See* Jonathan Vigliotti & Mead Stone, *How Iowa Woman Angela Prichard Helped Police Solve Her Own Murder*, CBS NEWS (Mar. 19, 2025, at 13:50 ET), https://www.cbsnews.com/news/angela-prichard-bellevue-iowa-murder-christopher-prichard-48-hours/ [https://perma.cc/3M98-BWR7]; Sara Melanson, Karla Castillo, & Karley Cross, *College Station Man Facing Domestic Violence Charges Following 911 Call Admitting To Strangling Family*, KBTX (Mar. 19, 2025, at 08:07 ET), https://www.kbtx.com/2025/03/19/large-police-presence-south-college-station-neighborhood-wednesday-morning/ [https://perma.cc/8FM2-SNDX].

> Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.[48]

Other organizations have adopted similar definitions. The National Domestic Violence Hotline emphasizes that "the one constant component of [IPV] is one partner's consistent efforts to maintain power and control over the other."[49]

It is not always clear what is IPV, but these three things are clear: (1) IPV is not a single isolated incident, rather it is a pattern of behavior; (2) the perpetrator of IPV intends to gain or maintain control over their partner; and (3) IPV is not limited to physical abuse.

A. Our Dark History of Legal "Wife-Beating"

The legal acceptance of IPV has deep historical roots. The phenomenon can be traced from religious teachings that explicitly endorsed spousal discipline, through the formal codification of chastisement doctrine in American law, to the gradual legal reforms of the late nineteenth century that began—though incompletely—to reject this practice.

1. Religious foundations and early teachings

Violence within intimate relationships is as old as the relationships themselves. Until recently, IPV was not condemned as morally or legally wrong.[50] For centuries, physical violence was considered an acceptable means of controlling a wife. Major world religions, Christianity, Islam, and Judaism, each "traditionally believed it was within a husband's purview to discipline his wife."[51] This discipline typically took the form of physical

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[48] *Domestic Violence*, DEP'T OF JUST.: OFF. OF VIOLENCE AGAINST WOMEN (emphasis added), https://www.justice.gov/ovw/domestic-violence [https://perma.cc/ZX75-CLJV] (last visited Mar. 25, 2025).

[49] *Learn More About Abuse*, NAT'L DOMESTIC ABUSE HOTLINE, https://www.thehotline.org/resources/learn-more-about-abuse/ [https://perma.cc/6Z5C-B8G7] (last visited Mar. 25, 2025).

[50] SNYDER, *supra* note 2, at 11.

[51] *Id.* Further, some interpretations of "the holy texts—Koran, Bible, and Talmud…even gave instruction on the manner of wife beating, such as avoiding direct blows to the face, or making sure not to cause lasting injury." *Id.* at 11-12.

correction, reflecting widely accepted patriarchal power dynamics and prevailing gender norms. "Contempt for women has been interwoven with Western religious teachings … almost from the beginning."[52] Biblical teachings reinforced the subordinate status of women, which extended into marriage.[53]

Religious contempt for women went hand in hand with acceptance of corrective violence. These teachings were not merely abstract theological principles but were translated into explicit practical guidance for husbands. IPV was deliberately taught by religious leaders as a necessary form of discipline.[54] Church leaders "exhorted [men] from the pulpit to beat their wives and [for] wives to kiss the rod that beat them."[55] In the fifteenth century, Friar Cherubino of Siena, a Christian scholar, wrote *Regola della vita matrimoniale* (Rules of Marriage).[56] These rules explicitly endorsed IPV and instructed husbands on how to correct their wives:

> When you see your wife commit an offense, don't rush at her with insults and violent blows…. Scold her sharply, **bully and terrify her**. And if this still doesn't work … take up a stick and **beat her soundly**, for it is better to punish the body and correct the soul than to damage the soul and spare the body. … Then **readily beat her**, not in a rage but out of charity and concern for her soul, so that the beating will rebound to you merit and her good.[57]

According to Cherubino, a husband was expected to respond to any perceived wrong through psychological intimidation, and, if necessary, physical violence using a weapon. Although these were not legal rules, religious teachings carried considerable social and normative authority that would later be reflected in secular legal systems.

2. Formal laws and Chastisement

Surprisingly, in New England, the Puritans did have formal laws in place. However, these laws "were largely symbolic and rarely, if ever, enforced."[58] This was because the Puritans, like countless other cultures, built their idea

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[52] TERRY DAVIDSON, CONJUGAL CRIME: UNDERSTANDING AND CHANGING THE WIFEBEATING PATTERN 95 (1978). After all it was Eve who persuaded Adam to eat the apple that got the pair cast from the Garden of Eden. *Gen.* 2:4-3:24 (King James Version). Eve was created from Adam after taking one of his ribs. *Id.*

[53] *Gen.* 3:16 (King James Version). God said of wives: "thy desire shall be to thy husband, and he shall rule over thee." *Id.*

[54] DAVIDSON, *supra* note 52, at 98.

[55] *Id.*

[56] *Id.* at 99.

[57] *Id.*

[58] *Id.*

of marriage upon patriarchal concepts.[59] A husband was given complete control over his wife.[60] So while the official, and legal, stance disfavored IPV, this had no practical effect on the daily lives of Puritan women.

This pattern of tolerance continued into the nineteenth century where IPV had become deeply embedded in pop culture. It appeared in "poems, songs, and jokes, in temperance stories and novels which blanketed the country, in almanacs, in children's books. In illustrations, and even in at least one card game.[61] The commanding view was that "[a]s master of the household, a husband could command his wife's obedience, and subject her to corporal punishment or 'chastisement' if she defied his authority."[62] This echoed the kind of control Friar Cherubino of Siena had prescribed centuries earlier.

In England, "judges based their decisions on what the community seemed to feel was correct."[63] Because society thought wife-beating was acceptable, judicial opinions reflected this view. Judges formally sanctioned the abuse of wives from behind the bench.

Early American common law adopted the English doctrine of chastisement.[64] In *Bradley v. State*, a Mississippi court upheld—although restricted—the "right of moderate chastisement."[65] A husband was permitted to use an instrument "no bigger than [his] thumb."[66] The practical effect of this ruling, even with the so-called restriction, was to legalize wife-beating. A husband could legally strike his wife if he used a rod or stick that was no wider than his thumb.[67] In North Carolina, courts applied a variation on this standard, focusing on the level of injury inflicted.[68] Chastisement that caused

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[59] John B. Kamp, *Patriarchy and Gender Law in Ancient Rome and Colonial America*, 8 IOWA HIST. REV. 43, 47 (2020).

[60] *Id.*

[61] Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2125 (1996) (citing Jerome Nadelhaft, *Wife Torture: A Known Phenomenon in Nineteenth Century America*, 10 J. AM. CULTURE 39, 42 (1987)).

[62] *Id.* at 2123.

[63] DAVIDSON, *supra* note 52, at 101.

[64] *See* Bradley v. State, 1 Miss. (1 Walker) 156, 157 (1824); State v. Black, 60 N.C. (Win.) 262, 262 (1864).

[65] 1 Miss. (1 Walker) at 157.

[66] *Id.* This is sometimes referred to as the "Rule of Thumb," which has become a popular American idiom, but there is a debate among scholars whether the idiom comes from the early antidomestic violence legislation. Many scholars maintain that the phrase originates much further back than the decision, from 753 B.C. during the reign of Romulus, the first King of Rome, and his rules permitting IPV. Others assert that although the phrase bears an uncanny relation to the rule, it has no relation to early antidomestic violence legislation. *See* Glenn Ricketts, *Feminist Legal Scholar Cites Historical Origins of "Rule of Thumb"*, NAT'L ASS'N OF SCHOLARS (Aug. 19, 2009), https://www.nas.org/blogs/article/feminist_legal_scholar_cites_historical_origins_of_the_rule_of_thumb. [https://perma.cc/M4HM-TBZA]. Regardless of the origins it has become inextricably intertwined and forever associated with permissive domestic violence.

[67] 1 Miss. (1 Walker) at 157.

[68] 60 N.C. (Win.) at 262.

permanent injury was *impermissible*, but any temporary injury was permitted.[69]

These decisions collectively established spousal abuse as a unique carve-out in criminal law: a husband could legally strike his wife that would constitute criminal assault if committed against *any* other person.[70] The legal reasoning underlying chastisement was rooted in the exchange of rights and responsibilities under coverture laws. Under coverture laws, a husband acquired the legal rights of his wife, making him responsible for her behavior, and in turn that wife lost her independent legal status completely.[71] "[C]hastisement was one of the host of 'privileges' men acquired upon marriage."[72] In his 1765 *Commentaries on the Laws of England*, William Blackstone explained how this exchange between spouses was reflected in English common law:

> For, as he is to answer for her misbehavior, the law thought it reasonable to intrust him with the power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is liable in some cases to answer. But this power of correction was confined within reasonable bounds.[73]

James Kent later adopted this reasoning too in his 1826 *Commentaries on American Law*:

> As the husband is the guardian of the wife, and bound to protect and maintain her, the law has given him a reasonable superiority and control over her person, and he may even put gentle restraints upon her liberty, if her conduct be such as to require it.[74]

The law trapped women in a legal catch-22: coverture eliminated their independent legal identity and placed them under their husbands' authority, and that subordinate status was then used to justify the violence necessary to maintain it.

Although Blackstone recognized that chastisement was not an unlimited right, these limitations were largely illusory. Husbands retained sole discretion to determine what constituted misbehavior, what required correction, and how much force was appropriate. Husbands served as judge,

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[69] *Id.*

[70] *See* KIRSTEN S. RAMBO, "TRIVIAL COMPLAINTS": THE ROLE OF PRIVACY IN DOMESTIC VIOLENCE LAW AND ACTIVISM IN THE U.S. 10 (Columbia University Press 2008) (quoting *State* v. *Rhodes,* 61 N.C. (Phil. Law) 453 (1868)).

[71] *Id.* at 3.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 3-4.

jury, and executioner. Men were unilaterally defining standards of acceptable behavior for women and enforcing those standards through violence.

3. The shift away from legal sanction

In the latter half of the nineteenth century, cultural and legal attitudes toward chastisement began to shift, though "[c]hastisement did not die an easy death."[75] Early critiques emerged in commentary, followed decades later by formal legal reforms that often proved more symbolic than substantive.

The first signs appeared in Gilbert Abbott à Beckett's *Comic Blackstone*:

> By the old law, a husband might give his wife moderate correction … but it is declared in black and white that he may not beat her black and blue, though the civil law allowed any man on whom a woman had bestowed her hand, to bestow his fists upon her at his own discretion. The common people, who are much attached to the common law, still exert the privilege of beating their wives … and a woman in the lower ranks of life, if she falls in love with a man, is liable, after marriage, to be a good deal struck by him.[76]

À Beckett's satire highlighted the absurdity of the legal distinction between "moderate correction" and beating a wife "black and blue"—a distinction that suggested wives should be grateful for limited violence rather than questioning why any violence was permitted at all.[77] It revealed that spousal violence was an expected consequence of marriage. By framing this as ridiculous rather than reasonable, à Beckett signaled shifting cultural attitudes that would eventually reach the courts.

While à Beckett's critique initially stood relatively alone, the decades following the Civil War brought accelerated social change that eventually translated into legal reform.[78] Courts began allowing criminal prosecution against abusive husbands and rejecting their right of chastisement claims.[79]

In *Fulgham v. State* the Alabama court declared:

> The wife is not to be considered as the husband's slave. And the privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.[80]

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[75] Siegel, *supra* note 61, at 2122.
[76] GILBERT ABBOTT Á BECKETT, THE COMIC BLACKSTONE 121-22 (Callaghan & Cockroft 1869).
[77] *Id.*
[78] Siegel, *supra* note 61, at 2130.
[79] *Id.* at 2133-34.
[80] Fulgham v. State, 46 Ala. 143, 146-47 (Ala. 1871).

The same year the Massachusetts Supreme Court explicitly rejected the right of chastisement.[81]

But these formal changes tell only part of the story. "[J]urists and lawmakers vehemently condemned chastisement doctrine, yet routinely condoned violence in marriage."[82] The laws and judicial protections that were created, much like the Puritans' laws, were not effective.[83] When prosecutions did occur, batterers were often selected based on factors other than victim protection, suggesting that "concerns other than protecting women animated the[ir] punishment."[84] Significant gaps remained between legal prohibition and actual protection.

In the absence of effective legal enforcement, community-led punishment stepped in to protect women. "A variety of groups and individuals—ranging from victims' family members to church congregations to feminists to vigilante groups…all took deliberate measures to punish batterers and to protect victims of domestic violence."[85] This approach may have been more effective because where "the system of formal regulation against wifebeaters was relatively weak and cumbersome … the mechanisms for informal regulation [were] relatively vigorous and extensive."[86] Even these community interventions could not fully address the systemic nature of IPV, setting the stage for new challenges in the twentieth century.

B. The Twentieth Century: "Drawing the Curtain"

1. The Private Matter Era

By the twentieth-century IPV was no longer called chastisement or wife-beating, it was commonly referred to as "domestic violence." The new term reflected the shift in how society conceptualized IPV: IPV was a private matter to be resolved between husband and wife within the home.[87] The term "domestic" itself reinforced this privatization. "Domestic" is defined as "relating to the household or the family."[88] Domestic violence, therefore, literally means violence within one's home or among family members.

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[81] *Id.* at 2121-22.
[82] *Id.* at 2130.
[83] RAMBO, *supra* note 70, at 10.
[84] Siegel, *supra* note 61, at 2130.
[85] RAMBO, *supra* note 70, at 1.
[86] *Id.*
[87] *See* Siegel, *supra* note 61, at 2120.
[88] *Domestic,* MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/domestic [https://perma.cc/E47J-UCZ6] (last visited Nov. 3, 2024).

A prophetic North Carolina judge declared in 1874 that "it is better to draw the curtain, shut out the public gaze and leave the parties to forget and forgive."[89] This is the attitude that shaped the twentieth century, where spousal abuse was not *permitted* but intervention did not come rushing.[90]

Recent scholarship, however, complicates this narrative of *wholesale* privatization and non-intervention.[91] Elizabeth Katz argues that the reality was more nuanced: courts did publicly address domestic violence, but only in ways that reinforced existing gender roles.[92] "[T]he male judiciary was willing to strongly and publicly address domestic violence but only in ways that left men in control."[93] Judges "harshly condemned male perpetrators—sentencing men to fines, prison, and even the whipping post—for failing to conform to appropriate husbandly behavior, while rewarding wives who exhibited the traditional female traits of vulnerability and dependence."[94] Women were given "protection, but no extension of basic rights."[95]

Either approach produced the same result; the continued denial of women's independent legal rights.[96] Coverture laws persisted well into the twentieth century, meaning married women lacked the legal capacity to bring claims themselves.[97] When victims sought formal legal remedies such as interspousal tort suits, courts rejected these claims because granting such relief would require acknowledging women's autonomy—an acknowledgment fundamentally incompatible with coverture.[98]

This denial was an indirect form of systemic abuse in itself. It is considered "preservation through transformation."[99] The legal system may have abandoned the explicit language of husbands' rights to chastise but preserved male control over women by transforming the justification from entitlement to paternalistic protection.

2. Victim-blaming and institutional failures

Beyond the courts, the "private matter" ideology shaped institutional responses throughout the criminal justice system.[100] Police departments, in

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[89] State v. Oliver, 70 N.C. 60, 61-62 (1874).

[90] *See, e.g.*, *id.*

[91] *See generally* Elizabeth Katz, *Judicial Patriarchy and Domestic Violence: A Challenge to the Conventional Family Privacy Narrative*, 21 WM. & MARY J. WOMEN & L. 379 (2005).

[92] *Id.*

[93] *Id.* at 438.

[94] *Id.* at 379.

[95] *Id.* at 436.

[96] *See id.*

[97] Siegel, *supra* note 61, at 2161-62.

[98] *See* Katz, *supra* note 91, at 379-80.

[99] Siegel, *supra* note 61, at 2119.

[100] Joan Zorza, *Criminal Law of Misdemeanor Domestic Violence, 1970-1980*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47 (1992).

particular, explicitly embraced non-intervention as official policy.[101] During the 1970s, officers were taught that IPV was a private family matter "ill-suited to public intervention."[102]

It was standard police practice "to delay response in the hopes the problem would resolve itself or the disputant would leave before the police arrive[d]."[103] Simply put, IPV was not considered a police matter. Officers were supposed to hope the situation would go away on its own, even knowing the wife would likely face escalated violence. The police were not just unlikely to intervene—they were unwilling.[104]

When victims sought help despite these barriers, they encountered active hostility.[105] In 1978, a Chicago resident wrote to a newspaper advice column describing this dynamic.[106] She referenced a police officer's claim that "police can't help [victims of intimate partner violence] because the women don't *want* help."[107] Rather than acknowledging institutional failure, this response blamed the victims themselves. The writer's own research revealed that women in Chicago found it "useless to call the police," were told to "mind your husband," and had officers "offer[ing] to escort [them], the victim, out of the house."[108] When given the opportunity to respond, the police denied none of these specific allegations but instead insisted they were more than properly trained—once again shifting blame to victims rather than acknowledging systemic failures.[109]

Women were often too scared to reach out to the police because when they did, they were shamed, ridiculed, and humiliated.[110] Two women seeking legal action against their abusive husbands were "humiliated by police officers and magistrates who refused to take their pleas for help seriously."[111] One magistrate dismissed IPV as merely "a case of a breakdown in the family unit," claiming "[l]ots of husbands and wives just hate each other."[112] The implication was clear: no outside intervention was necessary. The solution was for couples to talk it out—advice that

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[101] *Id.*
[102] *Id.*
[103] Meg Townsend et al., *Law Enforcement Response To Emergency Domestic Violence Calls for Service* (Feb. 1, 2005) (on file with the WRLR).
[104] *See id.*
[105] *See, e.g.*, Ann Landers, *Wife beating: Public and police viewpoints aired*, PHILADELPHIA INQUIRER (Apr. 27, 1978).
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] Bill Peterson, *System Frustrates Battered Wives*, WASH. POST (Nov. 2, 1975).
[111] *Id.*
[112] *Id.*

fundamentally misunderstood the dynamics of abuse and left victims trapped with their abusers.[113]

In some cases, institutions created arbitrary barriers designed to discourage victims from pursuing claims. Police required one woman to "count backwards from 100 to prove she wasn't crazy."[114] The requirement that she demonstrate mental competence through this arbitrary test bore no logical connection to assessing the credibility of her assault complaint.[115] She described her experience: "[i]t took [her] 11 years to get enough nerve to go to [a magistrate] and when [she] got there they were insulting and sarcastic."[116]

In 1978, Geri Hartzell, attempted to seek police assistance following a violent assault by her estranged husband.[117] After he "forced her car off the road, tried to take her car keys, punched her in the head, and stole her wristwatch," Hartzell, then 17 years old, sought to file assault charges.[118] Instead, she received "religious literature," was told to "seek marriage counseling," and advised to "turn to God for help."[119] Charges were never filed.[120]

These responses were not isolated incidents—they reflected widespread institutional practices. As was common at the time, "police minimize[d] wife-beating cases" and failed to treat them with appropriate seriousness.[121] Officers "often attempt[ed] to reconcile the parties or to mediate" rather than treating IPV as the crime that it was and is.[122]

3. Early reforms and mandatory arrest laws

The tide began to turn, once again, in the late 1970s. In New York City, a group of abused women filed a class action lawsuit against the NYPD after years of being ignored and neglected.[123] The plaintiffs alleged what countless women already knew, that police routinely refused to arrest abusers, even

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[113] *Id.*

[114] *Id.*

[115] *Id*.

[116] Peterson, *supra* note 110.

[117] *Wife Asks for Arrest and Gets Advice*, TRI-COUNTY COAL. AGAINST DOMESTIC VIOLENCE NEWSL. (Jan. 1979), https://policing.umhistorylabs.lsa.umich.edu/s/crackdowndetroit/item/2703 [https://perma.cc/YP59-DTG8] (on file with Bentley Historical Library, Diana Warshay Papers, Box 1).

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Police Will Arrest Wife Beaters in Reversal of New York Policy*, N.Y. TIMES (June 27, 1978) https://www.nytimes.com/1978/06/27/archives/new-jersey-pages-police-will-arrest-wife-beaters-in-reversal-of-new.html [https://perma.cc/4VEY-Q8G5].

[122] *Id.*

[123] Bruno v. Codd, 396 N.Y.S.2d 974 (Sup. Ct. 1977).

when the evidence was overwhelming.[124] The resulting settlement mandated the NYPD to respond to domestic violence calls as they would any other crime.[125] Abused women were now "officially entitled to the same police protection as other victims of crimes."[126] That this needed to be said in 1978—decades after IPV as supposedly abolished by the judiciary—revealed how far practice had lagged behind law.

What followed was a national movement towards mandatory arrest laws where an arrest was required "when there was reasonable cause to believe an assault had taken place."[127] The theory was straightforward: if police were *required* to arrest, they could no longer dismiss IPV as a private matter or pressure victims to reconcile with their abusers. Today, sixteen states and the District of Columbia maintain mandatory arrest laws for IPV.[128]

Mandatory arrest laws created its own complications. It removed all discretion from the decision and often sweeping up victims alongside their abusers.[129] And the empirical case for mandatory arrest proved contested because "[i]t is unclear as to whether or not mandatory arrest actually deters domestic violence in all communities."[130] The landmark Minneapolis DV experiment that advocated for mandatory arrest policies has never been consistently replicated. Some critics raised deeper concerns, warning that mandatory arrest increased state control over women.[131] The pendulum had swung from systemic refusal to intervene to an instrument that sometimes harmed those it was designed to help.

Federal intervention came in 1994 with the Violence Against Women Act (VAWA), "the first federal legislation acknowledging domestic violence and sexual assault as crimes."[132] VAWA set up a source of funding, encouraged "community-coordinated responses," and created criminal penalties for certain acts of IPV.[133] This not only gave actual protection to women but signaled to the entire country that IPV was a serious issue. VAWA has been reauthorized several times since its passing, each time

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[124] *Id.*

[125] N.Y. TIMES, *supra* note 121.

[126] *Id.*

[127] Margaret Solic, A Nation Against Itself: Domestic Violence, Feminism, and the State 74 (2015) (Ph.D. dissertation, The Ohio State University).

[128] DJ Summers, *Which States Have Mandatory Arrests for Domestic Violence? What Are Their Impacts?*, KDVR (May 13, 2022, at 16:14 ET), https://kdvr.com/news/data/which-states-have-mandatory-arrest-dv-laws-and-what-impact-do-they-have/ [https://perma.cc/MK8F-X9XA].

[129] *See* Solic, *supra* note 127, at 91.

[130] *Id.* (citing ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 93 (New Haven: Yale University Press, 2000)).

[131] *Id.* (quoting MARIE GOTTSCHALIK, THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA 160 (2006)).

[132] *Violence Against Women Act*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, https://nnedv.org/content/violence-against-women-act/ [https://perma.cc/25L5-46UW] (last visited Jan. 11, 2026).

[133] *Id.*

trying to patch any loopholes and remain responsive to victims.[134] While this legislative framework was in place, deeper cultural and institutional barriers have persisted into the twenty-first century.

C. Modern IPV in the Twenty-First Century

According to the National Domestic Violence Hotline, one in four women and one in seven men have been the victim of severe physical violence by an intimate partner in their lifetime.[135] Each day, three women are murdered by a current or former intimate partner.[136] The numbers grow even more grave when guns are involved—especially for women in the United States compared to "women in other high-income countries."[137] "The presence of a gun in domestic violence situations increases the risk of homicide for women by 500%."[138] Seventy-six women are *shot* and *killed* by an intimate partner *each* month.[139]

IPV also carries economic consequences that are not apparent at first glance. "The lifetime cost of intimate partner violence—including the costs of related health problems, lost productivity, and criminal justice costs—has been estimated at $103,767 for women and $23,414 for men."[140] These expenses go beyond hospital bills and other physical or mental health treatments. They trickle into every other aspect of their lives.

The most common question people ask is, why don't victims just leave? Why do they stay? It is never that simple. Never that easy. There are numerous factors to consider: children, other family members, shelter, finances, etc. It takes an average of seven attempts for a victim to leave an abusive relationship.[141] And the simple truth is that victims are in the most danger when they attempt to leave.[142] Consider Michelle, Marie, and Megan,

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[134] *Id.*

[135] *Domestic Violence Statistics*, NATIONAL DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/stakeholders/domestic-violence-statistics/ [https://perma.cc/Q7U4-V2R3] (last visited Mar. 25, 2025).

[136] *DV Facts and Stats*, RESPOND, https://www.thehotline.org/stakeholders/domestic-violence-statistics/ [https://perma.cc/Q7U4-V2R3] (last visited Mar. 25, 2025).

[137] *Learn More About Abuse*, NATIONAL DOMESTIC VIOLENCE HOTLINE, https://www.thehotline.org/resources/learn-more-about-abuse/ [https://perma.cc/SBJ5-GGQA] (last visited Mar. 25, 2025) ("Women in the US are 11 times more likely to be killed with guns than women in other high-income countries.").

[138] *Id.*

[139] *Guns and Violence Against Women*, EVERYTOWN, https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/ [https://perma.cc/G7FR-29PG] (last updated Nov. 20, 2024).

[140] *DV Facts and Stats*, *supra* note 136.

[141] *Id.*

[142] SNYDER, *supra* note 2, at 11.

who were all attempting to leave their abusive husbands when they were killed by them.[143]

IPV is also severely underreported. Even with improved treatment by law enforcement, it is estimated that only about half of all incidents are reported to the police.[144] Some victims do not even recognize that they are victims. The United Nations has created a list of questions to help identify whether a person is a victim of IPV.[145] These questions can be used for self-identification or help recognize the signs in family members, friends, and peers.

Underreporting is a particular problem for men. It is incredibly hard for men to come forward due to fear of ridicule.[146] Being abused is seen as antithetical to the gender roles associated with males, and people often do not believe men can be abused.[147] When a six-foot man says that his five-foot-nothing partner is physically abusing him, people often laugh rather than take the report seriously. This discourages men from speaking out at all.[148] All victims face stigma, but for men it can be particularly severe.[149] Victims are forced to suffer in "dangerous silence" in the face of this stigma.[150]

From all the numbers, it is clear that the current treatment of IPV is not working—and the presence of guns is making it worse.

III. WHAT HAVE COURTS DONE?

The statistics make it clear that guns and IPV are a deadly combination. But what protections exist to keep firearms out of the hands of abusers? How secure are those protections? The answer depends on the courts, and in recent years, the Supreme Court has reshaped the landscape of gun regulation in ways that may directly threaten the safety of IPV victims.

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[143] *Id.*; Pfleger, *supra* note 22; Annie Reneau, *'This is the Face of Domestic Violence', The Tragedy of Megan Montgomery Happens Far Too Often,* UPWORTHY: HEALTH (Dec. 4, 2025), https://www.upworthy.com/megan-montgomery-ex1 [https://perma.cc/P3V4-RC75].

[144] *Data Says Domestic Violence Incidents Are Down, But Half of All Victims Don't Report to Police*, USA FACTS, https://usafacts.org/articles/data-says-domestic-violence-incidents-are-down-but-half-of-all-victims-dont-report-to-police/ [https://perma.cc/N7G3-7JZU] (last updated Oct. 21, 2021).

[145] UNITED NATIONS, *What is Domestic Abuse?,* UNITED NATIONS CORONAVIRUS RESPONSE, https://www.un.org/en/coronavirus/what-is-domestic-abuse?utm_source=chatgpt.com [https://perma.cc/Z7KT-VCRZ] (last visited Feb. 9, 2026).

[146] *The Silent Struggle: Why Men Often Don't Report Abuse*, SAFE ALLIANCE, https://www.safealliance.org/blog/silent-struggle-why-men-are-less-likely-report/ [https://perma.cc/CWA7-NNES] (last visited Mar. 21, 2025).

[147] *Id.*

[148] *Id.*

[149] *Stigma and Domestic Violence*, CONNECTIONS FOR ABUSED WOMEN AND THEIR CHILDREN (Feb. 27, 2023), https://www.cawc.org/news/stigma-and-domestic-violence/ [https://perma.cc/2M7U-BJJV].

[150] *The Silent Struggle: Why Men Often Don't Report Abuse*, *supra* note 146.

According to the Constitution the American people have the right to own guns under the Second Amendment: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[151] The Supreme Court has gone back and forth on what right is conferred by this Amendment and what type of regulation is allowed—because not even the right to freedom of speech is without limits.[152]

For decades the courts followed the precedent set in *United States v. Miller*, until *District of Columbia v. Heller* changed the fabric of Second Amendment analysis in 2008.[153] Then came along *N.Y. State Rifle & Pistol Ass'n v. Bruen* in which the conservative bench changed the analysis yet again.[154]

A. The Unworkable *Bruen* standard

The New York law in *N.Y. State Rifle & Pistol Ass'n v. Bruen* was struck down as unconstitutional under the Second Amendment.[155] In a 6-3 decision Justice Thomas, who wrote for the majority, provided a new framework for Second Amendment cases using a two-step analysis rooted in originalism.[156]

First, the court must look to see if the conduct falls within the "plain text" of the Second Amendment.[157] If it does, the conduct is presumptively protected by the Constitution.[158]

Second, the government must show that the regulation "is consistent with the Nation's historical tradition of firearm regulation."[159] The government cannot "simply posit that the regulation promotes an important interest," it *must* find a historical analogue.[160] Accordingly, "to pass the new test, the government must show there was a 'relevantly similar' regulation of the conduct when the Second and Fourteenth Amendments were adopted by presenting a 'well-established and representative historical analogue.'"[161]

Bruen overturned the standing Second Amendment precedent and two-prong test that was set by the Supreme Court in *District of Columbia v.*

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[151] U.S. CONST. amend. II.

[152] *See What Does Free Speech Mean?*, U.S. CTS., https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-free-speech-mean [https://perma.cc/6CQX-SWL3] (last visited Mar. 21, 2025).

[153] *See* District of Columbia v. Heller, 554 U.S. 570 (2008).

[154] N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 24 (2022).

[155] *Id.*

[156] *Id.* at 25.

[157] *Id.* at 20.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *In re* Appeal of the Denial of R.W.T., 477 N.J. Super. 443, 584 (App. Div. 2023) (quoting N.Y. State Rifle & Pistol Ass'n. v. Bruen, 597 U.S. 1, 24 (2022)).

Heller.[162] With this change came significant criticism. The two main lines of criticism were: (1) from advocates for gun control who took issue with the apparent expansion of Second Amendment protections, and (2) from judges, clerks, and others pointing out that the decision did not provide a workable framework to be applied.[163] In fact, federal judges across generations and appointments "warn[] that history is an unworkable basis for deciding constitutional questions" and "pushes courts toward unreliable, unreasonable, and unjust conclusions."[164]

These judges are having a hard time rationalizing the *Bruen* court's decision.[165] One such judge—being charitable to the decision—blamed himself for the shortcomings.[166] The judge, a longtime member of the bench, expressed a desire to have "misunderstood" the opinion because "[i]f not, most of the body of law Congress has developed to protect both public safety and the right to bear arms might as well be unconstitutional."[167] Others are much less charitable to Justice Thomas and the *Bruen* opinion describing it as "moronic."[168]

Although supporters point to the research that shows, despite the "confusion and disruption [in] lower federal courts," courts are still reaching fair decisions.[169] They note that "courts are [still] upholding state, federal, and local gun laws against Second Amendment challenges."[170] These include laws regarding "commercial regulations of firearms, assault weapon and large-capacity magazine restrictions, ghost gun restrictions, sensitive place laws, permit and licensing laws, and many others."[171] They characterize *Bruen* as "allow[ing] for a wide range of gun violence prevention laws" as long as they do not go too far.[172]

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[162] *Heller*, 554 U.S. at 9.

[163] *See* Clara Fong, Kelly Percival & Thomas Wolf, *Judges Find Supreme Court's Bruen Test Unworkable*, BRENNAN CTR. FOR JUST. (June 26, 2023), https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable [https://perma.cc/U74Z-L6TV].

[164] *See id.* ("In the short time since Bruen was issued, federal judges appointed by Presidents Reagan, Clinton, George W. Bush, Obama, Trump, and Biden have all questioned the opinion, warning that history is an unworkable basis for deciding constitutional questions that pushes courts toward unreliable, unreasonable, and unjust conclusions").

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] Scott Burris, *One Year On, Bruen Really Is As Bad As It Reads*, REGUL. REV. (Aug. 2, 2023), https://www.theregreview.org/2023/08/02/burris-one-year-on-bruen-really-is-as-bad-as-it-reads/ [https://perma.cc/8NX9-86N5].

[169] Billy Clark, *Second Amendment Challenges Following the Supreme Court's Bruen Decision*, GIFFORDS L. CTR. (June 21, 2023), https://giffords.org/lawcenter/memo/second-amendment-challenges-following-the-supreme-courts-bruen-decision/ [https://perma.cc/2KPW-X5TF].

[170] *Id.*

[171] *Id.*

[172] *Id.*

Supporters of the decision also make it clear that the "small number of ideologically-driven judges [that] have weaponized *Bruen* to strike down long-standing gun laws" are not representative of the majority.[173] They even provide a suggestion on how to course correct the judges who are misapplying the framework.[174] However, it remains true that since the decision in *Bruen* there have been an "unprecedented number of challenges."[175] Even if these cases are reaching a "fair decision" what is a "fair decision" is unclear. It is unclear who benefits from these decisions. The criteria for fairness may not include the impact these decisions are having in other areas of public concern, such as IPV.

In fact, amid the criticism and confusion some were left questioning what effect *Bruen* would have on the firearm regulation contained in 18 U.S.C. § 922(g)(8)[176]—a question answered two years later in *United States v. Rahimi*.[177]

B. A Recent—and Rare—Win: *United States v. Rahimi*

Scholars no longer have to wonder what effect *Bruen* has on 18 U.S.C. § 922(g)(8)—a federal law barring domestic abusers from possessing firearms in certain circumstances. On June 21, 2024, the Supreme Court directly addressed the issue in *United States v. Rahimi*.[178] Eight Justices held that 8 U.S.C. § 922(g)(8) does not violate the Second Amendment.[179] In the 8-1 decision, Chief Justice Roberts wrote for the majority; Justices Sotomayor, Gorsuch, Kavanaugh, Barrett, and Jackson each wrote concurrences; and Justice Thomas wrote the lone dissent.[180]

1. The Facts

The underlying facts of *Rahimi* paint a compelling picture for gun control. Respondent Zackey Rahimi and his girlfriend, C. M., met for lunch in a parking lot.[181] During their lunch, the pair began to argue and Rahimi became "enraged."[182] The argument escalated and Rahimi "grabbed [C. M.] by the wrist, dragged her back to his car, and shoved her in, causing her to

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[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] Raven Peña, *Bruen's Effect on 18 U.S.C. §922(g)(8) and (9): A Major Threat to the Safety of Domestic Violence Victims*, 48 T. MARSHALL L. REV. 133, 134 (2023) (*United States v. Rahimi*, was still pending before the Court, which explicitly answered this question).
[177] *See* United States v. Rahimi, 602 U.S. 680 (2024).
[178] *Id.* at 686.
[179] *Id.* at 701.
[180] *Id.* at 737-778.
[181] *Id.* at 686.
[182] *Id.*

strike her head against the dashboard."[183] Rahimi became distracted, and C. M. took the opportunity to run away, at which point he shot at her.[184] Defying the statistics, C. M. went to court to obtain a restraining order, where she detailed the continued abuse she suffered at the hands of Rahimi—abuse that he did not contest.[185]

The county court issued a restraining order finding "that his violence was 'likely to occur again' and that Rahimi posed 'a credible threat' to the 'physical safety' of [his ex-girlfriend and child]."[186] As a result, Rahimi's gun license was suspended for two years.[187] Rahimi violated the order by both attempting to contact C. M. and coming within a restricted area.[188] Rahimi's case was brought under 18 U.S.C. § 922(g)(8), which states:

> (g) It shall be unlawful for any person—
>
> (8) who is subject to a court order that—
>
> (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
>
> (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
>
> (C)
>
> (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
>
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or
>
> to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.[189]

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[183] *Id.*

[184] *Id.* (Although it is unclear if Rahimi was shooting at C. M. or the bystander that had witnessed the entire assault and provoked him into grabbing his gun from his car).

[185] *Id.* at 687.

[186] *Id.*

[187] *Id.*

[188] *Id.* Rahimi also threatened another woman with a gun and was identified by Texas police as the suspect in five other unrelated shootings. *Id.*

[189] *Id.* at 688; 18 U.S.C § 922(g)(8).

2. The Opinion

The central holding of *Rahimi* was that the federal law prohibiting domestic abusers from possessing firearms did not violate the Second Amendment.[190] Specifically, the Court found that "[w]hen a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect."[191] The Court reasoned that "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms," citing various gun laws that existed in the 18th century.[192]

By coming to this decision, the Court upheld the framework that was created by Justice Thomas in *Bruen*.[193] Although the Court did not leave the test completely unchanged. Chief Justice Roberts took this as an opportunity to clarify the analogous law requirement that must be found to satisfy the test.[194] An analogous law from the time of the construction of the Constitution—the 18th century—still must be found for a current gun control law to be found constitutional, but it does not have to be identical.[195] Courts may consider laws that have slight differences to keep in mind the modern advancement of society since the days of the Constitution.[196] In other words, judges are meant to look for sisters, not twins. But the current law cannot go further than what the analogous law would have permitted.[197] The focus is still squarely on the past and what type of regulation was and was not allowed.

Thanks to the mess created in *Bruen*, this correctly decided decision, like *Bruen*, makes little sense. The Court's opinion is the legal reasoning equivalent of a "landlord special." Instead of making a workable framework, the Court passes the buck to the next court or case that will have to decide on this issue and ignores the sheer unworkability of the underlying framework. Without a proper foundation, the entire house will come crumbling down around us, and this threatens gun control as a whole.

Almost immediately, criticism appeared for this opinion. The main attack is on the logic employed in the opinion—almost entirely due to the Court's inheritance of *Bruen*—but not the ultimate decision. One such critic, a

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[190] *Rahimi*, 602 U.S. at 690.
[191] *Id.*
[192] *Id.*
[193] *Id.* at 689.
[194] *Id.* at 703-04.
[195] *Id.*
[196] *Id.*
[197] *Id.*

former clerk for a judge on the United States Court of Appeals for the Sixth Circuit, finds the opinion to be "utterly incoherent" because the Court "provides absolutely no meaningful guidance to lower court judges who are struggling to apply the vague 'historical tradition' test announced in *Bruen*."[198] The Court had the opportunity to right some of the wrongs that have appeared in the wake of *Bruen*, but it chose not to do so.

Some have opined that this opinion does not actually follow *Bruen*'s two-step analysis. These scholars argue that while "eight Justices characterized *Rahimi* as consistent with *Bruen*'s methodology […] *Rahimi*'s test differs both in its wording and application."[199] Based on language alone, there is a difference between the tests:

> The canonical formulation of *Bruen*'s test, applied by myriad lower courts, is that, if an individual's conduct falls within the plain text of the Second Amendment, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Rahimi*, by contrast, held that "the appropriate analysis" for Second Amendment questions "involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." Although *Rahimi* said that this formulation was "[a]s [the Court] explained in *Bruen*," the shift from looking to tradition alone to the *principles underlying* that tradition is significant. That the *Bruen* opinion never used the term "principle" in this context further indicates that *Rahimi* effected a meaningful change.[200]

The *Harvard Law Review* article concludes that the "difference was not merely semantic—it shows that the two cases applied two different tests."[201]

Others "take the Court at its word" that these tests are the same, different only in the synonymous words used to describe the test:

> *Rahimi* is best read as a course correction in the Court's Second Amendment jurisprudence, retreating from the position taken in *New York State Rifle & Pistol Ass'n v. Bruen*. However, the Court's failure to definitively address the level-of-generality question means that many state and federal gun regulations still exist in a state of limbo. The Court's Second Amendment jurisprudence will remain unsettled until the Court speaks more conclusively in the future.[202]

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[198] Ian Millhiser, *The Supreme Court Refuses to Accept Blame for Its Worst Guns Decision*, READER SUPPORTED NEWS (Feb. 4, 2026), https://www.rsn.org/001/the-supreme-court-refuses-to-accept-blame-for-its-worst-guns-decision.html [http://perma.cc/G5JZ-WZGK].

[199] HARV. L. REV., *United States v. Rahimi*, 138 HARV. L. REV. 325, 331 (2024).

[200] *Id.*

[201] *Id.*

[202] *Id.* at 325.

In either case, *Rahimi* still bears resemblance to *Bruen*. *Rahimi* does nothing to answer the questions that were left unanswered in *Bruen*. *Rahimi* does not answer the important questions that would allow for a more uniform application from courts below.

While *Rahimi* is a step in the right direction—and the right decision—questions remain and need to be answered. Glaringly, the Court failed to adequately tackle the complexities of IPV. While a win, it's a hollow victory that does nothing to quell the feelings of dread associated with the ever-existing ability to pull the rug out from under us. Amid the criticism, IPV continues to remain absent from the conversation and virtually invisible.

3. The Concurrences

The shining stars of *Rahimi* are the concurrences written by Justice Sotomayor, whom Justice Kagan joined, and Justice Jackson. Both concurrences cut to some of the deeper issues with the reasoning employed to uphold the regulation under *Bruen*.

Justice Sotomayor was one of the three dissenters in *Bruen*.[203] Two years after declining to join Justice Thomas's opinion, Justice Sotomayor stands firm in her view that *Bruen* was "wrongly decided."[204] In her concurring opinion, Justice Sotomayor applauds the majority's decision to not require a carbon copy of laws from 1791 and agrees that this is a step in the right direction, considering, as she aptly points out, it is no surprise that there is no matching law for §922(g)(8).[205] Justice Sotomayor further gives voice to the concern of many readers of *Bruen*, that while "[h]istory has a role to play in Second Amendment analysis, … a rigid adherence to history, (particularly history predating the inclusion of women and people of color as full members of the polity), impoverishes constitutional interpretation and hamstrings our democracy."[206]

Justice Jackson's concurrence is equally as cutting. *Bruen* was decided days before Justice Jackson was officially a member of the Supreme Court.[207] Accordingly, Justice Jackson explicitly states: "I disagree with the methodology of [the *Bruen*] decision; I would have joined the dissent had I been a Member of the Court at the time."[208] What is most memorable about this opinion is that Justice Jackson does something the Court does not often do: give voice to the *humanity* of the case. She highlights the sheer

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[203] *Bruen*, 597 U.S. at 83.
[204] *Rahimi*, 602 U.S. at 702 (Sotomayor, J., concurring).
[205] *Id.* at 702, 705.
[206] *Id.* at 706.
[207] *Id.* at 741 (Jackson, J., concurring).
[208] *Id.* Although this still would not have been enough to beat the majority.

unworkability of the *Bruen* two-step analysis by listing out important questions that have been left unanswered up to this point:

> Who is protected by the Second Amendment, for a historical perspective? To what conduct does the Second Amendment's plain text apply? To what historical era (or eras) should courts look to divine a historical tradition of gun regulation? How many analogues add up to a tradition? Must there be evidence that those analogues were enforced or subject to judicial scrutiny? How much support can non-statutory sources lend?[209]

These questions point to the core problems with finding an analogous law—or even a similar law that does not extend further than the historical law. Most criticism boils down to the deficiencies of *Bruen*—deficiencies that rear its ugly head in *Rahimi*—asking the same questions: What period of history is sufficient? And why does distant history control the future?

IV. WHAT HAPPENS NEXT?

Rahimi was an important and necessary win to keep women and other victims safe from IPV—even if much of the conversation has not centered around IPV. Going forward it is critical to keep challenging the *Bruen* framework to achieve a test that both makes sense and protects victims. More "common-sense gun safety" policies need to be pursued and tightened to keep guns out of the hands out of dangerous individuals. Most importantly, the public needs to be educated on IPV so victims do not suffer in silence.

A. Keep Fighting *Bruen*

The reality is that *Bruen* needs to change. *Bruen* cannot be what dictates gun control laws because it ignores modern complexities that could not have been contemplated at the time of the drafting of the Constitution. The Supreme Court needs to answer the questions that were left by *Bruen* that *Rahimi* could not answer—or did not want to answer. The Court needs to provide a workable framework to the courts below that are asked to use this standard when deciding whether gun control laws are constitutional.

Seeds to change *Bruen* were planted in the *Rahimi* concurrences.[210] Justice Sotomayor and Justice Jackson call out some of the issues with *Bruen* that are still apparent years later in *Rahimi* and will remain present until the Court addresses them.[211] One of the biggest issues is the analogous law requirement, which *Rahimi* has started to chip away at. When we look back,

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[209] *Id.* at 745-46.
[210] *Id.* at 706 (Sotomayor, J., concurring).
[211] *Id.* at 703-06 (Sotomayor, J., concurring).

what period of time are we looking to? Why should an analogous law from hundreds of years ago carry so much weight?

The main issue is that there are particularly dark periods in American history. In 1857, the Supreme Court decided that enslaved people and their descendants were not American citizens.[212] Slavery was not abolished until 1865.[213] In 1896, the Court made "separate but equal" the law of the land.[214] Women did not have the right to vote until 1920.[215] Which of these points in history lends itself to the historical analysis? At the time of the signing of the Constitution in 1787, the people who were in control and had the most rights were white property-owning males.[216] A framework rooted in 1787 will never adequately protect victims of IPV because in 1787, wife-beating was legal.[217] Women did not have any legal rights of their own. The founding fathers could not fathom the reality of today, and yet we must look to them for answers.

Scholars agree that this decision makes no sense, regardless of what test is actually employed by the Court.[218] Judges applying this standard are unhappy with what they are forced to use.[219] Members of the current Supreme Court do not support the framework.[220] This discontent needs to be the spark that helps change how courts evaluate Second Amendment cases—so that the big picture, keeping IPV victims safe, is not lost, and so *Rahimi* can reach its fullest impact. The challenge in *Rahimi* came out in favor of victims of IPV, but this may not be the case next time because of *Bruen.*

B. Pursue Common-Sense Gun Safety Policies

The fight for "common-sense gun laws" began in 1981 after a failed assassination attempt on President Reagan.[221] Current popular "common-

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[212] Dred Scott v. Sandford, 60 U.S. 393, 403–04 (1857).

[213] U.S. CONST. amend. XIII, §1.

[214] Plessy v. Ferguson, 163 U.S. 537, 540 (1896).

[215] U.S. CONST. amend. XIX, §1.

[216] *August 7, 1787: The Right to Vote*, NAT'L PARK SERV. (Sep. 22, 2023), https://www.nps.gov/articles/000/constitutionalconvention-august7.htm [https://perma.cc/UJT7-AKZV].

[217] Siegel, *supra* note 61.

[218] Eric J. Segall, *Originalism, Bruen, and Constitutional Insanity*, 51 FORDHAM URB. L.J. ONLINE 1 (2024); Lydia Wheeler, *Judges Confused by Supreme Court's Historical Test for Gun Laws*, BLOOMBERG L. (Jul. 12, 2023, at 04:45 ET), https://news.bloomberglaw.com/us-law-week/judges-confused-by-supreme-courts-historical-test-for-gun-laws/ [https://perma.cc/6CB3-GC8L].

[219] Fong, Percival & Wolf, *supra* note 163.

[220] *Bruen*, 597 U.S. at 83 (Breyer, J., dissenting).

[221] *How Brady Background Checks Became Law*, BRADY UNITED, https://www.bradyunited.org/resources/research/how-brady-background-checks-became-law [https://perma.cc/4GN9-ZTXH] (last visited Mar. 23, 2025).

sense gun laws" include "universal background checks and extreme risk protection orders (ERPOs)."[222]

Other suggestions to specifically help victims of IPV are to implement "red flag laws" and strict relinquishment policies.[223] These laws "enable family members or law enforcement officers to ask a judge for a 'gun violence restraining order' or an 'extreme risk protection order.'"[224] This would help keep guns out of the hands of dangerous individuals, even for a short period of time, at the state level.

Some gun control policies in recent years have been passed to specifically help victims of IPV. In 2022, President Joe Biden signed into law the Bipartisan Safer Communities Act ("BSCA") which helped close what was known as the "boyfriend loophole."[225] The "boyfriend loophole" referred to a blind spot in gun control policies: married individuals were subject to restrictions but not individuals in romantic or dating relationships.[226] The BSCA expands firearm restrictions to cover those in a "current or recent former dating relationship" who are convicted of misdemeanor domestic violence.[227]

Critics argue that the BSCA helped "tighten" the "boyfriend loophole" but did not close it citing some of the new problems that have been created.[228] For instance, "dating relationship" is not defined, and with modern dating culture, this may cause some survivors to be left unprotected.[229] This also only applies to "recent" dating partners.[230] The legislation does not clarify what qualifies as "recent" and leaves firearms in the hands of abusive ex-partners from further in the past, who can still pose a risk.

The "boyfriend loophole" is not the only gap that remains. Similar to how dating partners were left out of earlier gun control laws, stalkers are often excluded too. Stalking has not always been recognized as a form of IPV or abuse, but in recent years organizations and leading advocates have started to include stalking in their definition of IPV.[231] Gun control laws have yet to

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[222] Annalies Winny, *Most Americans Support Common-Sense Gun Laws—So Why Don't We Have Them?*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Nov. 15, 2024), https://publichealth.jhu.edu/2024/whos-driving-gun-policy [https://perma.cc/KDT9-8AJQ].

[223] SJ Osborn, *Preventing Intimate Partner Homicide: A Call for Cooperative Federalism for Common Sense Gun Safety Policies*, 66 LOY. L. REV. 235, 259 (2020).

[224] *Id.* at 260.

[225] Orion Rummler, *Bipartisan Gun Violence Bill Tightens The 'Boyfriend Loophole' But Doesn't Close it Completely*, THE 19TH (June 23, 2022, at 23:02 ET), https://19thnews.org/2022/06/gun-bill-boyfriend-loophole/ [https://perma.cc/G9LK-4H4F].

[226] Osborn, *supra* note 223, at 249.

[227] Rummler, *supra* note 225.

[228] *Id.*

[229] *Id.*

[230] *Id.*

[231] *Stalking & Intimate Partner Violence: Fact Sheet*, STALKING PREVENTION, AWARENESS, & RES. CTR., https://www.stalkingawareness.org/wp-content/uploads/2018/11/Stalking-IPV-Fact-Sheet.pdf [https://perma.cc/TMG5-XMM8] (last visited Mar. 23, 2025).

catch up.[232] This "stalker loophole" needs to be addressed for victims to be adequately protected.

Even when abusers *are* covered by firearm restrictions, those restrictions may not last. Under the BSCA, people convicted of serious domestic violence offenses can potentially regain their right to purchase firearms after five years if they meet certain criteria.[233] Due to inconsistent state laws and practices, some individuals may have their gun rights restored, *even if they still pose a risk to others*. This is known as the "restoration loophole."[234] This is particularly concerning for victims because when there's a gun in the home, IPV turns deadly. If a convicted abuser can still "pose a risk" and get their guns back, what is the point of taking them away in the first place?

C. Make More Noise

Closing the legal loopholes matters, but so does changing how we talk about IPV. Until abuse is recognized and discussed openly, victims will continue to suffer in silence and not receive the help they need. Jake De Vera, associate director of Women's Advocates, notes that:

> [A]s a society, we need to normalize talking about abuse. I think within groups of men and groups of women, we've normalized talking about our relationships. We talk about our relationships in those groups a lot, whether with a cosmetologist or another service professional. But what we haven't normalized is intervening in those conversations [to say] that what [they're] describing is actually abusive behavior…. And that is what we need to normalize.[235]

Abuse itself should not be normalized, but people should not be afraid to speak up when they are experiencing abuse nor should people be afraid to intervene. Like De Vera says, a friend should be able to call out a "toxic" partner as abusive and help their friend get out of that relationship. The best way to make this shift is to educate more members of the public. Those who are likely to come across victims of IPV need to be targeted. Youth education is a priority as well. The earlier the signs can be recognized the more vigilant people can be to catch IPV before it is too late.

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[232] Everytown Research & Policy, *Which States Prohibit People With Stalking Convictions From Having Firearms?*, EVERYTOWN, https://everytownresearch.org/rankings/law/stalker-prohibitor/ [https://perma.cc/SU25-F8QQ] (last visited Mar. 23, 2025).

[233] Rummler*, supra* note 225.

[234] *Id.*

[235] Nina Moini & Ellie Roth, *Proposed Law Would Help Train Cosmetologists to Address Domestic Violence*, AMY IN THE NEWS (Feb. 19, 2025), https://www.klobuchar.senate.gov/public/index.cfm/2025/2/proposed-law-would-help-train-cosmetologists-to-address-domestic-violence [https://perma.cc/CH38-AZWG].

In Minnesota, a bill has been proposed to mandate IPV education for hair stylists, cosmetologists and estheticians, in pursuit of normalizing IPV conversation in hopes of better prevention.[236] The idea is that many individuals spend hours talking with these professionals, and that a salon is a neutral setting for proper intervention.[237] Isolation is such a part of IPV that this may be one of the only forms of outside contact the individual has. This is a simple and relatively inexpensive first step: train the people who are already in the room. Bills like Minnesota's need to become a national trend.

Youth education needs to be more comprehensive too. Currently, thirty-eight states require or mandate education on teen dating violence or IPV in schools.[238] The remaining twelve states do not have any requirement that schools educate students about IPV—this includes the warning signs, impact, or the resources that are available.[239] Among the thirty-eight states that do, there is significant variation—there can even be variation among the counties within a state.[240]

New Jersey is an example of a state with strong protections for students regarding IPV education. New Jersey's Teen Dating Violence Education Law requires public middle and high schools (grades 7-12) to incorporate age-appropriate dating violence education into the health curriculum.[241] Teen dating violence is a subset of IPV that deals directly with abuse in the context of teen and juvenile relationships.[242] The basis for the law is that "[i]t is important for students to learn the difference between healthy and unhealthy relationships and educators can play an important role in helping students recognize abuse and seek the help they need."[243]

New Jersey also has a law on general domestic violence education. This requires public schools to provide education on domestic violence and child abuse as part of the curriculum. This includes the impact of IPV on individuals and family units. Schools are required to have reporting procedures, intervention strategies, and consequences for students involved

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[236] *Id.*

[237] *Id.*; *see also* Nina Pottell, *We Hairdressers Can Be Therapists and Magicians, Too. No Wonder People Trust Us*, GUARDIAN (Jan. 25, 2016, at 09:04 ET), https://www.theguardian.com/commentisfree/2016/jan/25/hairdressers-people-trust-profession-mps [https://perma.cc/3VCD-6ZTD] (Bartenders and hairdressers alike are new age therapists—with absolutely no formal training to recognize when people are really in trouble.).

[238] Avanti Adhia, Melanie Kray, Deirdre Bowen, Mary A. Kernic & Elizabeth Miller, *Assessment of Variation in US State Laws Addressing the Prevention of and Response to Teen Dating Violence in Secondary Schools*, 176 JAMA PEDIATRICS (Jun. 13, 2022).

[239] *Id.*

[240] *Id.*

[241] *Teen Dating Violence*, STATE OF N.J. DEP'T OF EDUC. (last visited Mar. 23, 2025), https://www.nj.gov/education/safety/sandp/schoolsafety/tdv.shtml [https://perma.cc/L7HT-ZBAK].

[242] *Id.*

[243] *Id.*

in incidents of dating violence.[244] Staff are required to be trained to recognize and respond to IPV among students.[245]

More states should educate their students in public schools in similar ways. The more visible the issue becomes, the better chance we have at stopping it and getting victims the help they need. The remaining twelve states should implement legislation requiring at least bare minimum requirements, while working towards a more comprehensive approach similar to New Jersey. The more visible that IPV becomes the better chance we have at fighting it.

Even more important than IPV isolated education are *survivor* stories. In April 2025, influencer Kayla Malec publicly disclosed to millions of followers that she had been in an abusive relationship for nine months, detailing her experience in a gutting two-part video series spanning more than four hours.[246] Throughout her account, Kayla underscores how abuse often contradicts victims' own expectations of themselves, describing the dissonance of enduring "things I have only seen on TV … things that I just knew I would never let happen to me."[247] Without any gauge of normalcy the dissonance can be isolating.

Kayla emphasizes that "if [she] had seen a video like this six months ago it would have saved [her] life."[248] Had she heard another victim's story, she may have recognized that what she was experiencing was not acceptable. The more *survivor* stories that are shared, the greater the likelihood that someone in danger will encounter one before it is too late. Kayla's story is an attempt to intervene where silence often proves fatal.

In a follow-up video months later, Kayla shifts from survival to healing, speaking directly to victims: "It's not your fault. It is never your fault."[249] Her insistence on continuing to speak out reinforces the broader implication of victim testimony: when even one person recognizes themselves in another's story and finds a path to safety, that act of speaking becomes a form of prevention. If such narratives reach even a single person in time, the impact extends far beyond the individual—and society is stronger for it. Had Michelle, Marie, and Megan heard a story like Kayla's, they might still be alive today.

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[244] N.J. REV. STAT. § 18A:37-33 (2025).

[245] *Id.*

[246] KAYLA MALEC, *he doesn't love you. pt. 1.* (YouTube, Apr. 4, 2025), https://www.youtube.com/watch?v=WjrfjJwdGqg [https://perma.cc/P2GQ-M7Y7] [hereinafter MALEC, *pt. 1.*]; KAYLA MALEC, *he doesn't love you. pt. 2.* (YouTube, Apr. 10, 2025), https://www.youtube.com/watch?v=WNEh5FdlFqk [https://perma.cc/27AU-9EXU] [hereinafter MALEC, *pt. 2.*].

[247] MALEC, *pt. 1.*, *supra* note 246, at 00:52.

[248] *Id.* at 03:11.

[249] KAYLA MALEC, *healing.*, at 23:01 (YouTube, Oct. 11, 2025), https://www.youtube.com/watch?v=17dkNrbis10 [https://perma.cc/FN23-FQCV].