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## Interview with John Klock

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INTERVIEW WITH THE HONORABLE JOHN E. KLOCK OF  
THE ALEXANDRIA CIRCUIT COURT DEFENDING  
MANDATORY ARREST

*Conducted by Renee Esfandiary and Krista Newkirk  
William and Mary Journal of Women and the Law*

INTERVIEWER: What reasons do you have for supporting the mandatory arrest policy?

JUDGE KLOCK: Well, I think from experience that there is a long history of cases not being prosecuted, oftentimes because the victims did not want to prosecute. Also, many times the police officers may have felt that perhaps the case was resolved when he or she was at the scene, when in actuality the conflict was not resolved. This led to more violence, and police officers would sometimes go back to the same residence four or five times over the weekend. The mandatory arrest policy was a way to force the case into the criminal justice system, and to give some opportunity for the victim to understand what recourse exists and what programs there are to help solve the underlying problem.

INTERVIEWER: Do you feel that mandatory arrest is effective in deterring the crimes of domestic violence?

JUDGE KLOCK: Yes, we had the mandatory arrest policy now for almost eight years. At first, it got a lot of resistance from police, magistrates and lead prosecutors. In general, resistance occurred up and down the line. I think in many cases where this has been forced into the system, the recidivism rate on cases we have tracked has been reduced substantially.

INTERVIEWER: What is your reaction to studies that state that mandatory arrest is only effective for individuals that have something to lose by arrest? For example, individuals who have a job, arrest causes a bad social implication against them. In contrast, for individuals who don't have a job, arrest may not have the same social consequences. Are you familiar with these studies, and if so, what is your reaction?

JUDGE KLOCK: Yes, I am familiar with the studies. I suppose if they did studies of other crimes, such as rape, robbery, burglary, and larceny, they might come to the same conclusion.

There are some people who are recidivist criminals. I don't pretend to say that we can answer all the problems, but we can address those problems even for those individuals for whom arrest is not a big deal. By incarcerating the criminal maybe someone can be saved, or through the system, may want to be saved. The mandatory arrest policy provides us with a way to get them in the system. We can force individuals who fear arrest into the system, and individuals who do not fear arrest still go to jail and are incapacitated.

I might add that some of these studies really don't go into what types of resources are available once these people are in the system. It takes a comprehensive plan to address the problem. You cannot just arrest them and prosecute them. You have to have close attention by case workers, and you must keep the victim involved. You also must have numerous alternatives for a judge, such as placing people in programs like anger management, drug programs, or other programs. The plan must have a comprehensive approach.

**INTERVIEWER:** In your experiences, does mandatory arrest necessarily mean a no-drop policy with regard to prosecution of the case?

**JUDGE KLOCK:** They work hand in hand. Just like there are exceptions to mandatory arrest, there are exceptions to a no-drop policy. If there is a mandatory arrest and the victim refuses to testify, then that has probably undermined the policy. So I think you must have a strict policy on not dropping cases once they get into the system.

**INTERVIEWER:** Do you feel that arresting both parties meets the concerns of victims of domestic violence? For example, in a situation in which there are two aggressors, one may be acting in self defense, but both individuals are arrested due to the policy. Do you feel that this is common in practice?

**JUDGE KLOCK:** No, I think that situation is the exception to the norm. It has happened a few times, and sometimes when the police are there they have probable cause for two or more crimes committed, and they do arrest both parties. I would suspect that sometimes the police must arrest both parties out of necessity when the police cannot determine who was the original aggressor. However, that doesn't happen very often.

INTERVIEWER: What are the criteria used to determine who is the primary aggressor, and how are the police taught to identify them?

JUDGE KLOCK: I think common police practices through on-the-scene investigation usually provide an answer to the question of who was the primary aggressor. And when they need to make a judgement call they probably need to make it very quickly. However, they usually can discern the primary aggressor.

INTERVIEWER: Are the police given special training to discern who has the differentiating marks or bruises?

JUDGE KLOCK: Yes, they receive special training and the police also look at the circumstantial evidence. I think prosecutors and police need to look at everything: the size of the individuals, any history the police have of previous calls to that address, and all of the evidence. I think that all of these cases need investigation. The police must do more than just arrive at the scene, and see who's hitting who to try to make a determination. We have a police sergeant and a police officer who are dedicated to domestic violence. They are consulted on all cases, and do a lot of in-house training.

INTERVIEWER: So you have a special domestic violence unit?

JUDGE KLOCK: Yes, we have a domestic violence unit, which consists of two police officers, the prosecutor, a law clerk and a case worker.

INTERVIEWER: Do you think requiring police to make reports on the incidence of non-arrest will raise the level of wrongful arrests, due to time efficiency concerns?

JUDGE KLOCK: That was a concern that was voiced when we first started, but that has not been fact. First, the reports have been very instructive. Second, the reports allow us to keep some type of statistics on what has occurred. Therefore, requiring reports has not had any effect on our department, because our department already had that policy. Making reports in non-arrest cases also brings victims to the attention of the domestic violence programs. They can offer these persons shelter, advocacy, support and referrals.

**INTERVIEWER:** Do you believe there is any conflict of interest in the prosecutor's duty to look tough on crime and to protect domestic violence victims from consequences that may be more detrimental than not arresting or prosecuting? For example, a husband loses his job due to arrest and the effect is that the woman loses the children in her family because her husband no longer has a job.

**JUDGE KLOCK:** I suspect that is a possibility. One of our procedures is to have a case worker contact the victim within 48 hours of the event to find out what the situation is. Oftentimes our dispositions are patterned or customized to the needs of a particular family situation to try to avoid those problems. If the father is going to go to jail and the kids are going to starve, then one of our options is to have part of the sentence suspended. This would allow the father to work and yet still have the effect of attempting to deter future violence. I believe one of the keys to successful prosecution is to get the victim to continue to cooperate. Many victims fear that the husband will go to jail and she will lose her support. The purpose of the case worker is to try to avoid that situation whenever possible. Also, work release and modified work release are options.

**INTERVIEWER:** I know that some jurisdictions have implemented a program where the defendant has the option, if he meets certain criteria, to enter a guilty plea, and receive a sentence that is suspended if he completes anger management counseling. Does your jurisdiction do that?

**JUDGE KLOCK:** Yes, we do that.

**INTERVIEWER:** What have you found to be the results of that program?

**JUDGE KLOCK:** We have measured the recidivism rate for those that pleaded guilty and attended the anger management program, the recidivism rate is largely decreased. If the defendant pleads guilty, and if he in fact completes the program, then we may well ultimately dismiss the case so that the defendant will not have the incident on his record. This is an incentive for the defendant to complete the program. For those that are concerned about having a criminal record, the policy is a benefit. This is only

utilized in a limited number of cases. Defendants often only take counseling seriously after a conviction

**INTERVIEWER:** What is your response to arguments that mandatory arrest is anti-feminist because it takes the choice away from the woman to decide whether to call the police and whether an arrest is implemented?

**JUDGE KLOCK:** I have not really thought about the policy as being anti-feminist. We look at it from a victim's standpoint, and whether the victim is male or female, the policy is the same. I understand that most victims are females; the policy is an effort for the system to protect victims. In the area of domestic violence it happens to be that the victims are mostly female. But, I have not heard that allegation before. This policy affords victims more options. We know that if nothing is done, the violence will most likely continue.

**INTERVIEWER:** Would you say that the policy is not paternalistic but is just a response to a problem of crime within our society?

**JUDGE KLOCK:** I think it is not intended to be paternalistic and I suppose the criminal justice system should be careful not to be perceived in such a manner. Oftentimes the system focuses on particular problems, whether it be domestic violence, elderly violence, or sexual assault. Because most sexual assault victims are females, the same argument could be made regarding paternalism in that context. But I don't look at it that way, and I don't think the system does. Furthermore, I do not think the public perceives it that way.

**INTERVIEWER:** What, if any line, do you think should be drawn with regard to a woman's choice not to prosecute?

**JUDGE KLOCK:** Well, each case stands or falls on its own, and we make quite a few exceptions. If there is an articulable reason why the case should not, or cannot, be prosecuted, then I am not going to punish the victim further, by sending him or her to jail because he or she will not testify. If there is a pattern of the victim taking out warrants and then refusing to testify an exception to that policy will be made. So even for those victims that do not want to testify, we try to apply the system to the problem, in order to induce, persuade or cajole one or both sides

to go into some type of counseling program to avoid the problem. Because even those that do not testify do acknowledge in most cases that there is a problem. We are currently proceeding in these cases with victimless prosecution.

INTERVIEWER: What is your feeling on gun confiscation for domestic violence offenders?

JUDGE KLOCK: That is probably a pie-in-the-sky idea in Virginia. In theory, it is probably a good idea. However, in the realism of politics, I don't think its ever going to happen in Virginia.

INTERVIEWER: On that same line, what are your concerns regarding police officers who are charged with domestic violence offenses and are required to have their firearm confiscated?

JUDGE KLOCK: I know that has caused problems, not only in Virginia, but nationally. I suspect that some type of procedure will be implemented to look at those cases individually. I think all rules that are black and white usually have a fault some where. Furthermore, I think that policy may well deter spouses and police officers from ever reporting incidents of domestic violence, because they know that if convicted, the spouse is going to be out of work. I think that is an issue that has to be looked at to try to carve out some way to preserve the employment and still protect the victim.

INTERVIEWER: What other programs have you implemented that have proved to be very successful?

JUDGE KLOCK: In the area of domestic violence, we have what is called a target group, that is comprised of the top twenty-five or top thirty recidivist defendants which get special attention.

INTERVIEWER: Will you explain how that works?

JUDGE KLOCK: Yes, we have a list of what we call the heavy hitters of domestic violence — people who are recidivists. The rule is that when they have been arrested three or more times, they are on our hit list. And, if they are charged again, the case is then investigated as though it were a homicide. We assume that we may not get cooperation from the victim. A detective is

assigned to the case and it is given priority throughout the system. It has proven to have very amazing results.

INTERVIEWER: Is this managed by your domestic violence unit?

JUDGE KLOCK: Yes, I will give you an example. The process rate before we targeted this group was about sixty-five percent; this was composed mostly of these heavy-hitters. After we targeted this group, the rate decreased to thirty percent. This decrease has occurred within one year. The program has been very successful. That's just another aspect, I think, of forcing people in the system.

INTERVIEWER: Do you think in the future there is going to be a movement toward putting more emphasis on domestic violence, or do you believe that this movement has hit its plateau, and from here it is either going to stay constant or go downhill?

JUDGE KLOCK: I think it is probably going to stay constant. There is a lot of emphasis now on the domestic violence issue on the federal level, and certainly on the state and local levels. There is a lot of money available. I think it will plateau, and the government will wait to see whether the efforts we are making will make any in-roads into the problem. I do not anticipate anything more aggressive. In Alexandria, we are taking a close look at children living in abusive households, and are involving our child protective services to a greater extent.

INTERVIEWER: What is your response to studies showing that women are increasingly the primary aggressors in domestic violence?

JUDGE KLOCK: I think women are being more aggressive in every area of life. Therefore, it is not surprising that in the criminal area they are becoming equally more aggressive.

INTERVIEWER: Do you think the system will have to change its response as this increases?

JUDGE KLOCK: No, I do not think so. We have had a number of cases where men are being victimized. We handle them pretty much the same. Often, there are double income couples. We have

professional women that are abusers. I think you have to look at a case for what it is.