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INTRODUCTION: THE PROMISE OF THE VIOLENCE AGAINST WOMEN ACT OF 1994

*Elizabeth M. Schneider**

This symposium issue on the Violence Against Women Act of 1994¹ ("VAWA") is appropriately entitled *A Promise Waiting to be Fulfilled*. The Act, passed as part of the Violent Crime Control and Law Enforcement Act of 1994,² is a comprehensive effort to address the problem of violence against women through a variety of different mechanisms, including funding for women's shelters,³ a national domestic abuse hotline,⁴ rape education and prevention programs,⁵ and training for federal and state judges.⁶ It provides for reform of remedies available for battered immigrant women,⁷ the development of an innovative civil rights remedy⁸ and a host of other provisions including criminal enforcement of interstate orders of protection.⁹ The promise of the Act is substantial and its

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¹ Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18 and 42 U.S.C. (1994)).

² Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 18 and 42 U.S.C. (1994)).

³ 8 U.S.C. § 1154(a) (1994).

⁴ 42 U.S.C. § 10416(e)(2)(E) (1994).

⁵ 42 U.S.C. § 10418 (1994).

⁶ See, e.g., 42 U.S.C. §§ 13701, 13991, 13992, 14036 (1994).

⁷ See, e.g., 8 U.S.C. § 1154(a) (providing self-petition by immigrant women for legally recognized status).

⁸ 42 U.S.C. § 13981 (1994).

⁹ For example, criminal sanctions will be imposed if a person crosses state lines with an intent to violate a protective order, or for causing injury to a spouse

passage is significant. It is the first federal legislation that addresses the problem of violence against women, it addresses the problem comprehensively, and it resulted from an extraordinary coalition of women and civil rights groups working steadily over several years to accomplish this goal.¹⁰ However, as the contributions in this symposium suggest, the promise of the Act is yet unrealized and waiting to be fulfilled.

The genesis of this symposium was a panel discussion held at the Association of the Bar of the City of New York on September 14, 1995, *The 1994 Violence Against Women Act Civil Rights Remedy: Legislative History, Policy Implications and Litigation Strategy*. The panel was organized by the City Bar Association's Committee on Civil Rights, and cosponsored by many other Committees of the City Bar Association and legal organizations.¹¹ The panel focused primarily on the civil rights remedy of the Act, which makes gender-motivated violence a federal civil rights violation.¹² Panelists highlighted the legislative history and theoretical framework of the civil rights provision,¹³ described the

or intimate partner in the process of forcing that person to cross state lines by use of force, coercion, duress, or fraud. 18 U.S.C. § 2262(a) (1994). Punishment ranges from five years imprisonment for violations that do not result in physical injury to life imprisonment in cases where the violation results in death. 18 U.S.C. § 2262(b). Fines may also be imposed. *Id.*

The first conviction under this section of VAWA came in September 1995. Christopher Bailey bludgeoned his wife, bound her, placed her in the trunk of his car and drove for six days from West Virginia to Kentucky, where he dropped her off, comatose, at a hospital emergency room. Bailey was sentenced to life in prison. Leslie Laurence, *Domestic Violence Becomes a Legal Issue with Conviction*, HOUS. CHRON., Oct. 11, 1995, at 2.

¹⁰ See Sally Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 391 (1996).

¹¹ For a complete listing of the symposium's cosponsors, see Julie Goldscheid, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 383, 385 n.6 (1996).

¹² 42 U.S.C. § 13981.

¹³ Goldfarb, *supra* note 10, at 391.

efforts to implement the Act in its first year,¹⁴ and placed the civil rights provision in the context of other remedies available to women victims of violence,¹⁵ other civil rights and human rights remedies generally¹⁶ and the larger context of gender discrimination efforts generally.¹⁷

Because the organizers, moderator and panelists included some of the leading activists and scholars who had worked on passage of the Act, it seemed important to transcribe the panel and publish the proceedings. This led to the generation of several other essays placing the Act in a variety of different contexts: an update on funding and implementation of the Act by United States Representative Patricia Schroeder, one of the principal authors of the Act, an analysis of the Act from the perspective of its utility to communities of color and as a bridge between the civil rights and feminist communities by Professor Jenny Rivera, and a report on the Violence Against Women Act Project of the Federal Litigation Clinic at Brooklyn Law School and analysis of its implications for clinical legal education and training public interest lawyers by Professor Minna J. Kotkin.

The contributions to this symposium powerfully describe the promise of the Act generally, particularly the civil rights remedy.¹⁸ They document the severity of the problem of violence

¹⁴ Noël Brennan, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 419 (1996).

¹⁵ Betty Levinson, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 401 (1996).

¹⁶ Jenny Rivera, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 409 (1996).

¹⁷ Elizabeth M. Schneider, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications & Litigation Strategy*, 4 J.L. & POL'Y 427 (1996).

¹⁸ 42 U.S.C. § 13981. This symposium discusses the Violence Against Women Act generally, and is not limited to the civil rights remedy focus of the original panel at the Association of the Bar of the City of New York. However, it does not provide a comprehensive overview of all the provisions of the Act, and instead focuses primarily on the civil rights remedy.

against women in this country and its dramatic impact on gender equality. They describe the hard work of the coalition of women's and civil rights groups that lobbied for passage, and the triumph of the passage. Contributors describe the promise of the Act from many perspectives, from service provision to judicial education, from the establishment of a national hotline for victims of domestic violence¹⁹ to the development of the Violence Against Women Office within the United States Department of Justice. The redefinition of violence against women as a federally protected civil right that affords women a right to be free from gender-motivated violence has much potential as an actual remedy for victims, in shaping public consciousness and in transforming our concept of violence.

At the same time, the contributors to this symposium document substantial obstacles to meaningful realization of the promise of the Act. First, and most important, is the bottom line issue of whether the Act will be funded at a meaningful level, the problem of appropriations. United States Representative Patricia Schroeder describes the hurdles to funding the Act in the 104th Congress and shows that substantial divisions within Congress have already limited its reach and efficacy.²⁰ Second, there are numerous analyses of obstacles for victims of violence in seeking relief. It is significant that as of April 1996, only two cases have been brought,²¹ and one of these cases has led to a challenge of VAWA on constitutional grounds.²² Finally, there are extensive discussions

¹⁹ 42 U.S.C. § 10416(e)(2)(E).

²⁰ Patricia Schroeder, *Stopping Violence Against Women Still Takes a Fight: If in Doubt, Just Look at the 104th Congress*, 4 J.L. & POL'Y 377 (1996).

²¹ *Brzonkala v. Virginia Polytechnic Inst. & State Univ.*, No. 95-CV-1358-R (W.D. Va. filed Mar. 4, 1996); *Doe v. Doe*, No. 95-CV-2722 (D. Conn. filed Feb. 12, 1996).

²² Christy Brzonkala has filed a lawsuit against the Virginia Polytechnic Institute and three of its football players, two of whom she says raped her as the third watched in September 1994. One of the defendants has challenged the constitutionality of VAWA. The defendant's attorney, David Paxton, has argued that Congress, in passing VAWA, has exceeded the authority granted to it in either the Commerce Clause or the Fourteenth Amendment of the United States Constitution. See Joe Davidson, *U.S. to Argue Against Challenge to Violence Act*, WALL ST. J., Mar. 27, 1996, at B7. The challenge relies in part on *United States*

of the interpretive problems and contradictions embodied in the civil rights provision that must be overcome in order to make the Act meaningful.

An important theme that runs throughout the symposium is the interrelationship of law and public education. The organizing effort that led to the passage of the Violence Against Women Act was itself the product of the success of public education around issues of violence against women. At the same time, now that the Act has passed, there needs to be a massive campaign of public education concerning the provisions of the Act in order to afford access to the remedies provided by the Act to victims of violence. Education is also indicated for law students and lawyers, so that they are aware of the Act and understand the particular difficulties they may encounter in bringing claims under VAWA—not the least of which may well be gender bias and antiquated notions about the nature of violence against women that are deeply embedded in our justice system.²³ Most importantly, judges and other decisionmakers need to be educated if the Act is going to be interpreted consistently with its promise. The Violence Against Women Act itself is the result of a larger process of education, but the Act will not be meaningful unless that educational process continues and inspires effective action.

This symposium is part of this broader educational project—to alert lawyers, law students and activists to VAWA's existence, and to its significant practical and theoretical implications, and to

v. Lopez, 115 S. Ct. 1624 (1995), which holds that the Gun Free School Zones Act exceeded Congress' Commerce Clause authority because possession of a gun in a local school zone was not an economic activity substantially affecting interstate commerce.

²³ See generally Erich D. Anderson & Anne Read-Anderson, *Constitutional Dimensions of the Battered Woman Syndrome*, 53 OHIO ST. L. J. 363 (1992); Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71 (1992); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition*, 21 HOFSTRA L. REV. 1191 (1993); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980); Lenore E. Walker, *Beyond the Juror's Ken: Battered Women*, 7 VT. L. REV. 1 (1982).

inspire implementation of the Act in ways that will fulfill the promise of the Act. The symposium describes the many ways in which VAWA has already galvanized an educational process—but it also underscores the urgent need for that process to continue. As a teacher of courses on gender and violence against women and the law, and co-author of a forthcoming law school casebook on domestic violence,²⁴ I am acutely aware of the need for education and, at the same time, how transformative education on violence against women can be. It is my hope that education concerning the Violence Against Women Act—of which this symposium is a part—will continue this transformative process.

²⁴ CLARE DALTON & ELIZABETH M. SCHNEIDER, *CASES AND MATERIALS ON BATTERED WOMEN AND THE LAW* (Foundation Press forthcoming).