



Addressing Violence Against Women

Where Are We Today? **By Olivia DeBlasio**

Most of us have a breaking point. For Maureen Valdez, hers came one night in June 1997 in a small town near Portland, Oregon, where she and her boyfriend Shawn lived. After five years of consistent verbal and physical abuse, she had had enough. Anticipating a fight, Valdez fled the house out of fear. While she was away, Shawn tore apart the kitchen, punched his fist through the microwave, and wrote “F— you” in his blood on the walls.

Later that night, Valdez came home and tiptoed through the house. Seeing the blood-streaked walls, ruined kitchen, and Shawn sleeping

soundly on the couch, she locked herself in the bedroom, along with her children and fell asleep. Before dawn, Shawn broke into the bedroom, dragged Valdez by her hair, and beat her.

“After that night I was able to be strong enough,” she says, “because after the blood and words I feared for my life.” Valdez took the children and left for good.

Valdez, like many of the four million American women battered by husbands or partners each year, returned to her abuser repeatedly until she found a way to leave him. But, because a domestic violence victim

often fears heightened violence if she tries to flee, or because she lacks emotional and economic support or is torn by memories of love mixed with manipulation, she may be trapped in a cycle of violence and reconciliation. Valdez is one of the lucky ones. She was caught in the cycle but managed to break away and survive. Some victims don’t make it; about 2,000 women die every year as a result of domestic abuse.

Fighting violence against women has been a focus of advocates and concerned lawmakers for years. About three years before Valdez reached her limit, Sen. Joseph Biden

(D-Del.) and others pushed through Congress legislation that President Clinton signed into law as the Violence Against Women Act (VAWA), part of Title IV of the 1994 Violent Crime Control and Law Enforcement Act. The law expanded existing federal criminal law and, through its office in the Department of Justice, administered grants to law enforcement agencies and gave policy input to other federal offices. It included a civil remedy, added in response to four years of hearings documenting the unequal treatment of victims of gender-motivated violence in state courts. But in 2000, the U.S. Supreme Court ruled 5–4 that a young woman in Virginia could not civilly sue her alleged rapist in federal court. Even before the ruling came down in *United States v. Morrison*, 529 U.S. 598 (2000), many commentators declared VAWA a casualty of the Court’s federalist judicial review.

But VAWA is far from dead, despite the loss of the civil remedy, says Geoff Boehm, a staff attorney at NOW Legal Defense and Education Fund, which has been a big supporter of VAWA. “In reference to *Morrison*, most of VAWA survived and was reauthorized in 2000.”

In VAWA 2000, the reauthorized \$3.3 billion legislation that became law about six months after the *Morrison* decision, there was no attempt to rekindle any civil remedies for gender-motivated crimes. Instead, legislators broadened the original Act. “When we reauthorized VAWA, we made the biggest commitment Congress has ever made to prohibit [child and domestic] abuse,” says Connie Morella (R-Md.), a VAWA sponsor. “We enhanced shelters, added rape prevention, safe havens—we even expanded it.” The reauthorized version included immigration provisions to enable battered immigrant women to petition without relying on their abusive husbands’ agreement to do so, along with the funding and other

provisions contained in the original law. VAWA 2000 also spelled out more clearly an existing full-faith-and-credit provision that allows protection orders to follow the victim across state lines and enforced child custody provisions within protection orders. (See sidebar on page 6 for more on expansion of law under VAWA 2000.)

VAWA requirements in 1994 included, and still include since its 2000 reauthorization, tougher federal penalties for sex crimes; services for immigrant victims; several different grants

The Supreme Court ruled that Brzonkala’s rape claim fell under VAWA’s civil rights provision, but then ruled the provision unconstitutional.

to law enforcement, shelters, and other services; and federal criminal penalties for anyone who travels across state lines to violate a protection order. VAWA funds prosecutors, courts, law enforcement agencies, victim services, community-based assistance programs, tribal governments, and state coalitions.

Today, the Act restates what it enacted seven years ago: Domestic violence is a federal crime—a bold statement in a country where cases that look and smell like family law stay out of federal court. However, Congress really intended that VAWA would “supplement” state courts in prosecuting domestic violence when crimes spread across state lines, explains Rachele DesVaux Bedke, a federal prosecutor in Florida who visited local law enforcement offices and shelters to get the word out about interstate offences when VAWA first became law.

What Was Lost?

In *Morrison*, petitioner Christy Brzonkala alleged that two other stu-

dents at Virginia Tech raped her and then degraded her in front of other students. The Supreme Court ruled that her claim fell squarely under VAWA’s federal civil rights cause of action provision (42 U.S.C. § 13981) because of its gender-motivated nature, but the Court ultimately ruled that section unconstitutional.

The Court rejected § 13981 on two bases: the Commerce Clause and the 14th Amendment. The Court’s majority opinion found that gender-motivated crimes did not affect interstate commerce and that the section was directed at private individuals who have committed gender-motivated criminal acts, rather than at state actors’ gender biases, and thus did not satisfy the civil rights amendment.

Still, commentators that declared VAWA’s total demise after *Morrison* had not taken into account the statute’s severability clause, which allowed the rest of the Act to stand. But, although much of VAWA remained intact, advocates who had pushed so hard to create the federal civil rights provision were forced to reconsider their strategies. *Morrison* might serve as a wake-up call to the states, says Mike Bedke, husband of DesVaux Bedke and a Florida lawyer who serves on the American Bar Association’s Commission on Domestic Violence. He was watching the proceedings in the Supreme Court when *Morrison* came down. His firm, Piper Rudnick, had worked pro bono on the case and submitted an amicus brief in support of the VAWA provision.

“Obviously, we were disappointed,” he says. But the ruling served to galvanize advocates to redouble their efforts at the local level, in such areas as employment-related effects of violence. Bedke notes recent progress in getting new protection laws on local books (see article on pages 8 and 9). Going state-by-state also may be the best way to approach reinstating civil remedies, a goal that has been on the

What's New? VAWA 2000's Expanded Scope

VAWA 2000 added "dating violence" to the purpose areas under several grants including the STOP (Services Training Officers Prosecutors) Violence Against Women Formula Grant Program, which allocates about 25 percent of funds to police, 25 percent to prosecutors, 30 percent to victim services, and 5 percent to state and local courts, with the remaining 15 percent to be allotted according to a given state's discretion.

The Act also improves and expands battered immigrants' access to immigration relief and removes abusers' ability to use immigration laws as a tool of control over immigrant victims. For example, the Act allows VAWA self-petitioners to adjust their permanent residency in the United States rather than having to go abroad to do so.

In addressing both immigrant and trafficking-of-persons issues, the reauthorized Act created two new visas: a new nonimmigrant U-visa for victims of certain serious crimes, including domestic violence, sexual assault, and stalking; and a nonimmigrant "T" visa for certain "victims of severe forms of trafficking" who either have complied with any reasonable request for assistance in the investigation or prosecution of trafficking or have not yet turned 15 years old.

VAWA 2000 reauthorized full-faith-and-credit mandates pertaining to protection orders. Child custody may now be included in a protection order and states must not require victims to pay their filing fees when they enforce an order.

New Grant Programs

- ◆ Indian tribes are slated to receive a set-aside increase from 4 percent to 5 percent under the Grants to Combat Violent Crimes Against Women and created a 5 percent set-aside for tribes under grants addressing protection order enforcement, rural domestic violence issues, and supervised child visitation programs.

- ◆ VAWA 2000 created a new grant program called Transitional Housing Assistance for Victims of Domestic Violence, to be administered

by the Department of Health and Human Services.

- ◆ To address elder abuse, VAWA 2000 created two new Department of Justice grant programs: one program to provide training for law enforcement, prosecutors, and courts on elder abuse, neglect, exploitation, and violence against individuals with disabilities; the other program to make grants to states, units of local government, tribes, and nongovernmental entities.

New Studies

- ◆ Federal agencies must conduct national studies and report to Congress on state laws regarding insurance discrimination against victims of violence against women; workplace responses to domestic violence, sexual assault, and stalking; and unemployment compensation for victims of violence against women.

- ◆ VAWA 2000 requires a study and report to Congress on federal and state laws relating to child custody, including recommendations to reduce violence against women and sexual assault of children. The Act also expanded emergency jurisdiction under the Parental Kidnapping Prevention Act to include domestic violence cases.

- ◆ The Attorney General must develop a research agenda based on the recommendations contained in the National Academy of Sciences report *Understanding Violence Against Women* and must report to Congress on the agenda.

- ◆ VAWA 2000 requires the Attorney General to evaluate existing standards and protocols and develop and report to Congress on a national standard and protocol for sexual assault forensic examinations.

- ◆ VAWA 2000 requires the Attorney General, in consultation with national programs whose primary expertise is in domestic violence, to establish a task force to coordinate federal research on domestic violence.

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minds of advocates. In a recent conference call with the Advisory Board of the Florida Coalition Against Domestic Violence, Bedke says he found the consensus to be "that [civil remedies] had been placed on the back burner . . . but that it needed to start moving up on the list of priorities."

Often state legislators respond to arguments for a civil remedy with, "We already have laws on the books that say you can sue under typical tort theory," says Bedke. He draws a comparison to the questioning reaction hate crimes received. "You know the argument: Why do we need hate crime legislation to protect women, gays, minorities, etc. when it is already a crime to stalk, attack, kill, etc.?"

But Bedke stresses that we need such civil remedies in order to protect victims in cases like *Morrison* because, as he and many others believe, "economic outcomes do influence behavior, and as a result some batterers will modify their behavior if they are at risk of being sued for damages."

VAWA in Action

DesVaux Bedke served as prosecutor for the Middle District of Florida's first criminal VAWA case in 1997. She was able to use provisions added to the federal gun statute, 18 U.S.C. § 922, to bring a woman's male batterer into federal court in 1997. That case involved a defendant whom police stopped on suspicion of selling drugs. When the officers

searched his car, they found a shoebox containing a domestic violence restraining order wrapped around a gun. The federal court convicted the man of violating the domestic violence provision of the federal gun statute.

Federal jurisdiction over convicted felons who are charged with possessing a gun is nothing new. In 1994, however, the Law Enforcement Act added language to the gun statute that addressed domestic violence.

"What's new was this principle was extended to apply to anyone who is subject to a domestic violence restraining order or misdemeanor," says DesVaux Bedke. With these domestic violence provisions couched in a pre-existing, Supreme Court-approved

gun law, prosecutors need not prove that the batterer traveled across state lines, only that the gun or ammunition did.

However, a criminal charge based on the domestic violence or stalking interstate provisions in VAWA would require a prosecutor to prove interstate activity by either the perpetrator or the victim who flees a state out of fear. Congress intended to help states deal with these interstate offenses that encompass domestic violence when it passed VAWA.

Discrepancies among protection order programs in various jurisdictions was a major factor behind support for the original VAWA, and the penalties that put teeth in its interstate provisions are often tougher than states' penalties on batterers. VAWA imposes federal criminal penalties—

up to life imprisonment—for anyone who travels across state lines with the intent to violate a protection order and who then violates the order.

The states pay attention to VAWA because it is properly funded, says Roberta Valente, an attorney and senior advisor with the Domestic Violence Resource Network. "It would have been meaningless without it," she says. "VAWA has good law, but it has good grant programs to figure out how to [apply the law]. The Act's grant money helps local law enforcement and service providers research the applicable law and create policy."

Since the enactment of the original Act, recorded instances of domestic violence and sex crimes have dropped by more than 40 percent, Biden related in a recent hearing over

the Violence Against Women Office (VAWO) (see sidebar below). Biden specifically pointed to the use of "federal dollars, federal leadership, federal commitment and federal/state collaboration" as making the difference.

VAWA has had an impact on the lives of women in abusive situations because it granted money to fund shelters and train police officers in the dynamics of domestic violence and because it provided legal assistance for women struggling to keep their children from a perpetrator. Because of VAWA, more women are able to obtain shelter, and, says Lynn Rosenthal of the National Network to End Domestic Violence, more women who reach out for help by obtaining protective orders and shelter are treated with dignity by law enforcement. 🍷

Office Politics

On April 16, the Senate Judiciary Committee held a hearing on a bill sponsored by Biden—whom supporters long ago dubbed the "Father of VAWA" for his consistently strong support—that would create a Violence Against Women Office. Although an office does exist, it doesn't do so under VAWA. Both in 1994 and 2000, VAWA neglected to include an office. "Generally speaking, when you create a grant program, you give it an office," says Roberta Valente, a senior advisor with the Domestic Violence Resource Network and a former advisor in the office. "VAWA was an anomaly. So the Department of Justice (DOJ) set up an office, but it doesn't statutorily exist."

The Violence Against Women Office has a budget of almost \$400 million. It funds 11 grant programs and manages more than 1,200 active grants. The programs address needs ranging from violence against older and disabled domestic violence victims to creating better processes for entering data to track stalkers.

In the spring of 1999, the VAWO was moved from the DOJ to an office still within the DOJ but housed in a separate building, the Office of Justice Programs (OJP). This move accompanied a merging of VAWO with the Violence Against Women Grants Office. Many VAWO supporters, including Biden, criticized the move.

According to Valente, "Because OJP is a grantmaking office of DOJ, the policy and implementation functions of the original VAWO began to atrophy."

"I'm concerned that the efforts to diminish the profile and role of the Violence Against Women Office may have negative and long-term effects on our government's ability to address violence against women," Biden said during the hearing.

If the VAWO bill passes, the office will gain prestige. The Senate bill gives jurisdiction to the office over all matters related to "administration, enforcement, coordination, and implementation" of all of the Attorney General's or DOJ-related responsibilities dealing with violence against women, including both the original and reauthorized VAWA. The bill also would ensure the office will be located once again in the DOJ, but it would function independently rather than as a division of the DOJ. It would also be led by a presidential appointee.

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