

**A SYMPOSIUM CELEBRATING THE FIFTEENTH
ANNIVERSARY OF THE VIOLENCE AGAINST WOMEN
ACT**

**PANEL THREE: THE IMPACT OF VAWA: BILLIONS (YES,
WITH A B) FOR PREVENTION, VICTIM SERVICES, LAW
ENFORCEMENT, UNDERSERVED POPULATIONS AND THE
COURTS, AND LOOKING AHEAD TO VAWA IV**

GEORGETOWN UNIVERSITY LAW CENTER

LEGAL MOMENTUM AND *THE GEORGETOWN JOURNAL OF GENDER AND THE LAW*

APRIL 22, 2009

Transcript of Remarks by

Lisalyn Jacobs, Vice President for Government
Affairs, Legal Momentum

and

Lynn Hecht Schafran, Director, National Judicial
Education Program, a project of Legal Momentum in
cooperation with the National Association of
Women Judges

XI *Georgetown J. of Gender and the Law* 576 (2009)

JULY FULCHER: Lastly, we will be hearing from Lynn Hecht Schafran.

LYNN HECHT SCHARRAN: Several years ago in Wisconsin, a judge scolded a rape victim for crying on the witness stand. He said that her behavior was "inappropriate," and that if she did not stop crying he was going to dismiss the case. There was a fair bit of hue and cry in the community and the judge said, "This is no sixteen year-old school girl. The woman was twice divorced; you might say she was well-experienced in the school of life." When asked if her divorces mattered, the judge said, "Yes, it sheds a different light on the circumstances." So, the question that Claudia's remarks have raised, and in fact all of our remarks have raised, is: When a victim of sexual assault or domestic violence or stalking or teen dating violence or some combination of all of these (as is usually the case) comes forward to seek help or redress in the justice system, is she going to encounter ER doctors like those who were on call in Boulder before VAWA and SANE education? Is she going to encounter someone like this Wisconsin judge who thought that rape is just bad sex if the woman was already sexually active? Or is she going to encounter someone who is knowledgeable about the dynamics and impact of violence against women?

The happy news, of course, is that thanks to VAWA funding for professional education for the gamut of people and services who interact with victims of violence—medical personnel, law enforcement, prosecutors, judges, and others—the odds of encountering someone knowledgeable have gone up sharply. That is hardly to say that everyone who needs this education is rushing to take and embrace it. We all know that, but today is a celebration, so I am just going to tell you about some people who have appreciated and applied what they have learned at the programs that they have attended.

Of course, in the few minutes we have, I can only give you a glimpse. I can tell you that if you want to know more and you are prepared to be overwhelmed, you might go to the web and look up “Violence Against Women Online Resources.”⁶ This is a web site that the Office on Violence Against Women maintains with the University of Minnesota, and it has a staggering wealth of material developed by OVW grantees. NJEP’s four-day prosecutor curriculum, which I’ll say a few more words about, is up there. There are literally millions of pages up there. We tried to do a count. Someone once told me ten million pages; I do not know if that is true. I tried to verify it, but it really is staggering.

In preparation for today’s panel, I called some people I know who do a lot of professional training for different groups. I thought it would be interesting to find out from them what VAWA funding has made possible for their organization, and what the response has been of the people who have come to their trainings.

LAW ENFORCEMENT EDUCATION

Nancy Turner is the Director of the National Leadership Institute on Violence Against Women for the International Association of Chiefs of Police (“IACP”). She wrote me about what she called the range of efforts that VAWA funding has supported, from guide books on interstate enforcement of protective orders to a roll call training video on identifying and investigating human trafficking to educate first responders, who are the people in the best position to identify the victims of this hidden crime.

VAWA also supports IACP’s National Law Enforcement Leadership Institute on Violence Against Women. Nancy sent me many e-mails from participants who wrote, in subsequent weeks, days, and months, about what they had done when they returned home. Here are just a few. The Chief of the Delaware, Ohio Police Department collaborated with local victim advocates and prosecutors in a civil protection order compliance check. They went door-to-door to check on compliance and see if a violator had manipulated a return to living again with his victim. The Chief wrote, “This initiative came about as a result of my attendance at the Institute.” The Assistant Chief of Police in Riverside, Illinois, wrote that

6. Violence Against Women Online Resources, <http://www.vaw.umn.edu> (last visited Feb. 9, 2010).

since the Institute they had created a "domestic violence sexual resource officer position and policy," and they had drafted legislation on domestic assault by strangulation that was then pending in the Illinois legislature. From a law enforcement category we do not always think of, campus security, the chief at a small Colorado state college wrote, "New educational and prevention efforts, new checklists and reporting procedures, and new investigative awareness are all hallmarks of the legacy of the Institute's impact on this graduate. Without question, my constituents are being better served as a result of my participation."

PROSECUTOR EDUCATION

Turning to prosecutor education on adult victim sexual assault, this is an area that I mentioned NJEP somewhat surprisingly has had some direct experience with, because several years ago the Office on Violence Against Women asked us to adapt our Understanding Sexual Violence Program for judges for prosecutors. We created a four-day curriculum. Claudia was one of my partners in crime—that must be some kind of a pun or oxymoron in this context. On that effort, we presented it around the country with the American Prosecutors Research Institute's National Center for the Prosecution of Violence Against Women. Then it became the basis for their VAWA-funded National Institute on the Prosecution of Sexual Violence, which is the companion to their VAWA-funded National Institute on the Prosecution of Domestic Violence.

At a pilot of NJEP's prosecutor curriculum I met Herb Tanner, who was then a line prosecutor in Michigan, and who today is the prosecutor coordinator for all violence against women education for Michigan prosecutors. Herb's position is funded through the VAWA STOP-grant formula funds, which provide money to the states on a population formula. When I wrote Herb about this panel, he wrote me back: "When I put into practice what I learned at NJEP's program, I got a conviction in every rape case I tried for almost two years afterward, and it set me on the path to becoming an educator for my own colleagues."

This is what he wrote about his own current funded position. It is a long quotation, but I really thought it told us what VAWA funding has provided, and that it was worth reading to you:

My job is to provide training and technical assistance to prosecutors on issues surrounding domestic and sexual violence and stalking. One of the hallmarks of our program is that it is highly collaborative. I work with as many of the stakeholders as we can bring to the table, including domestic violence and sexual violence service providers, law enforcement, medical care providers, sexual assault forensic nurse examiners, batterer intervention providers, mental health professionals, faith based groups, court staff, probation and parole agencies and other state agencies. We trained over 1,100 professionals last year. I think what VAWA money has meant to Michigan prosecutors is that we have highly-trained prosecutors who have access to the best practices and

who see the value of working collaboratively in their communities. If we did not have VAWA money, we would return to the days where prosecutors existed more or less on an island. I remember those days and they were not a lot of fun.

JUDICIAL EDUCATION

Turning to judicial education, which is my bailiwick, obviously, this requires something quite different than what Herb Tanner described. In very few states are judges willing to participate in multidisciplinary education, because they are very concerned that this will be seen as in some way violating the code of conduct against the appearance of impropriety. There is also the very significant fact that the judge's role is not about winning and losing cases; it is about conducting a fair process, and in the particular context of our focus—which is adult sexual violence—conducting a process that respects defendants' rights but at the same time minimizes the re-traumatization of the victim. Our two-day curriculum for judges is titled *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*. It provides current research on how victims react during and after the assault; the neurobiology of trauma and how that affects memory and makes people say things that seem like they are inconsistent statements, but are not; sex offenders, sex offender treatment, and sentencing; and jurors' attitudes toward rape. The expert faculty presents this information in the context of what it means to the judge's role, and all of these issues are discussed throughout the two days in small groups and reports back.

VAWA funding has enabled NJEP to present this curriculum in more than twenty states, and as you can imagine, there have been memorable moments. I put something back into my talk that I had taken out, because when Vice President Biden today was talking about what we should tell our daughters, I thought I had to tell you this: In one state that Claudia and I were in, the chief justice said (and all the judges of the state were there), the chief justice said to the room, "If my daughter were ever raped I would not let her go into the criminal justice system." Whereupon there was a general discussion about what these judges—who were almost all men—should tell their daughters. We get this a lot; we have male judges asking us what they should tell their daughters, and we say, "What are you telling your sons?"

The absolute standout memorable moment, though, that I do have in my little talk is this: in an unmentionable state, a male judge was listening as our sex offender expert read the transcript of an interview that he had conducted with a male college student who blithely described how he held his arm across his date's windpipe in order to hold her down and have what he perceived as having sex with her. After Professor David Lisack—whose name I'm sure is known to many of you—had finished, a male judge in the group said, "I do not see where there is a rape in that narrative." A female judge jumped up, ran behind her colleague's chair, put him in a chokehold and said, "Do you see it now?"

In addition to our five programs, VAWA funding has enabled us to turn this two-day curriculum into a four-hour DVD so we could get the information out more widely and on an as-needed basis. We were able to create a two-hour DVD called *Presenting Medical Evidence in an Adult Rape Trial*, which explains what a rape kit exam is, so the judges—even though they will not know how to do it, they ought to understand what a victim goes through. The judges and jurors and others will understand why victims so rarely have the kind of brutal genital injuries that people so mistakenly assume are the hallmark of non-consent. Our latest VAWA-funded project is a Web course/resource titled "*Intimate Partner Sexual Abuse: Adjudicating this Hidden Dimension of Domestic Violence.*" It is free, it is open to everyone, and the URL is on the flyer that I do believe is outside on the table.

With respect to how judges actually use what we hope they learn in our presentations in their own courtrooms and court systems, I am going to just choose one example because it is about our latest product, and it is the perfect bookend to the judge I told you about at the start of my remarks, because it is about a different Wisconsin judge. NJEP wanted to bring this issue of intimate partner sexual abuse to the attention of the judiciary and others because it is a prevalent but hidden problem, and research has shown that forced sex is extremely indicative of increasing dangerousness even to the point of lethality. A judge in Wisconsin named Mel Flanagan felt that this information was so important for her colleagues that she took our Web course, and out of it she created her own in-person training and she went around her state, presenting it in every judicial district and for the Wisconsin tribal judges.

To close, I actually want to echo something that Claudia touched on, that everybody actually has touched on, and that is this question of continuity. What VAWA funding has meant for professional education is so powerful because it has enabled providers to continually strengthen, revise, and update their programs to embrace the newest evidence-based practices, bring in the best experts, utilize the most effective teaching techniques—and the fact that many times, VAWA will fund the travel of those who need to come to these programs. That is a very significant issue because when the court systems have no money, the first thing that goes is judicial conferences. Thomas Jefferson wrote that "eternal vigilance is the price of liberty." I will close by saying that eternal professional education is the price of an effective response to violence against women. At the same time that we strive to prevent and reduce this violence, we know that it is never going to be eliminated. Only by keeping our victim advocates, health professionals, law enforcement, prosecutors, judges, and court personnel fully educated about these issues, can we serve victims and promote a fair and effective court process.

Thank you all for coming today.

we look forward to the new VAWA. I would like to kick off the questioning. VAWA is due to be reauthorized in 2011, which is going to be upon us before we know it, so I would like to ask the panelists, what would you like to see in the next iteration of VAWA, and how do you think we should go about getting it?

LYNN HECHT SCHAFFAN: I really do want to repeat with what I closed. There are a lot of new things that we might need, and Lisalyn and Leslye touched on many of them, but I think we need more of the same and that really is what has made VAWA powerful. Because as was adverted to before, foundations are cyclical; they fund something this year and then next year they have a new interest and their board gets together and they have a new board chair and he or she likes something else. Helen Neuborne is laughing; all of us who live on grants know this, and so we need to have a source of funding from people who understand the need and are willing to fund it. When the National Judicial Education Program was first mooted, when the idea was put forward at the very beginning of the founding of Legal Momentum and people went around to the funding community, they said such a program was not necessary and that judges do not need it because "Judges are impartial; that is their job description." I mean that is what people said, and so to have an entity that understands the necessity for professional education for everybody in the system—law enforcement, health professionals, judges—obviously, education that is appropriate to their role is essential. As I said before, you are not asking judges to think about the same issues as prosecutors; they have a different role . . . but more of the same. It may not seem interesting and attractive. People are always wanting the magic words "new" and "free," but this is so important, and I hope that we can maintain the funding that we have for professional education in perpetuity.

having to mop up the pieces. What we want to do is try and figure out what we can actually do to prevent these crimes to begin with . . . so that would be my short wish list.

LISALYN JACOBS: I am going to try to focus on two things. I think that the more we do this work, the more that we realize that there are systems that our work impacts, and that some of those systems are somewhat antiquated . . . and we need to figure out how to bring them along. In particular, I am thinking about unemployment insurance. One of the things the stimulus bill just did was to give states money—a sort of carrot approach—to try to get them to improve their unemployment insurance systems. And one of the things that states are encouraged to do is to allow victims of domestic violence—or someone in their immediate family—who have to leave a job to qualify for unemployment insurance. There are two issues there: 1) because it was not the Judiciary Committee that was focused on that, the piece that got passed focused solely on victims of domestic violence, so the goal is now to broaden the law to include sexual assault and stalking; and 2) unemployment insurance is a state-based system, but as we sit here in this century we have so many people who work for national and multinational corporations. Yvette Cade, the victim I talked about before, worked for T-Mobile. She would not have been eligible for unemployment insurance because she lives in a state where it is not made available to domestic violence victims. However, had she lived in the District of Columbia she would have been eligible . . . and I am sure she had similarly situated colleagues who worked for T-Mobile in the District of Columbia who had—while not as heinous—similar issues. So, trying to figure out how to create a more seamless web to support victims, I think is one thing that we need to focus on going forward.

Equally important is to figure out how to address the invisible scourge, which is domestic and sexual violence in Indian country. I think someone else said of another issue that it could very easily be the subject of several additional conferences and lectures . . . because how a Native woman receives protection from the law—whether her case to be prosecuted in federal court, in state court, in tribal court—is governed by a very complex and interconnected series of federal and state laws. But again, as I said before, victims of sexual and domestic violence in Indian country are victimized at rates that are so incredibly heinous compared to the general population. On top of which, I heard one of my colleagues from Indian country talking about her inability to get federal prosecutors to even tell Native women if their cases were going to be prosecuted or dropped. Trying to figure out how to redouble and improve those efforts, I think, is another big piece that we need to continue to focus on going forward.