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# Gates Public Service Law Program Speaker Series

## Monica Roa

### *"The Role of Law in Taking Rosaries out of Ovaries"*

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#### Michelle Storms

Good afternoon everybody. Thanks so much for coming. My name is Michelle Storms I am the Assistant Dean for Public Service here at the Law School and I'm very happy to welcome you into our Gates Public Service Law speaker series. And this Fall I'm really excited because we have quite an amazing speaker to share with us today who's done really transformational justice work in South America. It's a treat because a lot of the people who we have come and talk with us have been practicing law for decades or been involved in work and trying to make something important happen and then we have someone here who had a truly significant country changing legal victory before she turned thirty. So I want you law students, in particular, and I know that that is the bulk of our audience, to take note and to be inspired and encouraged by that. So who is this person of whom I speak?

Monica Roa is an international human rights lawyer and a native Colombian. She's the program director at Women's Link Worldwide, a group that works to advance women's rights through international law, strategic litigation, and really that doesn't say it all. There's so much more, if you look at their website it's overwhelming in the best possible way. She has a degree in law from the University of the Andes in Bogota, Columbia. Holds a master of laws as a global public service law scholar from New York University. She's been the director of the programs at Women's Link Worldwide since 2004. I will tell you a little bit about Women's Link Worldwide even though she probably will too. In terms of working with them, they have this approach about closing the gap between rights on paper and reality and they have the objective that they can ensure gender equality, or insure that is a reality around the world. So in 2006, she persuaded, via litigation, the constitutional court of Colombia to overturn the country's restrictive ban on abortion on the grounds that the ban violated Columbia's commitments to international human rights treaties that ensure a woman's right to life and health. That is truly significant and more forces were against her than were for her in this work. But with the belief that courts can be avenues for the implementation of social justice she moved forward with her organization they work on gender justice issues, human trafficking, international gender crimes, intersectional discrimination, migrant women's rights and sexual and reproduction rights.

So that's just a little bit of the organization and of this person. I was pleased to have the opportunity to spend a little time with Ms. Roa yesterday and as I mentioned, she is a young attorney and her commitment is not only just to this justice and to really advancing rights but to having fair dialogue, to using the courts as a mechanism for social justice but for bringing people together to understand what's at stake for people and for women in particular. She also has a really strong to encouraging the next generation future lawyers, to know what's possible for them to do. So I hope you'll enjoy this talk and join me in welcoming her.

#### Monica Roa

Thank you so much Michelle and thank you Rebecca for making it happen. Rebecca interned with us last year and she's coming back next year. So thank you so much for doing everything that it took to bring me here. I'm very happy to be in Seattle one of my best friends lived in Seattle for many years. I never came to visit, so shame on me. But here I am trying to make it up for her.

I was asked to give a title that was catchy for public interest lawyers in training. I hope I delivered and my challenge is to live up to the expectation. So I'm going to start telling you a little bit about Women's Link. As Michelle mentioned, we are an international human rights organization. Our main objective is to incorporate a gender perspective into the world of justice.

I like to show this picture because I want you to see that we are that many, that we have guys on board. There is only one, but now days we have three. And also that I am the second oldest in the organization. And I think that is truly inspiring and hopefully to you too because we are doing amazing work with really young people, so keep an eye open for our openings. It would be great to have you on board eventually.

We have two offices, one in Bogota and one in Madrid but we don't have more offices that's all. But we do have the capacity to do projects in other countries around the world. We have mainly been working in Latin America because of our office in Columbia and in Europe because of our office in Spain but this year we started working in Africa, so I guess next year we have to tackle Asia.

What makes us different from other organizations is that as I like to tell my attorneys, we don't spend time complaining, but proposing solutions. We're looking at the glass half full and thinking what can be done understanding there are a lot of problems, a lot of limitations. We want to see the law not as the enemy and as the oppressor, but as the tool for social change. And the we do take informed chances. That means we take the time to evaluate the context, and I'll talk a little bit more about that. And as opposed to bringing all the possible weapons we can use, we like to study the target, see how it moves and then pick one that we think is the best and that allows us to be very efficient in terms of how we use our resources.

Even though we're a legal organization, we always work with a three-pronged strategy that includes legal strategies, but also communications strategies and alliance strategies. And that's why the title of this presentation is how the law or litigation can help bring the rosaries of our ovaries as opposed to ho can it do it. Because we are very much aware that the law is one of the instruments, a very powerful one, but it's never enough. The law cannot change culture bu itself. We are aware of that and that is why everyone of our projects has these three strategies. I should tell you that the project that I'll be talking about today, which is the challenge on abortion law in Columbia was a pilot project, was the first project that Women's Link did. And it turned out really well and really lead us to where we are at now but it has also helped us theorize a little bit like create a methodology that we now both implement in all of our programs and projects but also give to other organizations. It's not easy, it's one of the hardest parts of the work to really understand what it is that we did right that we can share with other as lessons learned and as methodologies.

Today as Michelle mentioned, we have six different lines of work, but today's presentation, I'm going really to be giving you two presentations in one. I'll try to merge them. One is how we came to change the law that ends with a happy ending, changing the law. And the second one is what has happened since, all the challenges and threats that we have faced after the law was liberalized.

I have to start with the disclaimer that I was trying to make a moment ago, that the role of strategic litigation is not only creating legal standards, meaning changing the laws or winning a case, but it really is an opportunity to start debates, frame debates in a way we want them to be framed.

Articulate movement around the cases and generate movement in terms of debates and dialogues and energies and synergies. So one thing that we have very clear is that yes of course we like to win cases especially when that's the plan. Sometimes we plan to lose a case, for instance so we can litigate it internationally because we want to set an international standard. Losing can be a strategic objective when you bring a case. But we are very aware that the reason why we bring cases is to use those opportunities that arise when a case is brought to court. To really gather public opinion around it, have people talk about the issue, present different views that have not been presented before, look out for new strategic, unsuspected allies, et cetera.

I'm going to tell you a little bit how we started this practice, this is with hindsight, is the word, looking back that is so much easier. The first thing that we did and I think is still true in many places where this debate occurs is that the debate is usually a black and white debate. You're either pro-choice or anti-choice or pro-life or anti-life. Two extremes without any point for a dialogue. And on one corner they're usually portrayed as the crazy feminists, the pro-choice and the pro-life's are the very sad priests who cry for the babies that never get to be born.

But once we understood that and it was clearly happening in Columbia and the way we realized this was happening in Columbia was by doing an analysis of the articles that were published in the press about abortion. There were always these two extremes and the sources for the journalists were either the very angry, radical feminists or the very sad teddy bear looking priests. Did I say that right? That was a joke.

And then what we realized is that that is not an accurate description of the debate. The debate is really a continuum of people that agree to a certain level on women's right to autonomy and reproductive autonomy and we think that it's very important to not ignore the fact that some people can be, for instance, in agreement that abortion should be legal in the cases of rape, but not in any other case on abortion, I don't agree with abortion, I would never have an abortion I would never allow anyone around me to have an abortion, but that's something that the state should not impose on other people and all these other possibilities that really allow for a much broader understanding of the problem and that really can allow you to build on alliances that are not easy to find when you have this other approach.

So having this in mind, we decided to map the actors. What do we mean by mapping? We use this matrix in which we place the groups, trying to position in them in the range of whether they are in more or less agreement with our issue but also how much influence do they have in the public opinion. Are they heard by the media, when they speak, do people listen to them, do they have the capacity to persuade decision makers or people don't even know that they exist. When I talk about actors, I mean the people that are already engaged in the abortion debate. And this is what we found in Columbia. So people with very high profiles that were very anti-abortion and a lot of groups in particular women's groups that were very much in favor but with not so much of a visibility in the public sphere. Then we mapped the judges of the constitutional court. There are nine judges, two of them we could see that could easily join the corner that we were not going to spend our time or resources in trying to persuade because those are usually people that are not persuadable, but they were also not in the corner of people that were already convinced. They were in the middle ground, you could say they were liberal judges, but had never been strongly committed to the cause. And this is usually the landscape in many of the countries where we now give technical assistance. And what happens usually is that organizations, and I say this with a lot of respect for the work, focus on fighting with those that will never ever be persuaded and having meetings and workshops with those that are already convinced.

After that diagnosis, we decided on this strategy. We were going to focus on the middle ground, because that's where the judges which were the ones that were going to make this decision were

placed. So we were not going to ask for a complete liberalization of abortion. And footnote here: I don't think that anyone in the world every wants complete liberalization of abortion like a woman can have an abortion the day before she is due just because, and I think that showing that degree of grace is very important to other people because when you talk about total liberalization of abortion, people think about that previous week before the ninth month and delivery. So we really wanted to use circumstances we decided to aim for when the life or health of the woman is at risk and by health we included physical and mental health. This was not really our decision it's the definition of WHO, World Health Organization. But we did know that countries like England, for instance, that's the law that they have and that's how they get most of the abortions performed legally. We also included the case of rape or incest and we also included grave malformations of the fetus that made life outside of the uterus unviable. That was a very difficult one, where you draw the line because you don't want to sound eugenistic, is that the word? So we just decided that it was those malformations that really won't allow the fetus to survive delivery, such as an encephalia, when there is no brain, there is no skull. So after the fetus is separated from the mother's body, there is no brain to send orders for the body to function. So we decided that was going to be our target and that is strategy number one. We were going to focus both in the arguments and in the people placed in that middle ground. We were trying to convince those people, nobody else.

And what we were trying to do, and this is strategy number two. What do we have to say so the person standing before the line can step after the line? We didn't want to bring them all the way to this corner. And this went hand in hand with the communications strategy but also with the arguments we were picking to use in the complaint, so this really was thinking about what do we have to tell that person nor here or there so that person commits to being on this side, even if it's just a little bit.

The third strategy that we designed was raising the profile of those already in favor but were not that known in the country. That meant giving them communications training, exposing them to the media, doing conferences and seminars and inviting them to speak. What we tried to do was to, I like to say, democratize the range of people talking about abortion. It was not only the feminists, we brought in doctors, we brought in experts in public health, economists, there was a nutritionist that was talking about how the nutrition levels of the born children are diminished when there is an unwanted pregnancy, et cetera, et cetera. So we really wanted to bring more people in in such a way that those in that corner over there became just one more voice in the range of voices giving their opinions on abortion. So we were very respectful of every position. Everybody had the right to give an opinion be in agreement, or disagreement or some agreement or some disagreement. But we also had very clear that the strategy was asking the court to declare that a complete ban on abortion violated human rights of women. We were not trying to convince the church. We were trying to convince the constitutional court and that was key throughout the process. That was key for the development of the legal strategy. We didn't use any arguments in the complaint persuading the courts that the church should not interfere. We just took that for granted, we're not talking to the church. If they make their way into this, then we'll take the time to say why they shouldn't interfere, but we were not going to give them the first hand of this debate.

How that played with alliances. Actually I should say how that played with communications. The first instinct of the journalists was to have me in a talk show face to face with a archbishop and we were turning them down. We were saying, 'we won't have anything to discuss because he'll say the church opposes abortion, I'll say congratulations you're entitled to,' and full stop. If you want me, you have to bring an attorney and we'll discuss this constitutionally. If you want them and this is where the alliance part comes in, we had an alliance with Catholics for Choice who from within the Catholic church they defend the possibility for an abortion. So if they wanted the church debate they could have it and if they wanted the constitutional debate they could have it but they were

separate debates. And it was one very important way in which first we educated the journalists through the public opinion that those were different conversations.

And finally, the fourth strategy was also mapping the judges. Figuring out who they listen to. And this is something that we learned from advertisers. You know that when the commercials for cereal for children, they are aimed at children, but the person that makes the decision of whether to buy it or not is not the child, it is the parent. But the person that the parent listens to is the child, so that's the person that you target. That was somehow what we tried to extrapolate to the judges. So we were thinking, these judges and only these ones in the middle, we were not thinking of the ones in the extreme, what kind of journals do they read? Who was their mentor? Where did they have their PhD? What school they attended? What books do they read? Who do they ask to write the prologues of their books when they write one? Who do they cite often? and that gave us indications both of who the people or organizations that they listen to were but also what were the arguments that were most persuasive for them. Because of course, here you have a huge range of arguments that you can use, but we had to pick those that were the most effective for those particular judges. And the thinking behind this is very easy. Judges are people, therefore they like some things more than they like others and of course, they have to always justify their decision making in the law and be very rigorous, but at the end of the day there are within the law, there are options and we wanted to give them the best option for them.

So those were the main strategies, again it's very easy to talk about this afterwards. I am going to now show you a video that lasts I think twelve minutes and explains a little bit more how we developed the three legal, communications, and alliance strategies, and then after that I'm going to talk about what happened after and I hope you enjoy the video, it's very cool.

#### Video

While you are finishing the credits I should tell you that Martha Solay, in fact, died a year after the case was won. That Martha Solay, the woman in the video, she died a year after the case was won. It started as cervical cancer, but it metastasised during her pregnancy and then once she gave birth, it was too late and as you saw in the video she was with us the day that the decision came down and it was really hard to celebrate with her, but she was the first one jumping and screaming but we knew it was too late for her so that was very difficult. One of the things that we did and this is another footnote. Was that when the church excommunicated us, and this is only from the lips out because I never got my certificate, which I would have framed and placed in my living room, but they only said so. We did t-shirts and we were selling those t-shirts in different places where I went to give talks asking for donations and we built a house for Martha Solay's children. So that was our way of thanking her for lending her case to the cause. The other comment is I apologize for the quality of the video it's not the best I don't know what happened, but if you were able to read the quote for the decision, you could agree with me that that's judicial poetry, I love it. And we have this publication, we have excerpts of the decision in Spanish in English and I'm donating this to the library here, but you can also find that online on our website.

So that is the happy part of the story and I don't know if you believe me that changing the law was the easiest part of all this struggle. We did that in, we prepared for then months, we filed in April 2005 and we got the decision in May 2006. Ever since, the story has been quite different. On one hand, as I mentioned in the beginning, we were very much aware that judicial decision is not going to change reality from one day to the other especially in a context in which abortion was not only a crime but also a sin. Especially when doctors one day they are told if you perform an abortion it's a crime and you're going to go to jail and the next day they are told you are obliged to perform abortions when they are legal. That is not easy and we knew, we anticipated that, we knew that also from our comparative law exercise. So we had prepared workshops, giving information to the

public, to women, teaching them how to claim their newly recognized rights, talking to the public health system, talking to doctors, to the public officials in charge of granting these rights and monitoring and sanctioning those that were not complying et cetera, et cetera. And I think it was going a little bit more slowly than one would like this process to go, but according to the plan. That is until, this guy, that's why I'm calling this second part 'From Obstacles to Threats'. Obstacles, we knew we were going to find obstacles, but then this guy was appointed as the Procurador General there is no equivalent figure so I'm going to describe his functions so you understand.

He is obliged to grant human rights in all state actions in Colombia. He is obliged to make sure that constitutional jurisprudence is complied with by public servants and he has the disciplinary oversight of all public servants in Colombia. So he has a lot of power and this guy is a religious nut. He is an extremist. In his youth, he burned books, the forbidden books. And during his adulthood he wrote books that should be forbidden. One of the most important rights that we got in the constitution in 1991 is called the free development of the person-hood which is how we call our autonomy clause and he makes fun of that, he mocks it in his book which is called Towards the Free Development of our Animalhood and that's because that was the right that was central to the argument that led to the recognition of rights for the LGBT population. So he's really saying that if we keep pushing that right we're going to become animals.

We knew that, we read his books. In his book, he said that when constitutional mandates are against divine law, you have to change the constitution or you have to do conscientious objection. So when he was appointed as the person in charge of granting rights, we were very much afraid. And that fear became terror when this woman was appointed by him to be in charge of women's rights. I know her personally because she led the anti-choice movement during the process at the constitutional court. She was a dean of the law school of the Opuse University in Bogota and she herself wrote forty-seven amicus to the constitutional court opposing the liberalization of abortion. And this is a picture of her very pretty, you can probably see the resemblance with 101 Dalmations. She is here saying that the separation of church and state is dangerous and she is now in charge of ensuring that public servants comply with the constitution and with constitutional rights. So we knew this was going to be very difficult and we started to monitor what those two were doing very closely and of course sooner rather than later, they started giving us excuses to file complaints. So the first thing that we did, we filed a disciplinary complaint, and because this guy is in charge of disciplinary complaints, we had to file directly before the supreme court. We were saying that not only he's not complying with his functions that are giving by the constitution, but he's using his power to sabotage those rights that he's supposed to be granting. These are pictures of the day that we filed, again, we got a lot of media. That complaint has been sitting at the supreme court for a year and a half and nothing has happened. We don't know if we are going to win or not, but as I said at the beginning, this is not only about winning the legal cases, but really using them as an excuse to articulate and mobilize people. So that evening we held this candlelight vigil following the one that we had done previously that you saw in the video. And that was a way for us to claim some of the symbols I think that you probably saw that the right to life was central to our complaint and we're also claiming that the idea of lighting candles is something for the lives of women. So we did this candlelight vigil and we say, 'No more dark ages'. Some of you found some, some books of matches, there's some here in the front, I didn't bring enough, I'm sorry, but I wanted to bring you some souvenirs. That's what we produce and we invited people, we distributed those in universities, on the street, in theaters and we invited people to come by, light a candle, and then keep going with their lives, but this happened that night when we filed the complaint.

We also created a group in Facebook, it's called Columbia does not have a Procurador. WE know have more than 3800 members and everybody releases the tension, what's the word for that, yes, they vent. This is where they vent but also where we share information and news, et cetera. And of

course the media also responded, as usual, these are samples of all the different pieces and op eds that are constantly being published about the Procurador and everybody knows he is not case. And also the cartoonists have had the time of their lives smoking him. Take a moment to enjoy these. For those that came for the lunch panel, I said that this is a marathon, and because it's a marathon, we have to enjoy the process. So we really have to make fun of this otherwise we're not going to have enough energy to go through the end. And these are just examples of how groups that are not legal groups, but they just take again, this excuse to do protest and mobilization.

The second strategy that we did with the Procurador was that in the same way as in the original case, we did not argue for the secular state argument. We didn't use it. We decided that this was a time to bring it up and discuss it. We had the separation of church and state recognized in the constitution of 1991, but it hasn't been publicly discussed as such until now. So we decided we were going to have a series of panels in different universities inviting public opinion leaders to talk about the issue of the separation between church and state. We had three different ones in different universities. And this was also a way to find new allies that maybe would not have accepted an invitation to talk about abortion but they were willing and happy to talk about the separation between church and state. And of course, according to the plan, the Procurador was the main example for everybody's intervention. We created a website with information, we were tweeting the panels as they occurred. We recorded them in some of the presentations and also interviews of the panelists, we posted them on the website, so this really was a low cost plan. And because of these, there were people and groups that started filing complaining of their own against the Procurador for having used public money to, for instance, build this little church in the building of the Procuroradia. Or publishing those calendars that have biblical quotes and that are part of the Procuroradia. So people started finding specific issues about the violation of the separation between church and state and they started filing complaints of their own. So it wasn't just Monica Roa or Women's Link fighting the Procurador, but we had other people joining the legal battle.

And then the third one, this is an article, of all the tutelas, tutelas are like inaudible (52:20) but they're very expedite challenges where you protect fundamental rights and the judge has to respond within ten business days, but a fundamental right has to be affected otherwise you cannot use that action. And then the third one which is the one that we're currently waiting for an answer we were constantly thinking...okay this is what was happening is the Procurador kept publicly that abortion was not a right that emergency contraception was an abortivasent, that public servants did not have the obligation to remove obstacles so women could enjoy these rights et cetera. And then giving even scientific information, which I'm sure you have examples here, like Misoprostol was not safe, et cetera. And because everybody knew his position and his stance on abortion, then public officials were very fearful of complying with the constitutional mandate of granting abortion. So at the beginning we were trying to think of a case that because of what the Procurador was saying, public officials were being dissuaded from granting women's services. But it was impossible to find a woman who could prove that she was not given service because of what the Procurador was doing. So what we came up with was that we were going to sue him for the right to information. Information is one of our constitutional rights and the court has jurisprudence saying that one thing are opinions and you can say whatever you want when you're giving your opinion and that's under the freedom of speech, but when you're giving information, much more when you are a public servant, the information has to be truthful and reliable. So first thing we did was documenting for an article that we published all the lies of the Procurador. So we documented them, we proved that they were lies. And then we turned that into a tutela claim and again, so it wouldn't be personal because sometimes it looks as if it was Monica v. El Procurador and also because we didn't want to prove that we were looking after the right of every Colombian of representative age, what we did was we find 1200 women that were willing to be plaintiffs. So we worked with our partners in the different regions of Columbia and we got 1200 women signing on as plaintiffs. And we gave them,

this is again the communications component, we picked five of them from different regions we gave them communications training, spokes-person's training. We prepared videos online with them explaining why it is important that the Procurador, the person in charge of granting rights, gives reliable information. This tutela has been denied in the first instance, but that happens all the time, that's in the budget. It's now hoping to go to second instance and what we're really hoping for is that the constitutional court who is up to here with the Procurador ignoring their jurisprudence is going to take this opportunity to tell him, you are going too far. And what we're asking the court to do, we're not asking for him to be fired or sanctioned, the constitutional court cannot do that, but we're asking the court to say, 'you have to admit that you lied and you have to provide truthful information with the same publicity and through the same channels.' If we win, it's going to be more of a symbolical win, and also a very practical one, because then good information is going to be out there.

He is relentless and that happens because he truly believes he has been picked by God to take on this struggle. He has been aligned with the conservative party and they presented what you know as the person-hood amendment, it was a proposal reform of the right to life in our constitution to protect right to life from the moment of conception. It was filed in congress. Together with this argument that they kept using, a few judges of the constitutional court cannot change what millions of people in Columbia think about abortion. So they filed in the senate and we defeated them three weeks. So that was a huge win and I think a result of the work that we've been doing during these five years. Five years ago it was unthinkable that anything in congress, and I think that I should mention that there were seven abortion bills filed in congress since 1976 until when I started working on this which is 2005, and they always lost, they were never taken seriously. And this is the first time that an abortion debate in congress actually wins. So that is something to celebrate and as a movement and as a marathon, we need to celebrate every time we do a loop. But his plan B is already in progress, he has filed a bill on conscientious objection, which wants to get conscientious objection for institutions and wants to get conscientious objection for public servants. So the rule of law is going, I don't know where with public servants doing what their conscience tells them to do as opposed to what the law tells them to do. But we're there. The good news is that we're having fun in the process. It's very stimulating, if you want to look at the glass half full, because that pushes you to be even more creative. We will never have the discipline that they have. On Friday nights, they sit and work, on Friday nights we go out and dance and drink, but that, again, gives us the energy to continue. Our former president of Columbia, tweeted last week that our fight with the Procurador was like David versus Goliath, so I wanted to use this picture to show that.

You can find me in Facebook and Twitter. I really use that, and I love it, they should pay me for advocating for them so much because it's the best way to stay in touch and share information because I do think that a lot of the challenges are very similar and that we can learn from each other.

I want to finish with another video. This one is only two minutes. That's a different project of Women's Link and we're launching this project today it's called the Gender Justice Uncovered Awards, and I think as students, you will appreciate them and maybe get incentives to participate.

This is our website, by the way.

That's it. Well thank you very much.