



The RESOURCE

Newsletter of the National Sexual Violence Resource Center

Fall/Winter 2003

Kobe Bryant and Our Cultural Attitudes About Rape The Justice System on Trial

By
Susan Lewis, Ph.D.

In July 2003, when the District Attorney of Eagle County, Colorado charged Kobe Bryant with sexual assault, public interest in this rape case took on unprecedented proportions. We who do anti-sexual violence work now find ourselves answering calls from the media; fielding questions about issues like confidentiality and rape shield laws. While it is important to provide information and perspective regarding this case, many of us feel frustrated by our reactive stance to unfolding events. Since the Kobe Bryant Case is part of the legal and media systems, we find ourselves reacting along with the public to each day's developments, to the comments of the attorneys, and to media hype.

What is particularly difficult for us is the fact that we recognize the landscape, the all too typical insensitive and often unjust treatment of alleged rape victims, and we are challenged. We recognize the ongoing attempts to discredit the victim for what it is - unconscionable victim-blaming defense strategies; we know that women have a right to freely go places, to have attractions, and even to make careless decisions, all without being violently and sexually attacked; and we recognize that the media and the attorneys probably care less about the facts than the news and/or the career value of this high profile case. Finally we see how this case underscores a sad truth of how rape cases are litigated. Kobe

(Continued on Page 6)

SAAM 2004

"A Day to End Sexual Violence"

April is Sexual Assault Awareness Month (SAAM) and it is now time to plan for SAAM 2004. Each year as April approaches, the National Sexual Violence Resource Center (NSVRC) along with coalitions and programs across the nation, begins to think about new ideas for raising public awareness of sexual assault.

This year, the NSVRC encourages agencies, programs and coalitions to plan a SAAM event for **April 20, 2004**. The important aspect of this day is that we all do

"something" on the same day to raise public awareness; such a day of events with many doing "something" to mark the day is more powerful than all of us trying to do exactly the same thing. The NSVRC will provide a

variety of ideas in the 2004 SAAM packet; many of the ideas may not be new to you; some will be relatively simple and others more involved. You can choose one of

the suggested events or develop another activity. Essentially the NSVRC

encourages each organization to select something that will work well for them.

The NSVRC realizes that many of you have events all through the month of April, and you may decide to plan

(Continued on Page 14)



SAAM 2003 in Ft. Lauderdale, Florida. Community leaders join Broward County Sexual Assault Treatment Center in SAAM activities.

Inside The Resource

- 2 Response to SA for Tribes Under PL280
- 3 Crime Victims' Rights Amendment
- 8 Coalition Spotlight
- 10 Debbie Smith, Changed Forever
- 15 From the Bookshelf

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Jurisdictional Issues Complicate Response to Sexual Assault for Tribes Under PL280 Status

By
Mending the Sacred Hoop

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The sovereignty retained by Indian Nations has been under attack for over a century, both legally and culturally. Legally, the Major Crimes Act (and the resulting case law that upheld and expanded it) and Public Law 280 both continue to take a big bite out of tribal sovereignty and create jurisdictional tangles in Indian Country. Culturally, attacks included replacing the respect and honor held by women in traditional Native society with the dominant culture's view of women as chattel, as the voiceless property of men, and the accepted targets of violence. Many Native communities are working to reclaim their tradition of honoring women's sovereignty, and are making Native women's safety a primary concern. They recognize that the health and well being of tribes rests with the health and safety of women.

Over many years, legislative actions by the federal government have weakened Native sovereignty and compromised the ability of tribes to provide safety for women. Advocates working with Native women who have experienced violence need to be aware of the barriers to safety created by these attacks on sovereignty, not only to help women find the way through these barriers, but also to work to overcome them. As advocate and activist Eileen Hudon says:

Native women under the threat of death or other assault must navigate a complex set of jurisdictional issues when seeking safety through the legal system. Advocates and other helpers must be sufficiently prepared to respond to her safety needs by... understanding...how to navigate these systems on the woman's behalf under crisis circumstances.¹

MAJOR CRIMES ACT

Federally recognized tribes have a government-to-government relationship with the United States, and exist as sovereign nations with the ability to pass and enforce their own laws. Native nations retained this sovereign status by treaty; it was not granted or ceded by the United States. However, 200 years of contact with the federal government has greatly diminished tribal authority.

In 1885 the U.S. Congress passed the Major Crimes Act (18 U.S.C. 1153), which ensured the federal government's desire to limit tribal authority over crimes committed in Indian Country, stating that major felonies involving an Indian, whether as victim or accused, are matters for federal prosecution.² The Act does not, however, eliminate concurrent tribal jurisdiction; while this might seem to uphold sovereignty, it actually muddies the jurisdictional waters and is currently creating the opportunity for legal challenges under "double jeopardy", or the unconstitutionality of trying someone for the same crime twice.³

The Major Crimes Act marks a major foray by the United States government into Native nations' sovereignty. According to Sarah Deer of the Tribal Law and Policy Institute, it has created "an inconsistent ability of tribal systems to protect women

(Continued on Page 12)

Crime Victims Remain Oppressively Burdened: Making a Case for a Crime Victims' Rights Amendment

By

Steven Twist, Esq.

In the following article, Steven Twist, of the National Victims' Constitutional Amendment Project, writes compellingly about the pain, difficulties, even jeopardy and injustice encountered by sexual assault and domestic violence victims in court. He and the National Victims' Constitutional Amendment Project, along with many others argue that a federal constitutional amendment is the best way to redress the problem. Although there is relatively little dispute over the unfair treatment of victims, there are many who do not support the idea of a federal crime victims' constitutional amendment. The NSVRC presents the position statement of the National Network to End Domestic Violence (NNEDV) as representative of those who oppose a federal crime victims' constitutional amendment. (See Page 5.)

Just over twenty years ago, President Ronald Reagan's Task Force on Victims of Crime issued its call for constitutional rights for crime victims. In concluding that a federal constitutional amendment was necessary, the President's Task Force noted:

The guiding principle that provides the focus for constitutional liberties is that government must be restrained from trampling the rights of the individual citizen. The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed.

Sadly, more than two decades later, crime victims remain "oppressively burdened" by our justice system. Consider how our system treats victims of domestic or sexual violence.

When the accused is arrested he is given a hearing, usually within 24 hours. This hearing determines whether the accused will be released on his own recognizance or on a bond, the amount of the bond, and what any other conditions of release will be. Routinely, the victim will never be given notice of this proceeding, will be denied any meaningful opportunity to attend, and will be given no voice regarding the release or other matters that may be crucial to her safety. Typically, she will not be informed of the defendant's release, or of the conditions of that release. Her safety will not be a factor in determining release conditions.

These failures, at the very beginning stages of a criminal case, set the tone throughout, and are of far more than

academic interest. For women who are raped and beaten, these failures are all too often fatal.

As the case progresses, there will be little, if any, consideration for the victim's interest in a speedy trial. The defendant will ask for, and the court will grant, one continuance after another, without giving the victim a voice in the matter, and without regard to the often harmful effects the delay will have on her.

In most cases, the defendant will be offered a plea bargain without the victim ever knowing about it. The plea bargain will be presented to the court at a formal proceeding, but the victim will be given no notice of this proceeding and she will have no right to attend. Even if she finds out about it, and even if she wants to tell the judge what she thinks about the plea bargain before the judge accepts it, she will have to stand silent, having no right to speak to the court.

If the case does go to trial, the victim will not be allowed in the courtroom during the trial, except when she testifies. On the other hand, the defendant will have a right to be there,

along with the defendant's family and friends, and even the state's chief investigator, who is also a witness.

After a conviction, the defendant will be sentenced, but the victim will not be

allowed to speak at the sentencing proceeding, unless the prosecutor decides to call her as a witness, or if she is allowed an independent right to speak, what she says may be severely limited and she, unlike the defendant, may be subject to cross

These conditions of injustice persist, despite the best efforts of the victims' rights movement; they persist despite more than two decades of efforts to pass and enforce victims' rights laws in every state.

(Continued on Page 4)

Crime Victims' Rights Amendment

(Continued from Page 3)

examination. Typically, the rapist or abuser will not be ordered to pay restitution. Her safety will not be considered when release decisions and probation conditions are established.

When the convicted offender is eligible for a parole or clemency hearing, the victim will routinely not be given notice and will have no fair opportunity to be heard. Again, her safety will not be considered when release decisions are made.

These conditions of injustice persist, despite the best efforts of the victims' rights movement; they persist despite more than two decades of efforts to pass and enforce victims' rights laws in every state. Realizing that only fundamental reform through our most basic law will bring lasting justice and fairness to victims, the many in the victims' rights movement have forged a bi-partisan coalition that seeks a federal crime victims' rights constitutional amendment. Senator Dianne Feinstein (D-CA) and Senator Jon Kyl (R-AZ) lead the coalition.

When passed and ratified by the States, the amendment will establish basic rights to justice and fairness that no legislative body or court will be able to deny. The amendment will establish for victims of violent crime the right to reasonable notice of public proceedings in their cases, the right not to be excluded from those proceedings, and the right to be heard at release, plea, sentencing, and clemency proceedings. It will require that the victim's interests in restitution, safety, and avoiding unreasonable delay be given due consideration. It will establish for victims standing to enforce these rights. The amendment's provisions are simple and direct, yet they will profoundly improve the quality of justice for crime victims.

Imagine the importance for a victim of sexual or domestic violence to have her safety considered when release decisions are made. Imagine the importance of giving her a voice at release, plea, sentencing, and clemency proceedings, or respecting her right to restitution, or her right to a speedy trial. These crimes often take from the victim her control over her own body, over her own life. The criminal justice system, by treating her as just another piece of evidence, perpetuates her loss of control. Imagine the importance of our system telling her that, as a matter of our fundamental law, she has the independent right, at crucial stages, to participate; that she is a person with worth and dignity and that the law will respect her.

How could anyone who truly advocates for victims of sexual or domestic violence oppose these measures? There

are some who say that giving rights to crime victims will diminish the rights of the accused, as though rights competed in a zero-sum game. No constitutional right of a defendant prevents a victim from receiving notice of proceedings, from being present at proceedings, from being heard at release, plea, sentencing, or clemency proceedings, or from having the victim's interest in safety, restitution or a speedy trial considered.

Only through a federal constitutional amendment will the goal of justice for crime victims be achieved. For twenty years we have tried statutes and state constitutional amendments and they have failed to change the culture of our justice system in any meaningful way. Amending the Constitution is the right way — indeed the only way — to secure lasting, meaningful, and enforceable civil rights for victims, rights that are beyond the ability of a legal culture, hidebound to its own power, to change. This is how it has been throughout the history of our country. James Madison argued that the Bill of Rights needed to be in the Constitution because over time “the rights would take on the character of fundamental maxims and be incorporated in the national sentiment.” Victims' rights deserve no less. Those who argue that victims' rights don't need to be in the Constitution are simply condemning victims to perpetual second-class citizenship.

As constitutional scholar Prof. Larry Tribe of Harvard Law School, has pointed out, the rights proposed in S. J. Res. 1:

“are the very kinds of rights with which our Constitution is typically and properly concerned — rights of individuals to participate in all those government process that strongly affect their lives.”

The Committee on the Judiciary of the United States Senate concluded that the Crime Victims Rights Amendment was consistent with

“ the great theme of the Bill of Rights—to ensure the rights of citizens against the deprecations and intrusions of government—and to advance the great theme of the later amendments, extending the participatory rights of American citizens in the affairs of government.”

The National Governors Association in a resolution supporting a Federal constitutional amendment observed:

“... States and the American people by a wide plurality consider victims' rights to be fundamental. Protection of these basic rights is essential and can only come from a fundamental change in our basic law: the U.S.

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Crime Victims' Rights Amendment

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Constitution.”

Forty-three State Attorneys General, in supporting the Crime Victims Rights Amendment, wrote,

“Despite the best intentions ... crime victims are still denied basic rights to fair treatment and due process that should be the birthright of every citizen ... only a federal constitutional amendment will be sufficient to change the culture of our legal system.”

These authorities are a compelling rebuke to the voices of opposition. We seek a constitutional amendment because no

government should be allowed to treat crime victims the way they are treated today.

No government should refuse to tell a battered woman about the release of her batterer, nor force her into silence about her safety or the offender's plea bargain or sentence, nor exclude her from the courtroom during trial, nor force her to endure years of delays or go without restitution.

The time for action has come, so that no government will be able to treat crime victims with the gross injustice that has come to be the sad hallmark of our current system. Please join this fight for civil rights and justice. Contact

The National Network to End Domestic Violence's Position Statement on S.J. Res. 1 Victims' Rights Constitutional Amendment

The National Network to End Domestic Violence (NNEDV) is a membership and advocacy organization made up of forty-eight state and territory domestic violence coalitions representing more than 2000 local domestic violence programs. NNEDV speaks on behalf of survivors, victims, advocates and allied organization. We support improvements in the criminal justice system's response to the needs of victims of crime and applaud the attention in Congress to this critically important issue. We do not believe, however that a federal constitutional amendment is the appropriate remedy for the very real problems victims face in seeking justice.

- In our advocacy work to end domestic violence, we have learned that many of our policies and practices have resulted in unintended consequences for victims. The opportunity must be available to amend statutes, change policies and adapt procedures to meet our evolving understanding of the needs of victims. A constitutional amendment freezes in place, for all time, one set of solutions to the important issue of how to protect the rights of victims.
- The amendment may destabilize the important constitutional balance protecting the rights of those accused of crimes. In domestic violence cases, victims may be coerced into criminal activity by their abusers or subject to criminal charges for

defending themselves. For the women we work with, it is essential that criminal defendants retain their constitutional protections because victims of domestic violence may find themselves on the other side of the criminal justice system.

- Amending the United States Constitution should be a remedy of last resort. Many states have enacted constitutional or statutory provisions to protect the rights of victims. Efforts should be made to enforce statues that currently exist, create stronger safeguards in states and federal legislation where necessary, and provide training for prosecutors, court officers and others who can assist victims in their experience with the criminal justice system.
- The proposed victims' rights amendment provides little if any additional relief for victims. The amendment explicitly states that it creates no new grounds for a new trial and no additional claims for damages, making its passage an empty promise to victims dealing with the trauma and aftermath of crime.

NNEDV applauds the interest of Congress in protecting the rights of victims. While the proposed constitutional amendment is not a solution, it is a call to action. We can and must make the justice system work for victims through better policies, practices and state and federal legislation.

Kobe Bryant and Our Cultural Attitudes About Rape

The Justice System on Trial

(Continued from Page 1)

Bryant's defense strategy thus far has involved inappropriate and sometimes outrageous treatment of the alleged victim. For instance, in the preliminary hearing, Bryant's attorney used the name of the alleged victim six times in defiance of a clear court order not to. Equally sad is our collective understanding of the fact that many rape victims suffer similar kinds of mistreatment during their quest for justice.

As we all know, most rape cases never receive the attention of this one; many do not go to trial but are resolved through plea bargains. Very few have such a high-profile defendant, which means when victims suffer injustices they usually go unnoticed. Many cases are prejudged by the prosecutor as not winnable, not because the case is not credible but because the prosecutor fears jurors will bring their prejudices to bear on the case. Where is the justice in these cases? Many of those that go to court are marked by repeated attempts to discredit the victim and assign culpability to her; where is the justice in these cases?

Is it any wonder that so few victims report sexual violence crimes to police? The vast majority of sexual assaults go unreported; of those that are reported, a smaller number is selected for prosecution; and of those that go to prosecution, many do not end with convictions. In so many of these cases, the victim encounters insensitive treatment without opportunity for redress. Again, is it any wonder reporting rates are unconscionably low?

Frustrations in the Kobe Bryant case notwithstanding, we are faced with an unusual opportunity to use the proceedings to raise public awareness and to fight for change. Rather than responding defensively to the media requests for comments, we must present information in a proactive manner and together we can use this case to educate the public about practical and theoretical questions associated with rape law and rape trials, as well as to comment on the application of law and policy to the specifics of this case when appropriate.

It won't be easy for the anti-sexual violence movement to be heard over the fray of legal rulings, attorneys' comments and media interpretations. That said, let's not forget that we work day in day out, year after year, with sexual assault victims and

all the issues they confront in law and society. We are the experts and it is our right and duty to offer perspective and insight. We have the ability to articulate how real people suffer when victim blaming becomes the defense tactic, and we understand the cultural desire to turn a blind eye to the reality of sexual violence. We know better than most how easy it is to latch onto excuses rather than believe the obvious. We have a responsibility to provide a critical view and to bear the burdens of public criticism.

Each program and coalition must consider how they can best educate and refocus the attention of this case on public awareness of rape and increased scrutiny of our legal system. Each must determine for itself how it can turn this case into an opportunity to help all victims of sexual assault. Letters to the editor, Op-Ed pieces and talking to your local media are good ways to provide perspective and turn the discussion to relevant issues.

In Spring 2004, the National Sexual Violence Resource Center (NSVRC) intends to release a report on the way sexual assault cases are handled within the criminal justice system. This document, written by the eminent victims' rights attorney, Wendy J. Murphy, will provide perspective on the typical disposition of rape trials. The NSVRC hopes that it will be a useful resource for the field. Until then, Ms. Murphy urges all of us to be proactive with her signature line: "Your voice matters – invite yourself to the table – don't wait for a seat."

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Beyond the legal challenges associated with the Bryant case, there are two aspects of the whirlwind of events

that tend to adversely impact the trial: a kind of sports superstar syndrome and the media frenzy.

Our culture includes a strong tendency for widespread adoration and in some cases, worship of sports superstars. Clearly, Kobe Bryant is an individual who already reached superstar status and has a well-deserved level of popularity for his athletic skills. He is also worth a lot of money to many people.

Although marvelous athletics carry great cultural appeal, it should never blind us to basic ethical issues of right and wrong. The founders of our country rejected the notion of

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Kobe Bryant and Our Cultural Attitudes

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kings ruling because history had taught them that when even one person is above the law, the law effectively means nothing. And although we still find that government officials, celebrities and wealthy individuals often succeed in circumventing the full harshness of the law by virtue of money, privilege and fan also know and value the idea no one is above the law.

Sports heroes are often raised to believe that society's rules do not apply to them. In high school they often receive special treatment from friends and family. Not surprisingly, they are exempt from the laws of behavior. Of course, most when asked, will say, "if he raped her, he should be found guilty," but the desire to excuse superstars is strong and the excuses people make for their behavior are numerous. You might hear, "She shouldn't have gone to his room," or "She saw a great opportunity to get rich;" even if there is no evidence to suggest the victim is lying, fans and others who don't want to see their superstar in an ugly light will perform all kinds of mental gymnastics to resist holding their hero accountable for any of his actions.

Most of us have no personal relationship with Kobe Bryant or the victim, but we feel like we know Kobe. He is a regular feature of our popular culture. He brings amazement, entertainment, escape, and the idea that through focus and hard work, incredible things are possible. We are grateful for his role in our lives so we feel a connection with him. For the fans and those who celebrate what he offers, the immediate propensity is to think: Here's somebody I sort of know, here's somebody who embodies hope and achievement. Here's someone I need to believe in because it makes me feel good. And if this seemingly perfect person is not perfect, it can't be his fault. I need to blame someone else and therefore, I will blame his accuser.

What can we do to break through this mindset? This failure to see sports heroes as fallible humans sends a pernicious message that sports heroes can get away with anything. Add this problem to the incredible attention sports superstars receive and their already oversized egos, and there is an aura of invincibility. We do not know if Kobe Bryant felt

invincible, but we do know that there are fans that perceive him that way and although it has nothing to do with the truth about the type of person Kobe Bryant is or whether or not he is guilty of rape, his mythical persona directly affects the public's perception of his guilt.

Also brought with it a media frenzy beyond

The media has literally camped out in Eagle County in a physical display akin to a circus; the craze permeates many aspects of our culture. This involvement represents a double-edged sword. It provides much opportunity to educate, maintaining public interest and discussion on important issues. On the other hand, the investigation and reporting of details and events often seems unprofessional and

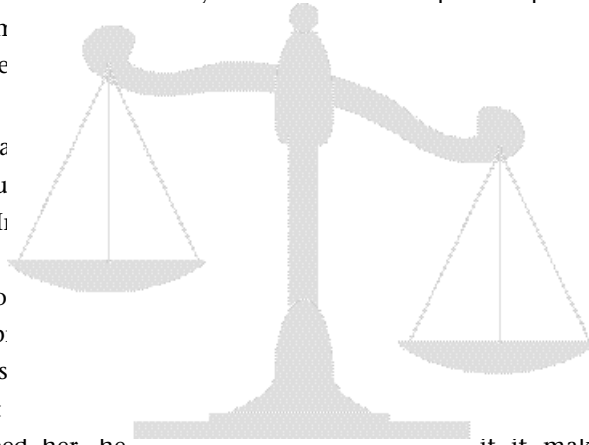
For many in the media, everything is fair game if it makes good copy. In fact, the smallest bits of information, even irrelevant details regarding the lives of both the accused and the alleged victim, appear on television almost daily.

In our high-tech world, finding an unbiased jury presents a great challenge. For good reason the criminal justice system provides for unbiased citizens; But when the media repeatedly prints every small detail of the lives of the people involved, it promotes confusion, prejudices and impassioned views in the public's mind.

In a rape case, where an all too frequent tactic for defense attorneys is attempting to discredit the victim by introducing irrelevant but potentially damaging information, it becomes particularly important to keep such irrelevant information out of the trial. While rape shield laws help in barring irrelevant information from the courtroom, they do not help if the attorneys ignore the law or if the media has presented a litany of irrelevant, unrelated and unexplained information to the public. The judge may remind the jury to only consider the information that should properly be part of the trial, but the jury may have already heard potentially damaging, irrelevant things that impede the judicial process. And it's impossible to unring the bell.

The media plays an important role in our democratic process, but in this case the impact has been as detrimental as it has been helpful. As the case evolves, we can only hope that high-minded journalism will prevail.

(Continued on page 15)





Coalition

NYSCASA: Making Public Policy Collaboration Work

By Anne Liske

The New York State Coalition Against Sexual Assault (NYSCASA) worked together with Family Planning Advocates (FPA) in the 2003 Legislative Session to achieve passage of a bill that requires all New York hospital emergency departments to accurately inform sexual assault victims about the availability of emergency contraception and dispense it upon demand. Although the two organizations had worked as allies in the past, the concerted effort to build successful collaborative strategies on this challenging issue made it a particularly important collaboration with real differences in process and results.

Each organization brought a different set of resources, skills and organizational structures to the table, yet the collaboration worked well for several reasons. We established clear agreement that we would communicate at every step of the way about what we were doing separately and together, and affirmed respect and commitment for maintaining that communication. We talked about our different working styles, how our respective constituent networks had some common interests and some differences, where each of our staff's knowledge, skills and abilities could be best utilized, and what was each of our perspectives on the legislative history of the issue. Both organizations recognized a need to frame the

presentation of the bill as a crime victim care issue, and to stick to that regardless of previous approaches.

Perhaps the most important decision was to gather accurate information about New York hospitals' practices with which to build an educational campaign with legislators and with the public; this campaign would also make use of the media. In the summer of 2002, the New York State Department of Health released a new adult protocol for emergency departments. That roll-out provided an opportunity for the two organizations to design a survey to be mailed to each hospital that asked whether they had received the protocol, how they were implementing it, and some specific questions about whether they provided education about, and dispensed, emergency contraception. Both our organizations offered assistance as resources for understanding and utilizing the protocol. We had a 90 percent plus response rate!

We highlighted and summarized a few key findings regarding gaps in service around the state and underscored the importance of addressing them. It was fortuitous that one of the hospitals that was not up to standard, was in the district of a key Senate sponsor of the bill. The Senator not only addressed the hospital directly about changing

their policies (and they did!), but he embraced the crime victim care approach. He also spoke about closing the service gaps in his own community, and around the state.

NYSCASA and FPA also developed region-specific media information for our centers to use for local education about the gaps thus facilitating some public pressure as well. We also testified at a legislative hearing early in session with all the data fresh from the survey.

The session was a tough one, with budget crises similar to those faced in other states, but we kept our focus to walk-the-walk, and talk-the-talk. This focus sustained us along the way as we faced attempts to sidetrack our framing of the issue, and as we brought other allies to the table and as we dealt with resistance and politics from some legislators. Bottom line, collaboration worked because we established strategic process, issue focus and worked hard to hold each other accountable while honoring the working relationships of the two organizations. For additional information about New York's legislative policy on emergency contraception, email NYSCASA at: jcwilliams@nyscasa.org.

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Spotlight



Kansas Adopts FVO for Sexual Assault Survivors

By Sarah Thomas

Survivors of sexual assault face many barriers as they journey toward healing from violence. Going to work, attending class or going to a job interview can be overwhelming when struggling with the aftereffects of sexual violence. For survivors who also live in poverty, the struggle is often especially difficult. At the Kansas Coalition Against Sexual and Domestic Violence (KCSDV), addressing the oppression of poverty in our advocacy with sexual assault survivors is crucial to our work.

Research shows that women living in poverty experience sexual abuse and assault at disproportionately higher rates. Advocates have known for some time that poverty doesn't cause sexual violence, but that sexual violence often makes and keeps women poor.

The federal government provides welfare assistance to economically disadvantaged families via the Temporary Assistance for Needy Families (TANF) Program. It permits each state to choose whether to adopt the Family Violence Option (FVO) waiver that may exempt certain families from time limits under a hardship exemption.

When Kansas adopted the Family Violence Option (FVO) in 1999, it specifically chose to include survivors of sexual assault in the waiver. In some states, only victims of domestic violence are eligible to receive the waiver,

however, Kansas crafted the FVO to meet the needs of survivors of sexual assault and childhood sexual abuse because of the recognition of the interconnectedness of sexual violence and poverty.

The adoption of the FVO led to the creation of the OARS (Orientation, Assessment, Referral and Safety) Program in 25 of Kansas' TANF offices. It provides services to survivors receiving the FVO waiver. OARS is a collaborative effort between the state TANF office, the Kansas Coalition Against Sexual and Domestic Violence (KCSDV) and twenty-two local domestic and sexual violence programs.

OARS advocates meet with survivors who are receiving cash assistance after they are screened for a sexual and/or domestic violence history and referred by their TANF caseworker. The survivor and advocate then meet and determine what, if any, are the regular TANF work program activities in which the survivor can safely participate. If, for example, a survivor is dealing with Post Traumatic Stress related to an assault and is having difficulty in the workplace, she can opt out of regular work programs and instead focus on working with her advocate on issues related to her sexual assault in the hope that it will help her successfully and safely return to work at some point.

The Coalition provides technical assistance and tools to the OARS advocates that enhance their ability to provide social-change based advocacy services to sexual assault survivors. KCSDV has trained advocates on

economic literacy, facilitating support groups for survivors of sexual assault, childhood sexual abuse and survivors of marital rape. The Coalition provides training to TANF caseworkers on immigration options available to victims of rape, sex trafficking and other violent crimes, the overlap of sexual and domestic violence with substance abuse and mental health issues, and sexual assault and incest within the context of domestic violence. We have also provided training on the dynamics of poverty and violence against women.

Providing technical assistance to advocates and TANF caseworkers across the state has presented some challenges. OARS advocates work in isolation in diverse communities. We have worked to provide a network of support to advocates by utilizing a listserv, advocate retreats and trainings, and individual mentoring. For caseworkers, training has focused on the specific issues they are facing in their areas. One area of focus has been creating a confidential space for disclosure and training caseworkers in the skills necessary for considerate and effective screening. Creating that safe space in the TANF office for sexual assault survivors has facilitated some unique opportunities for survivors to be heard within the welfare system.

OARS advocates are in an advantageous position to offer support to survivors. Many have been able to foster distinctive collaborations within their communities. At the same time, OARS creates an environment designed to give power back to the survivor in a system which has not always recognized the needs of sexual assault survivors.



"...addressing the oppression of poverty in our advocacy with sexual assault survivors is crucial to our work."

Changed Forever: From Homemaker to Advocate

You may have heard Debbie Smith speak in person or on television about the rape that changed her life forever, a rape that has provided an important focal point for those working to pass DNA legislation. This article focuses less on the rape and more on the long, difficult transition for Debbie and her family, a transition that resulted in our finding two wonderful advocates, Rob and Debbie Smith.

Debbie Smith, a Virginia homemaker, was raped in 1989 and changed forever. Over a period of fourteen years, Debbie Smith went through a long and often tumultuous personal transition. For years she struggled to deal with the pain and trauma of rape, but increasingly she began to share her voice and story with others as a way of illustrating the important role DNA can play in finding a rapist. Now, well known for her association with DNA legislation, that was originally named the Debbie Smith Bill, this Virginia homemaker recently spoke about some of the difficulties and inspirations on her long unanticipated journey.

Debbie often speaks publicly about what started as a typical day in March 1989. On that seemingly ordinary day she was abducted, taken into the woods and raped by a masked stranger, while her husband, a police lieutenant was asleep upstairs after having worked for 30 hours. She says, "I had no idea that this was the day that would determine my future, the day that would establish the spring board for my life's work."

After the rape, and in spite of the perpetrator's threats to her life, Debbie did report the rape to the police and went to the hospital. Traumatized and fearful, Debbie had no idea of how to go on with life. The looming threat often paralyzed Debbie and she struggled with suicidal thoughts for years. She recalls that thinking of her children kept her grounded. In fact, Debbie and her family managed to survive, to go forward and even to find the courage to help others. She attributes much her strength to the constant support of her husband.

She talks about the first week after the rape with pain. Debbie remembers the shock, confusion, and the worry, especially for her children. She recalls looking through lots of photograph books, wishing that she could identify her rapist. But, even with DNA evidence, it still took another six years to identify him. For five of those six years, Debbie continued on with life with little change or hope, always struggling with trauma and frustration.

At the five year mark, a local reporter who had covered the rape, asked Debbie and her husband, Rob, if they would

permit her to write a retrospective piece. When the reporter explained that Debbie's identity would not be in the article, this usually timid housewife said "Wait a minute, I want to check with my family first, but I think I want you to use my name." The article that used Debbie's name resulted in many responses, letters and calls from other sexual assault victims. According to Debbie, this article marked the beginning of her transition to a more public role; it was at this point that she began to understand that she wanted, or needed, to speak out. Debbie also decided to respond to and assist many of the victims that had contacted her.



Right to Left: Debbie Smith, Peter Neufeld, Paul Ferrara and Sarah Hart appearing before House Subcommittee on Crime, Terrorism and Homeland Security, July 17, 2003.

As events go, none was more important to Debbie than the identification and trial of the rapist. "My rapist was caught six and a half year after the rape as a result of a data bank cold hit. After another two and a half years, the jury found Norman Jimmerson guilty and sentenced him to two consecutive life sentences plus

twenty-five years with no parole. The sweet breath of validation swept over me filling my lungs with a renewed sense of being alive."

One of the spectators at this trial was the Director of the Virginia Division of Forensic Science, Dr. Paul Ferrara, who also happened to be on a "Committee on the Future of DNA", headed by Janet Reno. This Committee wanted to hear from a victim whose case was helped with DNA evidence. Dr. Ferrara suggested Debbie Smith. Someone from Janet Reno's Office invited Debbie to speak, but being a self-described "shy person," Debbie found the request, 'fearsome.' She resisted. Although her immediate reaction was to decline the invitation, with the encouragement of her husband, she agreed, and the two flew off to Chicago. Debbie found the courage to speak to this large Committee and to an even larger audience.

She spoke on the importance of DNA to her case, saying that she would not be there had it not been for this science. Her words deeply impacted the Committee. The next day another request; may we put your speech on the Internet?

(Continued on next page)

Changed Forever

And immediately after that, according to Debbie, reporters began calling, people and organizations began asking her to speak.

The transition from a shy, very private housewife to speaker and advocate progressed. Debbie explains, “working past my shy nature, daring to speak of such an intimate subject and learning to express my heart to perfect strangers is not an easy task but I have to do everything I can to help other victims of sexual assault. It is not a choice for me, but an overwhelming urgency.”

In June 2001 Rep. Carolyn Maloney’s Office contacted Debbie about speaking at a Congressional Subcommittee Hearing on Government Efficiency, Financial Management and Intergovernmental Relations” regarding setting minimum standards for rape kits. Again Debbie answered the call in the affirmative. She described the response of the Subcommittee as wonderful and gracious. She recalls that Rep. Maloney came to her and said, “Debbie, I’m going to name this bill after you.” In December 2001, a copy of the bill bearing her name was delivered to Debbie’s home.

The Bill was introduced in September 2001, but then the horror of 9-11 shocked the nation and changed the priorities of Congress. Despite this shift in focus, Debbie felt she should continue to work for this legislation. Beginning early in 2002, she handwrote letters to every member of Congress.

Most of the provisions of the Debbie Smith Bill became combined with similar points made in concurrent legislative actions and resurfaced in 2003 under a new name **Advancing Justice Through DNA Technology Act of 2003** (House of Representative No. HR 3214, and Senate No. S1700). The passage of this legislation remains a priority for many.

When you talk to Debbie about her impressive record of public speaking and work, she says that she has done relatively little to make things happen. She always says, “I’m just Debbie Smith,” and then speaks of the great impact that others have had. She explains that the letters of support from victims provided comfort and inspiration. She repeatedly points to the great love and friendship of her husband, Rob, who has traveled with her in the transition. “I could not do

any of this without his support.” Finally Debbie credits Rep. Carolyn Maloney as being the real impetus for the DNA legislation, saying that Maloney’s dedication and grace has had the real lasting impact.

As far as passing legislation goes, Debbie is, of course, right; it takes many people and many steps to make law, even before it gets to legislators. But Debbie’s importance is not as much about accomplishments as it is about her character and willingness. Putting aside fear and comfort, she did her part. Her importance can be found in the fact that she always rose to the occasion, that she was able to overcome her shyness and fear, that she truly cares about helping others and most of all, that she is now making this work, her life’s work.

Debbie and Rob have been so changed by this journey that they have committed themselves to helping others.



Debbie Smith and Senator Joseph Biden speaking at press conference in Washington DC, March 4, 2003.

Everything has been truly a joint venture for them during their 31-year marriage. Now, they have decided to dedicate their lives to victims of sexual assault by forming a non-profit organization called H-E-A-R-T (Hope Exists After Rape Trauma). This organization begins operation in January 2004.

H-E-A-R-T has three main objectives. They will continue public speaking throughout the country, endeavoring to bring awareness to the problem of sexual assault as well as trying to provide training to various disciplines involved with victims such as police, nurses,

prosecutors and advocates. They will continue efforts to educate and inform legislators as to the needs of sexual assault victims, while trying to change ineffective laws and create new ones where needed. Finally they will provide for the immediate safety and security concerns of victims who are unable to do so for themselves. Such concerns include changing locks, installing peepholes, alarm systems and adequate lighting. For victims who need some time away from home in order to process the traumatic event, they will provide a few nights stay in a motel. They intend to assist victims in attending court by providing vouchers for childcare if needed or by supplementing lost income for those days in court. For more information on H-E-A-R-T, visit [www. H-E-A-R-T.info](http://www.H-E-A-R-T.info).



Jurisdictional Issues Complicate Response to Sexual Assault for Tribes Under PL280 Status

(Continued from Page 2)

members. Especially in cases involving Indian women, police may often ignore crimes of abuse on the pretext of jurisdictional uncertainties.”⁴ Criminal jurisdiction is decided based upon the type of crime committed, the race of the

“Especially in cases involving Indian women, police may often ignore crimes of abuse on the pretext of jurisdictional uncertainties.”

perpetrator and the victim, and the location in which the crime occurred. If the offender and victim are Native, major crimes may fall under the jurisdiction of both or either federal or tribal authority. If the offender is non-Native, and the victim is Native, the jurisdiction falls under federal authority, if both the offender and the victim are non-Native, the state has jurisdiction.

When considering the Act’s impact on tribal authority to create and enforce laws protecting tribal members, it is important to consider that of reported assaults/rapes of Native victims, 90% involved an offender of a different race.⁵ If this assault occurs on the reservation, the tribe has no criminal authority over the non-Native offender, and too often the state or county will not prosecute the assault. As Native communities do not have criminal jurisdiction over non-Native perpetrators, only rarely does the Native victim of sexual assault see justice. Instead, the offender gets the message that there is no consequence for violence against Native women on Indian land, with grave consequences for women’s safety.

PUBLIC LAW 280

Native women’s safety is further compromised in certain parts of Indian Country by Public Law 280. Passed by the U.S. Congress in 1953, PL 280 arose out of the federal government’s conflicting views on Native sovereignty (termination of tribes versus self-determination of tribes), and created a jurisdictional maze in Indian Country that has often provided a justification for investigative and prosecuting officials to ignore sexual assaults.⁶ Public Law 280 does not affect all of Indian Country, but impacts tribes in a specific group of states and regions, creating further jurisdictional complications for these tribes.

PL 280 transferred criminal jurisdiction from the federal government to the “mandatory” states of California, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs), Wisconsin, and Alaska (except Metlakatla) without the consent of the tribes.⁷ PL 280 is an un-funded mandate. In other words, this transfer of jurisdictional authority to the states was not accompanied by the federal funds necessary to uphold this authority.

According to the National Sexual Violence Resource Center, the consequences of the jurisdictional complications resulting from PL 280 are:⁸

- Record keeping among federal, state and local prosecutors, law enforcement officials, tribal officials and service providers is poor and uncoordinated.
- Reporting can compromise the victim’s safety, with victims coming to feel increasingly helpless about reporting and fearful of reprisals.
- The confusion over jurisdiction often hinders the chances for timely and effective investigations and prosecutions.
- Violators and perpetrators come to understand that, even if they are arrested, prosecution and punishment may not occur, or may carry minimal consequences.

In both PL 280 and non-PL 280 tribes “confusion over jurisdictional lines has developed, making it difficult for victims to find legal recourse that is accessible, timely and just.”⁹

THE PRACTICAL IMPACT ON THE SURVIVOR

The jurisdictional tangle that exists in Indian Country has a grave impact on Native women who have survived sexual assault. It generates uncertainty over which law enforcement agency should be responding, thus making

Jurisdictional uncertainty delays and sometimes stalls criminal investigations.

timely response unlikely. It often creates the perception that a community does not respond to crime. Jurisdictional uncertainty delays and sometimes stalls criminal investigations, and also puts Native women in a position that makes them vulnerable to assault by non-Native predators.

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Jurisdictional Issues

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In addition, if a sexual assault is prosecuted, this jurisdictional tangle means that Native women have to travel farther to court, and impacts the probation and parole of offenders. Finally, the lack of funding disinclines states to properly maintain justice.

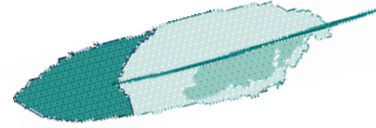
The lack of federal aid has created a scarcity of resources for criminal justice, thus translating into an all too often lack of effective state criminal law enforcement and justice in Indian Country for both PL 280 and non-PL 280 tribes. Additionally, the transfer of authority from the federal government to the states without funding means many PL 280 tribes do not have functioning criminal justice systems. This fact, coupled with mistrust or outright hostility between state and tribal authorities has created an atmosphere of "lawlessness"¹⁰ in Indian Country that puts Native women at high risk of violence in their communities.

CONCLUSION

Not honoring Native sovereignty has compromised the safety of Native women. Tribes must have the power and the resources (provided by the federal government in accordance with their historic accountability toward Native nations¹¹) to effectively investigate and prosecute violence against Native women:

Enhancing tribal and federal partnerships and reducing violence against American Indian women can be achieved, in part, by disregarding the race of the perpetrators and affirming tribal court authority to safeguard American Indian women within tribal territories, whether they have been attacked by Indians or non-Indians.¹²

When justice for Native women is determined by race and location, they are not being afforded the same civil rights as other citizens. Native women must have the same constitutional protection as women of other races. Without women's sovereignty being actively upheld, a Nation's sovereignty is compromised. Women create our Nations. Their sacredness must be actively upheld in order for our Nations to survive and thrive.



Notes

- ¹ Hudon, Eileen. "Notes on Advocacy in a PL 280 State/Tribe".. Mending the Sacred Hoop Technical Assistance Project.
- ² Department of Justice. *Criminal Resource Manual* 679. October 1997. http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00679.htm
- ³ See *United States v. Lara*, 324 F.3d 635 (8th Cir. 2003), scheduled to be heard by the Supreme Court. "Although the Fifth Amendment prohibits any person from being prosecuted twice for the same offense, it does not apply if two independent sovereigns are involved and each draws its authority to punish the offender from different sources of power. Therefore, Lara's claim of double jeopardy turned on whether the tribe exercised authority arising from a source distinct from the federal government's authority.": <http://www.legix.com/soc030825.cfm>
- ⁴ Deer, Sarah. 1997. (qtd. by the National Sexual Violence Resource Center. "Sexual Assault in Indian Country: Confronting Sexual Violence". 23 Apr. 2003. <http://www.nsvrc.org/indian.html>).
- ⁵ U.S. Department of Justice, Office of Justice Programs. *Bureau of Justice Statistics: American Indians and Crime*. Online report revised 6/18/99. Page 17. <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf>
- ⁶ NSVRC. "Sexual Assault in Indian Country Confronting Sexual Violence", 2000.
- ⁷ Note: in addition to these mandatory states, there are states whose constitutions allow them to assume authority over tribes. These optional PL 280 states that have assumed authority over tribes are: Nevada, Florida, Idaho, Iowa, South Dakota, Washington, Montana, North Dakota, Arizona, Utah, with the last 5 having disclaimers in their state constitutions that make their jurisdiction open to legal challenges. Certain states have retroceded, or returned jurisdiction to the federal government: Wisconsin (over the Menominee Reservation), Nevada (over the Winnebago and Omaha Reservations), and Oregon (partially retroceded jurisdiction over the Umatilla Reservation).
- ⁸ *Supra note 6* Page 13.
- ⁹ *Ibid.* Page 12.
- ¹⁰ Goldberg-Ambrose, Carole. *Planting Tail Feathers: Tribal Survival and Public Law 280*. American Indian Studies Center, UCLA, 1997. Page 30.
- ¹¹ *Toolkit To End Violence Against Women*, "Chapter 14: Nation to Nation: Promoting the Safety of Native Women". Violence Against Women Office: October 2001.
- ¹² *Ibid.*

SAAM 2004: Plan "A Day to End Sexual Violence"

(Continued from Page 1)

larger events for other days, particularly in the beginning of the month. April 20th, *A Day to End Sexual Violence*, should be thought of as a day to do something that will be part of the national impact; we do not expect that it will necessarily be the central focus of your SAAM campaign.

In the past few years, the NSVRC has been encouraging more coordination of SAAM plans in hopes that a more unified voice will resonate and really be heard. Last year, we suggested that programs and coalitions plan a "Shout Out," a public forum for speakers, advocates, politicians and entertainers to raise their voices and public awareness. Those who sponsored a Shout Out reported great success.

This year the planning committee considered many events that we might suggest. We wanted to select something that would be appealing and effective at the same time flexible and affordable.

At the foundation of *A Day to End Sexual Violence* is a desire to be sensitive to and encourage more local agencies and programs as well as coalitions and statewide initiatives. There are two

aspects of this idea that can really increase the involvement, voice and creativity of the entire anti-sexual violence movement.

First, we want to be sensitive to the needs of grassroots organizations, especially those that operate on a shoe-string budget, creativity and hard work. We want to promote a broader sweep, to encourage all rape crisis centers, campus programs and allied organizations to find some way to raise attention, to raise their unified voice about sexual violence.

In fact, many organizations do excel in raising awareness, often in very creative ways. Often they require more energy than money, and these SAAM efforts must be encouraged and recognized. The NSVRC will gladly provide a variety of SAAM ideas, but does not want to endorse certain ideas over others. In fact, the NSVRC wants to encourage a variety of events. For this reason, we hope that every center will plan an event/activity for April 20, 2004 as *A Day to End Sexual Violence*.

The second aspect of this year's focus on grassroots organizations is to

encourage feedback. The NSVRC reaffirms its commitment to respond to the needs, problems, ideas and successes of rape crisis centers across the nation. We know that many amazing ideas grow out of the inspiration and dedication of busy advocates and volunteers. We want to hear about their successes and challenges in promoting SAAM activities. What one center does effectively may in fact turn out to be a great idea to share with other programs.

In order to encourage feedback this year, the NSVRC will present a small gift to the first 50 programs/centers that send in a feedback form and related SAAM information after April 2004. Our hope is that we will get many forms and ideas; we would love to see your pictures, newspaper articles and all the unique SAAM materials that you created.

In January 2004, the NSVRC will be mailing SAAM packets to those on the NSVRC mailing list. It will include some ideas for SAAM activities for April 20th. We encourage you to notify us at resources@nsvrc.org or contact your state coalition if you are planning

(Continued on next page.)

New Jersey Coalition Against Sexual Assault

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Call the Conference Coordinator
Phone: (609) 631-4450
Email: mail@njcasa.org

2004 SAAM

(Continued from previous page)

something for April 20th. Consider the impact of a press release that can say, "across the state,... or across the nation a very large number of SAAM events will take place on April 20th." As always we ask that you check with your state coalition to coordinate activities within your state whenever possible.

The SAAM packet will also provide SAAM items for sale, including a poster, post cards, and teal awareness ribbon pins. For additional information, call Susan Lewis toll free: 877-739-3895 Ext. 102.

SAAM 2004 packets may be requested via our email: resources@nsvrc.org or by calling toll free: 877-739-3895. You may also visit the NSVRC website, www.nsvrc.org, for SAAM materials and ideas.



Kobe Bryant

(Continued from Page 7)

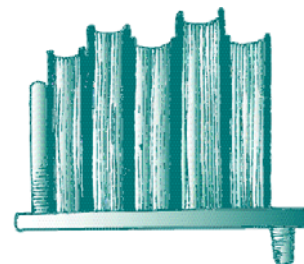
The NSVRC encourages everyone to be mindful of the potential impact of this case, and to develop creative ways to refocus some of the attention to promote better treatment of rape victims and better public awareness of sexual assault. If you or your organization has produced a document, commentary, letters to the editor, or any other resource relating to this case, we invite you to share a copy with the NSVRC. Finally, don't wait to be asked; find ways to increase awareness of and help for *all sexual assault victims*.



January 2004.
Visit the NSVRC's new website.

www.nsvrc.org

- Be sure to register your SAAM events on our SAAM calendar.



From the Book Shelf

Shaping Survival: Essays by Four American Indian Tribal Women

Jack W. Marken & Charles L. Woodard: Editors

Shaping Survival is a collection of essays recounting the personal experiences of four American Indian women during the movement that used education to assimilate American Indians into white society. The women offer gripping accounts of their involvement in boarding schools and Indian mission schools. They unveil the mistreatment of Native children that occurred, while detailing how each woman recovered her spiritual strength and personal well-being by embracing the traditional religious and cultural beliefs of her ancestors. The book is published by Scarecrow Press, Inc. Price: \$34.95.

Understanding DNA Evidence: A Guide for Victim Service Providers

By the Office for Victims of Crime of the U.S. Department of Justice

This OVC bulletin provides crucial information for victim service providers about the importance of DNA testing in sexual assault cases. It explains various aspects of DNA testing methods, describes contamination issues and prevention, and outlines the types of DNA analysis results. The bulletin offers the real-life experiences of sexual assault victims and the impact of DNA testing in their cases, including Debbie Smith's story. Valuable glossary and resource information are also provided. Free copies of this document (NCJ No. 185690) may be ordered on line at puborder.ncjrs.org. Shipping and handling may be applied.



Building Leadership and Commitment to End Sexual Violence

May 25-28, 2004
Los Angeles, California



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California Coalition Against Sexual Assault
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National Sexual Violence Resource Center

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