

Judicial Council of California
Head Trauma and Domestic Violence

Mervyn Degaños: My name is Mervyn Degaños. I'm here to tell you a story about what happens when you're a victim of an invisible force. And what happens when the our society isn't equipped to handle it.

To better understand this I want to introduce you to a woman I'll call M. That's not her real name. I'm calling her Mary because she's asked to remain anonymous. You'll learn why shortly.

Mary is in her 50s. She has 2 adult children and 3 grandkids. She used to have a job she loved. . . as an x-ray tech at a hospital. She enjoyed caring for patients. Mary's job was, at its core, to take pictures of her patients' insides.

Her career fit right alongside her other passion. Photography. One of Mary's favorite pictures is from 2016.

Mary and a friend recreated a historic hike to the top of Monument Mountain in New England.

Mary: *On one of those hikes was when Herman Melville met Nathaniel Hawthorne and they became good friends.*

MD: Mary and her friend. . . loaded with camera gear. . . started to make their way up the dark mountain.

Mary: *You know enjoying the stillness of that very early morning. Which I really miss because that was my favorite time to be up before the world woke up. It's a whole different quality of light and sound.*

MD: Back then, Mary was full of energy. She clambered over rocks, up the steep mountain. . . racing her way to the top, trying to beat the dawn.

Just as Mary and her friend hit the peak, she could see the sun sliding up the horizon.

Mary: *You. . .you see it and you go, "Ah, that's it. Oh my gosh I can't believe I just got that. You know." And you pretty much kinda know that you've got something.*

MD: One picture that Mary took, of the the morning fog crawling between the mountains.
. . . was an ethereal beauty.

Mary: *It almost looks like you could be looking at rocks coming up in the fog through water.*

MD: That picture became one of Mary's best sellers. It's hung at gallery exhibitions and.
. . . it's just one of her award-winning photographs.

An award-winning artist, a rewarding career, and a family. Life was working out all right for Mary.

But everything changed for her. . . in 2016.

Mary had been in a relationship for about a year and a half when it took a turn for the worse.

Mary: *The emotional and verbal abuse was escalating to the point where I was assaulted a couple of times.*

I did break up with that person for a short time but then I you know I don't know somehow you know made me feel bad for him or you know made me think he was going to go to counseling change and somehow I just went back into it.

But after a little while it started to get worse again until I ended up breaking up with him again.

MD: This time it was for good.

But. . . the day after Christmas. . . Mary got a call from her ex that changed her. . . forever.

Mary: *That's when he asked come to his home pick up some my belongings there and Christmas gifts. And then when I got there that's when I realized that you know none of my belongings were gathered and it was sort of like a trap. He just got me there for no good reason except to harm me.*

It was too late to leave. I was too afraid. I just decided to tell him I didn't feel well. Asked if I could lay down. And I figured I'd sneak out when he fell asleep. But every time I tried to leave, he would stop me.

So, then in the morning, when I did try to leave that's when he attacked me and started bashing head over and over again against an antique solid wood board.

And then after he kept smashing my head, you know, he's swearing and yelling at the same time. Then he smashed his forehead against mine so hard. And then I don't remember anything after that. I don't know what happened. The next thing I know is that he was sitting on the side of the bed and talking about things.

MD: Mary left and made her way home.

Mary: I was embarrassed, I was humiliated, and I don't think I realized a crime had been committed against me. I didn't even think about it. I just thought I was in a bad relationship and he beat me up and you know I made a bad choice.

MD: She didn't tell anyone about what happened, except her doctor, who told her she'd suffered a concussion.

Mary: I just thought, "Oh a concussion." I guess I just thought it was just a minor thing that was no big deal and you felt a little sleepy and the next day you were fine.

MD: Over the next few months, Mary's health deteriorated. She couldn't concentrate. She felt anxious and depressed.

Mary: And I was very traumatized by the violence of the assault so I thought a lot of it was from what happened to me.

MD: But as time went on Mary's symptoms persisted. Sleeplessness, inability to focus, headaches, forgetfulness, dizziness. She was having trouble seeing out of one eye.

After a follow-up, her doctor discovered that the attack had also detached her retina.

Mary: I was trying desperately to hold on to my job. I couldn't keep up with everything. My minds was like going overload trying to look here look there and trying to take it all in and, and. . . I don't know how to explain it. It's almost like you're trying to go into a warzone or something. I would have to sit in a dark corner to get away to get away from

the lights and to get away from peoples' talking so my brain didn't feel like it was buzzing.

MD: Even reading a patient's chart became a harrowing task.

Mary: *I'd circle the name. I'd circle the date of birth I'd circle the room. And the, and the and I'd go back through it a couple of times because sometimes my brain or my eye would trick me, transpose numbers and things like that.*

MD: Her friends could see something was wrong even if they didn't know why Mary had changed.

Mary: *My speech was much worse, then so I didn't. . .if I talked a stuttered quite a bit and I didn't want to, you know, try to have to speak to people and try to get through conversations.*

MD: Mary thought her struggles were all in her head—psychological.

The reality, ironically, is that she was right—the problem was in her head, but it was a physical issue.

When women like Mary seek help, they face an uphill battle.

First, most don't don't realize their brains have been damaged.

And even when they do realize the damage, the system may not be equipped to recognize the gravity of the harm. Brain injuries can mislead police and cause them to distrust a brain trauma victim. Prosecutors may not realize there's an injury, much less even spot it as an issue in the first place. And the judge or jury can underestimate the devastating damage of a brain injury. This is an insidious, widespread, hidden problem that affects millions around the country.

In other words, Mary's story is one of many. We'll learn more about what happened to her when she sought justice.

But before I tell the rest of Mary's story, we need to take a step back and talk about what we actually know about traumatic brain injuries or "TBIs." What we lay people call "concussions."

Think back to the early 2000s. Beyonce was just another member of Destiny's Child. Amazon was only an online bookstore. And we treated concussions, like we treat bumping your funny bone—an injury that was as inconvenient as it was good for a laugh.

Then starting around 2005, a series of studies opened football players' eyes to the fact that something was wrong with their brains.

[News clips about head injuries in football]

At the same time, the wars in Iraq and Afghanistan caused a rise in concussion casualties. Veterans and football players started to learn that their brain damage could be permanent. Especially if they had another concussion before their brains had fully healed.

Our paragons of manliness—soldiers and athletes—were scared. They demanded answers. And seemingly overnight, an understudied area of science—brain injuries, saw a flood of funding.

What we learned was terrifying. Parents pulled their kids from contact football. Over a two year period enrollment in peewee leagues dropped almost 10 percent, the largest fall on record.

We changed how we treated head injuries. Now, if a player showed any signs of a concussion, we pulled them off the field and even benched them for weeks.

But as we rushed to do better by these men, we overlooked one huge group,

Dr. Eve Valera: *Yes, so women who are being abused, specifically by their partners. My name is Eve Valera and I'm an assistant professor of Harvard Medical school.*

MD: Much of Dr Valera's work involves imaging the brain. Back in the 90s, Dr. Valera was a student studying neuropsychology. At the same time she was volunteering at a domestic violence shelter. As a volunteer, she noticed something. Domestic abuse survivors showed very specific symptoms. . .

EV: *So fatigue, depression, anxiety, dizziness, light sensitivity, sound sensitivity, nausea, headaches, all those types of things. You know, memory problems, attention problems, lack of focusing.*

MD: Most of these symptoms were attributed to PTSD and the psychological stress

EV: *Because it's sort of assumed that it's because they're in a very stressful situation. And they are.*

MD: As Dr. Valera worked with these women, she started hearing stories of how their abusers would cause them head trauma. . . Things like hitting them in the head or throwing them down stairs or into a wall.

That's when Dr. Valera, with her background in biology, made a connection.

EV: *So it's like, well, women are getting hit in the head. They report a lot of the same symptoms that are reported by people who sustain traumatic brain injuries. This seems like an obvious thing that's going on.*

MD: It seems obvious now, of course. After what we know about the NFL, the military. But back then, no one was making that connection between domestic violence and concussions.

EV: *And when I looked in literature there was absolutely nothing there. There wasn't a single article. Not body had looked at it at all.*

MD: Dr. Valera wrote her thesis on head trauma and domestic violence. She applied for research grants, but there was little interest or funding, despite evidence showing the widespread severity of the problem.

EV: *This is a tremendous segment of the population. 1 in 3 women report physical or sexual violence. Now we don't know the exact numbers who sustain brain injuries or repetitive brain injuries, but even if you take a fraction of that, it's still way over the number of NFL people and Iraq and Afghanistan folks put together. It's. . . the numbers aren't even comparable.*

MD: According to the CDC 1 in 4 women will experience physical violence by an intimate partner in their lifetime. Let's say, conservatively, that of those 31 million women, only 1 in 10 gets hit in the head so severely they black out or have memory loss. In other words, have a garden variety concussion.

That's over 3 million women.

Dr. Valera's research, however, seems to show that number could be much higher.

EV: *Well, I mean, 80% of women who are interviewed report traumatic brain injuries, even just one.*

MD: That means the number of abused women who've been concussed is likely close to 25 million.

To put that in context, that's 3 TIMES the number of tackle football players and active military personnel combined.

EV: *There is no reason to doubt that this is a really serious you know public health crisis and epidemic.*

MD: Unfortunately, 25 years after Dr. Valera made the connection between domestic violence and head trauma—the justice system still doesn't routinely ask survivors important questions like: "Have you suffered head trauma" or "Have you ever suffered memory loss after your partner hit you on the head?"

Questions like this aren't part of any standard domestic violence questionnaire.

EV: *So, not only the right questions aren't really asked, but the women don't necessarily think to bring it up either.*

If you step back even further, one thing that is interesting is that concussions have been primarily been studied in men because most of that athletes are men and the military is mostly men. So what we know about concussion more generally with respect to women is almost nothing.

We can't just take for granted that what we know about concussions now applies to women as well. We really need to study women.

MD: Dr. Valera's says that what little research we do have, seems to show that women's brains may be even more affected by trauma than men's. We just don't know, though, because as it stands, there's not a lot of public urgency to study brain trauma in women.

EV: *So if you think about how much money and resources are devoted to the NFL, for example. People are saying, "Yeah this a problem. We have to study this. We have to study this." And there's all sorts of resources going towards it. And that's not happening here.*

MD: Resources and attention matter. For example, a sense of urgency changed how we treated concussed NFL players and military personnel.

EV: If you're on the field of play you're sidelined you can't go back until you've reached certain criteria.

MD: That's because stress hinders healing. It keeps the brain vulnerable. Stress prolongs recovery and increases the chances of permanent brain damage. That's why we protect concussed military by giving them a mini-vacation--free time, a private room, and doctors that monitor their progress while they relax.

EV: Women are not getting put to the side and saying, "Ok, don't do anything until you're a little better." There's nothing like that.

MD: For women who are being abused, it's the exact opposite. A survivor's brain is bombarded with demands that increase stress and anxiety.

EV: I'm focusing more on, "I cannot cook for my kids. Or I cannot drive to school." Or whatever. You know, if you have a broken bone or you can't see or you have blood coming out of your ears. You need to address those things.

And, if you're assuming that part of the reason that you can't do things is because you're partner often says you know you're stupid this is all your fault. You deserve this. You asked for this. You start to believe that sometimes. And so think that, that's just the way you are. It's not because you have a brain injury that maybe you have these issues.

But what really scares me is women who report too many to count. It happened once a week for a couple of years. A couple times a week for a certain period of time or something. It's put in the more than 20 category.

So, when you put it all together in terms of just looking at recovery factors unfortunately women who are in partner abusive situations have the deck completely stacked against them in terms of recovering well or quickly.

MD: It's clear that brain injuries can have a devastating effect on women who've suffered abuse. Tragically, though, when women plead their case, they find a justice system that's not equipped to handle their needs.

Every time a domestic violence survivor interacts with the justice system—with police, investigators, DAs, court staff, judges, and juries—she faces a lack of understanding and resources to address or even just document a brain injury.

If, for example, a woman is able to fight through her brain's anxiety, inability to focus, and depression and actually call the police, her concussion is usually overlooked.

In fact, it can make her seem less credible.

EV: If it's an inconsistent story, it may just look like she's lying or maybe she's irritable or combative at the scene of the crime. Well. . . You may be confused. When you have a brain injury you may get that way.

MD: In Dr. Valera's experience in working with police, officers are generally not trained to recognize or ask about head trauma. If it is not flagged then it's unlikely to be included in a police report. But the challenges to a woman who has suffered brain trauma don't stop after they've called 911.

Take as another example the district attorney and the courtroom. In Dr. Valera's work with survivors, they tell her that DAs and their investigators rarely ask if they have suffered head trauma.

Even if they are asked gathering evidence that a jury will understand is incredibly difficult. That's because we're only at the early stages of understanding how to recognize the physical markers of a damaged brain or even if someone who has suffered a brain injury.

Take the case of repeated head traumas. It can result in what is called chronic traumatic encephalopathy or CTE. Symptoms include problems thinking, impulsive behavior, short-term memory loss, emotional instability, substance abuse, and suicidal thoughts. It's a degenerative disease and one of the scariest outcomes of repeated brain trauma.

EV: And even look at these people who have chronic traumatic encephalopathy. You look at their brains on a brain scan and they look pretty okay right now. You can't see that tau. Only, once their dead you cut their brains open can you see it.

MD: The microscopic injuries to the tau protein are, for now, invisible as long as a sufferer is alive. The lack of visible injury is also a challenge in mild traumatic brain injuries or what we commonly call "concussions."

EV: *Simply put, if I trip and whack my head and I'm out even for 5 seconds, I've had a concussion. And chances are, there won't be any sign of that whatsoever on any imaging and any scan you might do.*

MD: For now, we don't have the technology to easily show someone's suffered a brain injury. That means there aren't any CSI forensics or brain scans or charts or x-rays to show a judge or jury.

EV: *When it comes to a head or brain injury, it's much more difficult to have something that's beyond a reasonable doubt.*

MD: For now, proof comes in the form of doctor's testimony, cognitive evaluations, and people who can attest to who the victim was before her injury.

The injury might be difficult to prove, but for Dr. Valera, there's little doubt that a brain injury is one of the worst kinds of physical injuries a victim can ever suffer.

It can take away everything about who you are as a person.

EV: *Yeah, permanent disability, you can't work any more. There are certain things that happen when you have repetitive brain injuries . . . or they can happen that really alter your abilities to live life as a normal human being. If you're robbed of that, I mean, how can that be anything less than the most severe punishment.*

MD: Even though we know brain trauma is devastating, the science is still young. Physical diagnosis is still developing.

So that lack of easy-to-understand evidence masks a likely epidemic. Which means we don't feel the urgency to put money into researching brain trauma in domestic violence survivors. Which makes it harder for scientists to develop better diagnosis tools.

Meanwhile, millions of women are unable to access justice.

Knowing that women who survive partner violence have brain injuries. . . Knowing how they suffer. Knowing how they struggle to get justice. Just knowing is a huge step.

Take Mary, who we heard from at the beginning. Few people other than her doctor seemed to understand the gravity of her situation.

And when the justice system first investigated her case, it missed her brain injury.

Mary: *The investigator has the whole story. They never looked for a brain injury and said this person could have a brain injury. The DA's office didn't do it.*

I had to bring it up. I had to point it out. I had get those things to her and then she acted like she didn't believe me. I don't think they really know what to do with it.

When I try to speak with her on the phone a lot of times I think I know what I'm going to say, but then when I start to talk to her I don't feel like I can, like I'll start to stutter or I'll start to lose my thought pattern and then I feel like I'm wasting her time.

MD: Mary's case is ongoing and she desperately wants to testify. To tell a judge or jury her story of how she's suffered.

Of what her abuser did to her and how her life has changed. But she's worried of how the judge or jury will see her.

Mary: *I'm concerned when I get on the stand, that that attorney, the one that cross examined me, is gonna be. . . over to me and he's going to start asking me all these questions bombarding them to me quickly and expect quick responses and then try to confuse me. And I am going to get confused. I'm not gonna. . .I need time to process what's being asked of me and time to process my answer.*

MD: The DA's office also seems reluctant to put Mary on the stand because her symptoms—forgetfulness, difficulty focusing, anxiety, and so forth—might make her less credible.

Our society just doesn't understand the link between domestic violence and head injuries. That means we put a tremendous burden on survivors.

Mary lost her career. She has a hard time leaving her home, much less scrambling up a rocky mountain before dawn to take photos.

When she does make it out her door, Mary's strength masks her injury. She fights every day to look normal to people around her.

Mary: *They don't know what's going on inside me. They don't know I'm struggling. They can't see it. It's not real to them. Of course, when I'm out and I'm trying to speak to people, I'm putting every ounce of effort to appear normal.*

MD: I asked Mary something many people wonder. "How does she know she's suffered a brain injury? How does she know it's not just psychological stress that's affecting her?"

Mary: *Well, while I was in the relationship I was already dealing with that stress so . . . and I wasn't having these symptoms. And now this is a year and a half later.-I still did my photography. Now I barely know how to use my camera. I sit there and look at it and can't remember how to set some of the settings.*

MD: These days, Mary loses her balance, gets lost driving, and forgets the names of friends she's known for years.

Mary: *People that know me now only know who I am now. They'll never know who I was before. Everything that everyone else takes for granted is ten times the amount of work for me. It's . . .Just simple things like being able to get to that courtroom, to get myself ready, to get to the car, to drive that distance. Just sitting there to deal with all the lights and the noise. To be able to focus and. . .Now, this is one of the things that happens. . . I'll start talking and then I'm. . .now I'm forgetting what's the question and I get knocked back.*

MD: *How do you explain to someone that all the harm is that I'm not the person that I used to be.*

Mary: *And I'm still dealing with accepting that myself. Because keep trying to be the person I was before. And if I have a good day, "I say, I'm going to be okay. I'm gonna. . .I made it through it. I gonna be normal again." And then I try to go out and do things like anyone else, and the next day I'm almost. . . I'm in bed for the whole day. And I. . . and the reality hits me that I'm not the same person. I cannot do all of the things I did before. I can't go to work, go to the grocery store, come home, make dinner. I might be able to do two of those things during the day. And. . .and I'm not that old, you know. I, you know, I feel like I'm 100 years old. And it's real. And. . .even though I don't want it to be. I want my life back. I want my light back and my joy and my energy and my excitement. And my clarity, you know. And I can't get it back. I can't get it back.*

MD: After hearing Mary's story, I reached out to Judge Julie Emede for practical advice on how people in the justice system can help survivors with possible brain injuries. Judge Emede serves in Santa Clara County. She's been a judge in both the criminal and civil systems.

I wanted to know how being aware of the possible symptoms of head trauma--mood swings, memory issues, anxiety, attention problems, apathy--how it impacts her approach to handling cases.

Judge Julie Emede: *Well, I think the first thing is to recognize that a litigant or survivor who presents as disorganized, overwhelmed, irritable even or angry even, may have suffered a traumatic brain injury and to just be aware of that and probe a little bit deeper to see what information we can find. I think that, where it actually comes up is, aside from testimony of course in a . . .some kind of trial, it might also come up in a request for a criminal protective order or a domestic violence restraining order or an elder abuse restraining order even. One of those kind of settings. I think it's important to recognize that if there's been one reported possible TBI incident, that that heightens the need for a criminal protective order, domestic violence restraining order, any of those kind of restraining orders.*

Mary's story appears to be focused on the criminal justice system. In my experience--I was in both in the criminal justice system as a judge and the family court system as a judge--In my experience the number of people who present with traumatic brain injury and the number of the people who access the court system in general is higher in the family court system. And, in the family court system a judge is actually the person who is doing some of the . . .the questioning of the litigants in front of them. And so being aware of traumatic brain injury really helps you direct some of your questions and helps you understand if somebody is not responding in the way that you expect. That you might need to rephrase that question in a different way or come back to it.

In the criminal justice system I think that's a bit more challenging because the judge's role is not to participate in the questioning. And that's where training of attorneys is so important.

So in the civil system I think educating judges is even more important than in the criminal justice system.

MD: You have to know to ask the right questions. You have know there's an issue there to have to spot it and to dig deeper.

JE: *Yes I think that's right. I think that's exactly right. I think being able to say, "Gosh this sounds like someone who had a TBI." Or, in reading the paperwork before the proceeding starts and there's a description of "then, you know, my head hit the wall" or "my head hit the ground" or "I was hit in the head repeatedly" being aware of that when*

the proceeding starts then you're aware that the way the person presents might be impacted by what was described in the original paperwork.

MD: How can the system itself accommodate survivors so they aren't penalized for having, sort of, things that are affecting the way they are dealing with the court system.

JE: I'm going to say something that's going to be a recurring theme. Which is the first place to start is with training. And I think that trauma informed training would be the best. But training in particular on traumatic brain injuries at all levels. So staff, self-help centers if there are those available. Attorneys, judges, advocates, victim witness folks, really anybody in the system who will come into contact with a survivor who's been impacted by a TBI. First, I think that it's important that everyone is trained enough to recognize it. I think that's a big challenge.

In the whole community it starts with first responders. I mean we're talking about doctors and police officer and advocates who might be the first person somebody talks to. The victim witness system. Self-help centers if somebody goes to court to access services. And so I think it really, it has to start with the broader community. I think by the time somebody gets into court, certainly we need to be able to identify when something is going on and implement what processes we have. But some cases never even get that far because somebody, it's not recognized early enough on the process for somebody to get the help they need to move on to the next step.

In terms of what can happen in court, I think it's being sensitive to needing breaks. To offer to people who are testifying that if you need a break you can take that. Especially if people are having difficulty with just really being overstimulated by light and sound and stress that you can take more breaks in a court proceeding. Or. . . And really, part of the other challenge is for survivors to be able to communicate that they might need breaks or what it is that they need. So part of it would be having that training so that people are receptive to a survivor saying, "I need this in order to be able to tell my story today," or whatever it is that they need to do.

MD: Is there something that you do different now that you've heard Dr. Valera speak and stories like Mary's?

JE: Definitely. I would say one thing for sure is if there is a litigant in front of me who presents as disorganized or confused or can't tell a linear story or there are gaps in the information they're presenting that don't at first make sense. Those to me now are signs I might need more info if there was a head injury. So I think that is a big factor.

And again we have begun broader training because of that information so that everyone in the system is aware of that. I did some training with all of our staff and invited attorneys as well. And I think that that. . . Becoming aware of that and sharing that awareness is a really helpful factor in terms of not being the only person in the room who can recognize part of what's going on.

MD: Thanks to Judge Emede. And thanks to Mary for sharing her experience.

I spoke with Mary recently. It's been nearly 4 years since her head injury. Since our chat she's found support from her community and family. She still suffers from physical and mental symptoms, but her spirits are up. Her abuser's criminal case is still going. Mary still hopes for justice.

What will you do if you meet someone like Mary? Will they have to fight a battle they don't fully understand. . .by themselves? Will you be the only person in the room that even considers the possibility of a brain injury?

You can help train those around you to recognize and accommodate a possible brain injury. You can be part of a critical shift in how we approach survivors with head trauma.

For more information, a good place to start is the Ohio Domestic Violence Network. Their website has resources on head trauma and other information on intimate partner violence and domestic violence.

You can visit the Ohio Domestic Violence Network resource center at their website: ODVN.org. That's ODVN.org--the Ohio Domestic Violence Network.

Also, you can contact Dr. Valera if you have specific questions. Just search for Dr. Eve Valera, Harvard Medical School for her current contact information and mention you heard her here, on this Judicial Council of California podcast.

And, importantly, you can also share this podcast with someone who comes in contact with survivors. The more people that know, the better the chance people like Mary will get the help they desperately need.

Thanks for listening and for helping change the way survivors with head trauma experience justice.