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“SOMETHING ON WOMEN FOR THE CRIME BILL”:


Irene Meisel

A dissertation submitted to the Graduate Faculty in History in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2016
This manuscript has been read and accepted for the Graduate Faculty in History in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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Abstract

“Something On Women For the Crime Bill”:
The Construction and Passage of the Violence Against Women Act, 1990-1994

By Irene Meisel

Advisor: Professor Sandi E. Cooper

“Something on Women for the Crime Bill” examines the legislative and theoretical history of the Violence Against Women Act (VAWA), signed into law in 1994. It explores the deeply intertwined relationship between the tough-on-crime and feminist movements that shaped both the bill itself and the political discussion surrounding it. The bill inherited a host of ideas about crime, criminality, and race from the 1968 Omnibus Crime Control and Safe Streets Act, leading to a very particular representation of the rapist as a black criminal inhabiting the streets. It merged the categories of rape and domestic violence into one classification of “violence against women,” eliminating the need to address the particular characteristics of either and resulting in even greater erosion of the feminist anti-rape message.

This dissertation also details the role of the NOW Legal Defense and Education Fund (NOW LDEF) in the bill’s crafting and passage. NOW LDEF’s participation in VAWA’s creation represented a political coming of age for second-wave feminism, but the organization’s eagerness to pass a civil rights remedy for addressing rape caused its staff to view the very damaging effects of the bill’s other provisions as mere collateral.

Finally, “Something on Women for the Crime Bill” describes the hitherto undocumented efforts of a number of the ACLU, the NAACP, and the Leadership Conference on Civil Rights, all of which warned against VAWA’s destructive measures, to worked behind the scenes to halt its passage, and or to ameliorate its effects.
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<tr>
<td>ACLU</td>
<td>American Civil Liberties Union</td>
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<tr>
<td>EEOC</td>
<td>Equal Employment Opportunity Commission</td>
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<td>FVPF</td>
<td>Family Violence Prevention Fund</td>
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<td>FAAR</td>
<td>Feminist Alliance Against Rape</td>
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<td>LEAA</td>
<td>Law Enforcement Assistance Administration</td>
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<td>NAACP</td>
<td>National Association for the Advancement of Colored People</td>
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<td>NCASA</td>
<td>National Coalition Against Sexual Assault</td>
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<td>NOVA</td>
<td>National Organization for Victim Assistance</td>
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<td>NOW LDEF</td>
<td>NOW Legal Defense and Education Fund</td>
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<td>NWLC</td>
<td>National Women’s Law Center</td>
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<td>NYRF</td>
<td>New York Radical Feminists</td>
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<td>NYRW</td>
<td>New York Radical Women</td>
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<tr>
<td>PCSW</td>
<td>Presidential Commission on the Status of Women</td>
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<td>WEAL</td>
<td>Women’s Equity Action League</td>
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<td>WRP</td>
<td>ACLU Women’s Rights Project</td>
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<td>VAWA</td>
<td>Violence Against Women Act</td>
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<td>VOCA</td>
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“Something On Women for the Crime Bill” examines the legislative and theoretical history of the Violence Against Women Act of 1994 (VAWA) in an effort to understand how the deeply intertwined relationship between the tough-on-crime and feminist movements shaped both the content of the bill and the political discussion surrounding it.\(^1\) VAWA’s close relationship to earlier anti-crime strategies ensured that the bill focused not on empowering women but punishing their attackers; the language of VAWA construed women as generic crime victims, eroding the empowering message of feminism.

The NOW Legal Defense and Education Fund (NOW LDEF) played a much greater role in shaping the bill than has previously been appreciated. NOW LDEF’s pivotal role in VAWA’s creation and passage represented a political coming of age for second-wave feminist institutions and ideas, but was not uncontroversial. The organization hadn’t worked extensively on either rape or domestic violence legislation before, so was viewed with suspicion by many of those who had. Because NOW LDEF was historically a majority white organization working on a crime bill with deep racial undertones, both public and private conversations about VAWA stirred up old animosities about who truly represents feminism.

Opposition to the bill from both civil rights and women’s legal advocacy groups represented a larger and potentially more dangerous obstacle to its passage than previously documented. While hesitant to publicly oppose VAWA because of the peril of

\(^1\) VAWA was Title IV of the Violent Crime Control and Law Enforcement Act, H.R. 3355 103\(^{rd}\) Cong. (1993) passed as Pub. L. 103-322 103\(^{rd}\) Cong. (1994).
appearing to be “pro violence against women,” they nonetheless worked assiduously behind the scenes to prevent VAWA’s passage and, in lieu of that, to ameliorate what they saw as the bill’s far-too-punitive measures.

The particularities of VAWA’s construction made understandings of rape vulnerable to further revision to better conform to the law-and-order worldview in new and alarming ways. For instance, VAWA merged the categories of rape and domestic violence into one classification “violence against women,” a previously unheard of legislative entity. The elision of the two removed the need to address the particular characteristics of either and resulted in even greater erosion of the feminist anti-rape message by the law-and-order impulse. In addition, the fact that several of the legislation’s titles amended the 1968 Omnibus Crime Control and Safe Streets Act (the 1968 crime bill) guaranteed that VAWA inherited a host of ideas about crime, criminality, and race from that bill.2

Not coincidentally, the driving ideas behind VAWA can be linked to two 1968 developments. The first is the emergence of rape as a feminist issue symbolized by feminist Kate Millet’s essay “Sexual Politics,” which asserted that, “Like every system of oppression, male supremacy rests finally on force, physical power, rape, assault and the threat of assault.”3 Millett and others in the organization she belonged to, New York Radical Women (NYRW) offered a radically new interpretation of rape as part of a continuum of women’s oppression. Millett suggested that the solution to the scourge of rape was nothing less than a social and cultural revolution. The revolution Millett called

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for would be marked by a “change of consciousness of which a new relationship between the sexes and a new definition of humanity and human personality are an integral part.”

The second was the passage of the 1968 crime bill, which marked the federal government’s entrée into fighting state and local crime. Tough-on-crime proponents conflated street the street protests of the 1960s with street crime and saw a more punitive justice system as the solution to the social protests that had spread across American cities. As noted sociologist Kenneth B. Clark pointed out, there was “a tendency to make crime in the streets synonymous with racial threats or the need to control the urban Negro problem.”

Several scholars have documented the extent to which 1960s political ideology linked blackness to criminality.

While “Sexual Politics” and the 1968 crime bill were poles apart in 1968, when VAWA was introduced in 1990, its main rape provision would be called the Safe Streets for Women Act—after the Omnibus Crime Control and Safe Streets Act—and at its center would be a title creating prosecution grants modeled on those in the 1968 bill.

Millett’s essay signaled the beginning of a robust anti-rape movement. Over the next few years, addressing rape became a major feminist priority. Across the nation, feminist activists held speak-outs and protests to demand change. They created volunteer-run rape crisis centers that addressed the needs of survivors and modeled the type of non-hierarchical society they hoped to create. By 1979, the number of rape crisis centers

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4 Ibid.
7 Historian Liz Kelly describes one of the hallmarks of the rape crisis movement—stressing the agency of those who have been raped by replacing the description of “victim” with “survivor.” I have chosen to follow this practice. Liz Kelly, Surviving Sexual Violence (Minneapolis: University of Minnesota Press, 1988).
across the country had grown to over 400. In addition, state rape laws across the country had been revised and subdivisions of police departments and state attorney general offices were dedicated to investigating sex crimes.

While the second-wave feminists who first publicly addressed rape identified as radical, rape quickly became an issue that not only crossed over boundaries between multiple feminisms but also helped to erase those boundaries. The previously mainstream National Organization for Women (NOW) started its own rape task force in 1973. In 1974, the New York Radical Feminists (NYRF), a successor group to NYRW, and the National Black Feminist Organization (NBFO) held a joint speak-out. Nevertheless, how exactly to fight rape and even whether or not rape should be the target of feminist anti-violence efforts were issues that caused great consternation between feminists and feminisms.

To those who wanted to target rape law itself, collaboration with law enforcement to get legislation passed—and the concurrent reframing of rape law as crime control—seemed the most efficient route to meaningful legislative action. In this way, rape was split off as a discrete target of legislative change, separate from the social justice goals of the wider feminist movement. The decision to ally with law enforcement to reform rape laws was controversial. While many feminists supported state-based solutions, such as

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8 Maria Bevacqua, *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault* (Boston: Northeastern University Press, 2000), 35.
9 In her study of black, Chicana, and white second-wave feminist movements, Benita Roth replaces the standard narrative of a two-branch (radical and liberal) middle class white movement with one of a movement comprised of multiple feminist mobilizations. Benita Roth, *Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave* (Cambridge: Cambridge University Press, 2004).
law reform, in the fight against rape, just as many fiercely contested this strategy, preferring to remain faithful to the original movement politics that rejected state mediation of any kind. Although they maintained their political commitment to ending sexism, some women argued that reforming the criminal justice system was so far removed from the root aims of the feminist movement as to invert the movement’s original message.\textsuperscript{12}

Scholars Marie Gottschalk, Kristin Bumiller, and Jonathan Simon have explored the growth of the tough-on-crime movement and its intricate relationship to the anti-rape and domestic violence movements at length. These scholars stand at the forefront of a larger effort to document the history of what scholars term the “carceral” state—a phrase referring to the explosive growth of the prison population and the retributive turn in United States penal policy since the late 1960s.\textsuperscript{13}

The work of these scholars elegantly explores the mechanisms through which the feminist anti-rape movement was ultimately subsumed under the banner of a highly racialized law-and-order movement. They posit that, in response to the social challenges of the 1960s, conservative political leaders—both locally and at the national level—began to highlight street crime in an attempt to steer state policy toward social control and away from social welfare. Eventually rape was framed as just one of many street crimes to be tackled by the state criminal justice apparatus.

Gottschalk, in particular, shows how Johnson’s 1968 crime bill, central to this


drive, created policies and funding structures that would lead to a greatly expanded role for government in rape crisis centers. Centers were gradually transformed from expressions of a social movement to social service providers. This transformation accelerated during the 1980s when the volunteer-run revolutionary ethos of rape crisis centers was slowly drained of its potent transformative message.

By 1990, rape’s metamorphosis into a criminal justice issue would make it an appropriate focus for the omnibus crime bill then-Senator Joseph Biden (D-DE) had recently introduced.14 There are several conflicting published accounts that detail Biden’s decision to introduce VAWA to this crime bill, but Biden himself anchored his decision to his career-long preoccupation with fighting crime.15 In May 1990 Biden, who was then chair of the Senate Judiciary Committee and the self-proclaimed Democratic “point man on crime,” decided he wanted to include a measure targeting crimes against women in his sprawling crime bill.16 He turned for help to a new lawyer on the Judiciary Committee staff, Victoria Nourse, who was asked to get him “something on women for the crime bill.”17

Nourse crafted VAWA’s first two titles to fit into the already existing template of the crime bill, so that the majority of VAWA’s provisions were refracted through that bill’s tough-on-crime lens. VAWA’s first title, Safe Streets for Women, created grants for law enforcement that ate up the majority of VAWA’s funding and introduced mandatory minimum sentences. VAWA’s second title, Safe Homes for Women, implemented

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16 Ibid., 234.
mandatory arrest policies and made orders of protection for domestic violence valid across state lines.

VAWA’s most controversial third title, Civil Rights For Women—a legal remedy that made it possible for women who had been the victims of gender-based violence to sue their attackers in civil court—did not fit this template.\(^\text{18}\) While crafting VAWA, Nourse contacted NOW LDEF’s Senior Counsel Sally Goldfarb. Goldfarb, intrigued by the civil rights remedy, threw herself wholeheartedly into VAWA’s passage. Ultimately her investment in the civil rights remedy gave her and others at NOW LDEF a fierce sense of loyalty to the bill. Their belief that the remedy would be landmark feminist legislation caused them to view the possible damaging effects of the bill’s other provisions as merely collateral. Hypnotized by the holy grail of a civil rights cause of action, these feminists were deaf to warnings from the American Civil Liberties Union (ACLU), the NAACP, and the Leadership Conference on Civil Rights (LCCR)—an umbrella organization that included both the ACLU and NAACP, among others—about the overly-punitive nature of the bill.

Because NOW LDEF was focused on litigation, it did not have the lobbying or grassroots organizing experience that had helped make its one-time parent organization, the National Organization for Women (NOW), considered by many to be the standard bearer for modern American feminism. Therefore NOW LDEF hired veteran lobbyist Patricia Reuss. Together, Goldfarb and Reuss created and helped enlarge what would become a national VAWA task force. Goldfarb operated behind the scenes, frequently meeting with both lawmakers and other advocates and often serving as a bridge between

\(^{18}\) Several different people take credit for sparking the idea that shaped the civil rights remedy, including Victoria Nourse herself; Ron Klain, her boss on the Judiciary Committee and Catharine MacKinnon, the famed feminist scholar and activist known for her work on sexual harassment and pornography.
the two. Reuss masterminded not only lobbying efforts on the Hill, but also the task
force’s broad-based nationwide outreach strategy.

The punitiveness of VAWA’s measures lead to a concerted effort by several at the
ACLU, NAACP LDF and the National Women’s Law Center (NWLC) to thwart
VAWA’s passage. While unwilling to speak out publicly, lawyers for these organizations
worked assiduously first to thwart the bill’s passage and, when passage seemed
inevitable, to temper the harsh provisions of the bill.

VAWA’s retributive content notwithstanding, during the bill’s sojourn in
Congress it frequently came under attack by politicians eager to add additional and more
stringent punishments. 19 Thus members of the VAWA task force created a working
alliance with the Congressional Caucus on Women’s issues to try to rebuff efforts to pull
VAWA to the right. President Clinton signed the bill into law as Title IV of the Violent
Crime Control and Law Enforcement Act (the crime bill) on September 13, 1994.

Despite NOW LDEF’s best intentions, VAWA was ultimately an anti-crime bill,
rather than pro-woman legislation. Early anti-rape activists’ worst fears of criminal
justice co-optation had come true.

**Chapter Outline**

Chapter One begins with an examination of American stereotypes about rape and
the rapist. It pays particular attention to the centrality of race to the political history of
rape in the United States, exploring the rhetorical construction of black men as constantly

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19 Particularly Robert Dole (R-KS) and Orrin Hatch (R-UT)
threatening sexual attacks, black women as always consenting to sex, and white women as consistently duplicitous.\textsuperscript{20}

Catherine Jacquet was one of the first scholars to consider both the civil rights and feminist responses to rape, contextualizing the second wave in a larger history of social movement response to sexual violence. While the history of anti-rape activism has often been described as propelled entirely by white women in the radical arm of the feminist movement, in fact anti-rape crusading had been one of the goals of the civil rights movement. Despite this, the anti-rape efforts of the two movements frequently focused on different aspects of the crime. Civil rights groups’ race-based framework thoroughly informed their understandings and strategies in response to sexual violence to such an extent that they often viewed rape as a tool of racial oppression, and focused their efforts on the discrepancy in punishment between white and black convicted rapists. In contrast, radical feminist activists like conceptualized it as the most exaggerated form of patriarchal control, and often ignored the racial undertones in public discussions of rape. At times the two approaches could and did intersect, but the difference in emphasis was almost always a stumbling block to joint activism.

Kimberlé Crenshaw popularized the term “intersectionality” to describe a theory that takes into account the cumulative influence of racism, sexism, and classism. At a 1993 meeting of the National Coalition Against Sexual Assault (NCASA), a national coalition of rape crisis centers, Crenshaw gave a keynote that addressed the disastrous effects of a theory of gender that excludes race and vice versa.\textsuperscript{21} She pointed out that the lack of an intersectional analysis leaves the needs of black women ignored and insures

\textsuperscript{20} Ibid., 2.
that black men are overly penalized. She warned that a penal solution to rape was overly simplistic, as the violence suffered by women comes from several different sources, and thus needs to be addressed with a complex set of solutions.22

Early in the life of the feminist movement, activists held an antagonistic view of the legal system and law enforcement. Many radicals argued stridently against any kind of collaboration with the government, including working with law enforcement and accepting money from the state. Leery of such alliances, these feminists argued that their independence was both implicitly and explicitly empowering. Still, many activists conceded that working to reform the government’s approach to rape was a necessary evil.

The chapter then looks at the anti-rape movement’s incorporation into the tough-on-crime movement, which was in part a byproduct of the anti-rape movement’s mainstream success. Maria Bevacqua’s Rape on the Public Agenda: Feminism and the Politics of Sexual Assault examines what happens to feminist aspirations when they are reconfigured as legislative goals.23 Bevacqua points out that moving anti-rape efforts from the feminist agenda to the public agenda changes the understanding of rape in many ways. For instance, gone is the impetus to revamp gender structures; in its place is the drive to punish and stigmatize the individual rapist. In Bevacqua’s words, rape is converted “from an expression of patriarchy to a heinous crime, and from a tool for the control of women’s bodies to the province of a few criminally minded individuals.”24

Efforts to police blackness that began with the introduction of the 1968 crime bill

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22 Ibid.
23 Bevacqua, Rape On the Public Agenda, 134.
24 Ibid.
continued into the 1970s, when President Nixon declared a “war on drugs.” Michelle Alexander’s *The New Jim Crow* makes the bold claim that the United States criminal justice system has used the war on drugs as a tool for discrimination and repression to such an extent that mass incarceration has become “a stunningly comprehensive and well-disguised system of racialized social control.”

Because women could be narratively framed as perfect victims, the anti-rape movement was in many ways a perfect vehicle for furthering the victims’ rights movement and vice versa. While it initially started as a parallel but deeply related spinoff of the tough-on-crime movement, victims; rights soon developed its own separate agenda. The first hallmark accomplishment of the movement was the passage of the 1984 Victims Of Crime Act (VOCA). Rape crisis centers, in desperate need of money, represented their activities in such a way as to make themselves ideal candidates for VOCA funding. Nancy Matthews’ history of the anti-rape movement’s relationship with the state, *Confronting Rape: the Feminist Anti-Rape Movement and the State* contends that feminist demands and concurrent state responses ultimately “converged at the point of what happens after the fact of violence, a convergence Matthews terms “managing rape.” Managing rape is, of course, in stark contrast to stopping violence. Matthews’ work uses a study of rape crisis centers in California to demonstrate the extent to which the state—under the aegis of the Office of Criminal Justice Programs (OCJP) in this case— influenced the direction of rape crisis work by supporting the therapeutic aspects

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27 Gottschalk, 215.
of the anti-rape movement’s agenda while simultaneously pushing rape crisis centers’ more political messages to the side. As a consequence, rape crisis centers were transformed from sites of feminist activism to social service providers. Organizations that did not go along with the wishes of the OCJP or were too interested in maintaining a collectivist, rather than hierarchical structure, did not receive funding and had a severely shortened lifespan.²⁹

While radical feminists originally brought the issue of rape to the fore, Maria Bevacqua shows that anti-rape activism sometimes allowed feminists to collaborate across ideological lines.³⁰ Despite this, throughout the late 1960s, 1970s, and 1980s NOW had an ongoing if slightly complicated relationship with anti-rape activists. Maryann Barakso’s Governing NOW explores the fluidity of NOW’s politics. The organization mutated from the 1960s, when it was relatively mainstream, to radicalism and heavy involvement in anti-rape activism in the 1970s, and once more in the 1980s when it again became more mainstream, focusing on electoral politics. This fluidity affected the extent and quality of NOW and NOW LDEF’s alliance with groups focused entirely on sexual violence.

**Rape and the Law**

The relationship between violence against women and the law was famously addressed by a number of pioneering feminist theorists. Estelle Freedman’s Redefining Rape points out the extent to which understandings of rape have been tied to ideas about

who is—and is not—a citizen.\textsuperscript{31} The exclusion of women from voting and lawmaking contributed to the sense that sexual crimes against them (by men enjoying these privileges) were immune to prosecution. Indeed Catharine MacKinnon’s \textit{Feminism Unmodified} contends that because the American legal system uses maleness as the standard, women are always judged by the extent to which they are different from men.\textsuperscript{32} These differences, MacKinnon argues, ultimately create a system of inherent inequality when they are used to disadvantage women. Carol Smart’s \textit{Law, Crime and Sexuality: Essays in Feminism} examines the reciprocal constitutive relationship between the public and legal understandings of rape.\textsuperscript{33} Smart explores the means by which the legal construction of rape shapes the wider understanding of the crime just as the layman’s understanding of the crime necessarily helps construct the law. Smart agrees with MacKinnon that the hidden gendering of concepts is widespread and applies this concept to the rape trial itself, which she understands as a mode of sexualization of women’s bodies.\textsuperscript{34} Women’s overly sexualized bodies, Smart argues, are presented as open or vulnerable to the desires of men. Indeed, Smart argues that women’s bodies are what she terms “sexed,” meaning that sexualized meanings are attributed to the corporeality of women.

Chapter Two begins by asking several questions about the introduction of VAWA. Why did Biden decide to introduce VAWA at all? Why did he decide to introduce VAWA when and in the form that he did? Who wrote the bill’s different

\begin{itemize}
\item\textsuperscript{32} Catharine A. MacKinnon, \textit{Feminism Unmodified: Discourses on Life and Law} (Cambridge: Harvard University Press, 1987).
\item\textsuperscript{33} Carol Smart, \textit{Law, Crime and Sexuality: Essays in Feminism} (London: Sage Publications, 1995).
\item\textsuperscript{34} Ibid, 84.
\end{itemize}
sections and what was the relationship between authorship and content? How were those who worked at NOW LDEF, an organization that had not been actively involved in the anti-rape movement, galvanized to work for VAWA’s passage? And why was Nourse so eager to enlist NOW LDEF’s services and support? A close look at competing and contradictory claims about VAWA’s introduction and authorship reveals a great deal about the complex juggling act used by those who supported the legislation to prove their feminist credentials.

Next, the chapter examines VAWA’s individual titles. In addition to Safe Streets for Women, Safe Homes for Women, and Civil Rights for Women, VAWA included Equal Justice for Women in the Courts, which included measures for judicial education; National Stalker and Domestic Violence Reduction, which authorized the federal government to access criminal justice databases; and Protections for Battered Immigrant Women and Children, which allowed beaten immigrant women to sue for United States citizenship.

Chapter Three explores the strategy Goldfarb and Reuss employed to help the task force garner support for VAWA both from members of Congress and from the public at large. Because VAWA could be packaged as two bills in one—one part law enforcement measures and one part civil rights remedy—task force members could present the bill as a civil rights coup or a blow against crime, tailoring their message to their audience or audiences. Because the task force was in the unusual position of having to gather support for a bill supposedly promoting civil and women’s rights that many civil rights and women’s groups shied away from, Reuss worked to gather the support of unions,
religious groups, and others less concerned with the legal construction of civil rights law and more prone to endorse law enforcement measures.

Indeed, some of the fiercest opposition that VAWA faced was from the ACLU’s Women’s Rights Project (WRP) and the NWLC, both of which saw a host of dangers inherent in VAWA. Among the things they feared were the hyper-punitive nature of VAWA’s law enforcement and mandatory arrest measures and what they saw as the troublesome construction of the civil rights remedy. Isabelle Katz Pinzler of the WRP and Brenda Smith of the NWLC worried that a remedy covering only gender could potentially erode the civil rights of blacks and other minorities. Evidence of feminists vying for legitimacy can be found in the fraught relationship between NOW LDEF and anti-rape and anti-domestic violence groups outside Washington D.C. When writing her dissertation, “Legal Momentum: NOW-LDEF’s Role in Shaping Policy on Domestic Violence and Welfare Reform,” sociologist Margaret Holmes conducted extensive interviews with politicians, advocates, and activists.35 Many anti-rape activists were, at best, perplexed and, at worst, chagrined by NOW LDEF’s outsized role in VAWA.36 Because NOW LDEF itself had no history of working on either rape or domestic violence legislation, smaller rape crisis groups and some domestic violence groups questioned the authenticity of NOW LDEF’s effort to pass rape-related legislation.

Chapter Four expands upon other analyses of VAWA’s discursive structure to shine a light on the entrenched representation of women’s victimization, the rapist’s

36 Ibid., 25.
criminality, and the politician’s redemptive qualities.\(^37\) It provide a close textual reading of VAWA itself as well as of the reports and hearings from the 101\(^{st}\), 102\(^{nd}\), and 103\(^{rd}\) Congresses that make up VAWA’s official historical record.

Caroline Picart’s work highlights the difficulty of presenting women who have been raped or experienced domestic violence as anything besides victims, and those who have not as maintaining agency.\(^38\) She suggests that in presenting a strict dichotomy between women who are victims and women who are not, VAWA oversimplifies the complexity of women’s role(s) in society, ignoring a central message of feminism.\(^39\) Indeed VAWA’s vision of women as generic crime victims reified women’s victimization to a degree that anti-rape activists—who purposefully tried to excise the word “victim” from their vernacular, replacing it with the less evocative and more empowering term “survivor”—had gone to great lengths to avoid. Furthermore, VAWA’s merging of the two very different crimes of rape and domestic violence into the single category “violence against women” put added emphasis on women’s supposed victimization, something these terms shared. Nor have scholars addressed the extent to which women were encouraged to perform their victimization during hearings, and the multiple ways in which the writers of Congressional reports capitalized on the image of the woman as victim to bolster their case for VAWA’s necessity.

In a similar manner, VAWA included intrinsic assumptions about the nature of the rapist. Several scholars have already examined how VAWA itself rhetorically

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\(^38\) Picart, 100-105.

\(^39\) Ibid.
constructs the rapist. For instance, “Reinforcing the Myth of the Crazed Rapist: A Feminist Critique of Recent Rape Legislation” by law professor Christina E. Wells and lawyer Erin Elliott Motley posits that VAWA, while presented as feminist, in reality substantially undermined feminist efforts by reinforcing the notion that men who rape are “brutish male aggressors and sex-crazed deviant sociopaths.” Aya Gruber’s “Rape, Feminism and the War on Crime” is of a piece with “Reinforcing the Myth of the Crazed Rapist.” Gruber argues that the act of addressing sexualized violence solely through criminal law supports the view that the prevalence of sexual abuse is a the result of individual deviance and not the result of women’s impoverished socio-economic status and men’s “normal” behavioral practices. In this way anti-rape legislation has privileged a criminal, rather than a feminist, understanding of rape.

None of these scholars has examined the extent to which the actual architecture of VAWA itself—moored to the historic framework of the 1968 crime bill and further embedding anti-rape efforts in the structure of anti-criminality—reinforced the idea that the rapist was a crazed black stranger stalking the streets. The imagery of women victimized by criminals lurking in the streets set the stage perfectly for the idealized politician/savior to step in and save the day; in one hearing and report after another politicians indeed presented themselves as doing just that. The message of women’s empowerment that had been woven into the fabric of early rape crisis centers had all but disappeared in the rush to prosecute, supposedly on women’s behalf.

40 Wells and Motley, 127.
DESCRIPTION OF SOURCES AND METHODOLOGY

Claire Bond Potter begins her introduction to Doing Recent History with a quote by Arthur Schlesinger Jr. exhorting historians of the recent past to be completely aware of “the inadequacy of the present moment for any sort of lasting judgments.” Indeed, writing about the recent past can put severe limits on one’s perspective, as well as limit the number of books available to support and contextualize research. It also means facing limits on archives that are closed or restricted to researchers for a specified period of time that ends many years in the future.

As a plus, writing a history of the recent past makes it possible to interview live sources. I gained invaluable information speaking to those involved in the day-to-day machinations of VAWA’s passage. I spoke to NOW LDEF’s Sally Goldfarb and Patricia Reuss. Brenda Smith, who played a central role in attempts to prevent VAWA’s passage while working at the NWLC, helped me flesh out my understanding of those efforts. I learned more about the relationship between NOW LDEF and domestic violence advocates by speaking to Karen Artichoker of the Rosebud Sioux Tribe and Joan Zorza of the National Center on Women and Family Law, both of whom traveled to Washington D.C. to work on the bill. Zorza redlined the first version of VAWA for Nourse. Joanne Howes, who owned a public relations firm active in Washington D.C., told me about being hired by the Family Violence Prevention Fund (FVPF) to lobby for VAWA. Members of Bass and Howes were involved in last-minute negotiations between

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43 The firm was Bass and Howes.
Biden’s office, NOW LDEF, and the LCCR over the wording of the civil rights remedy.

Primary sources consulted included NOW’s and NOW LDEF’s records. The minutes of the meetings of the VAWA task force made it possible to plot the development and growth of task force membership to discern the relationship between task force members and track the relationship between the task force and congressional staff. Most of the minutes were typed for distribution, but in several instances handwritten notes were particularly revealing. Margaret Holmes gave me copies of the transcripts of her interviews with a range of subjects, including NOW LDEF staff, congressional staff, and activists. These interviews helped me clarify my understanding of grassroots activists’ attitudes toward NOW LDEF’s central role in VAWA’s passage.

In addition to investigating the above sources, I also examined VAWA’s various drafts as well as the bill’s collateral materials—the reports and hearings that make up its official historical record. I provide a close reading of these in an effort to uncover their implicit and explicit assumptions about women’s vulnerability, the identity of the rapist, and the role of politicians embedded in both the bill’s language and structure.

Ultimately VAWA’s passage narrowed the range of possible federal responses to rape and domestic violence at the same time that it pushed the national conversation about these crimes to the right. Because lawyers steeped in the tradition of civil rights, such as Brenda Smith and Isabel Katz Pinzler, were more accustomed to focusing on rape’s role as a tool of racial oppression, they were particularly attuned to the possibility that efforts to craft anti-rape legislation could go devastatingly off course. Those who came from a stricter—and whiter—tradition of feminist jurisprudence were focused more narrowly on women’s rights and could perhaps too easily lay aside the worries of
their peers. That VAWA was supported by the latter over the objections of the former seems in hindsight to implicate legal feminists in the creation of the carceral state, but it is nowhere evident that those working on VAWA twenty-five years ago could have foreseen the extent to which it would push the movement they were so dedicated to one step closer to co-optation by those bent on pursuing law and order. Instead, that some feminists wholeheartedly supported VAWA is a reminder that even actions taken with the best of intentions can have very ugly consequences.
CHAPTER 1
THE HISTORICAL ORIGINS OF THE VIOLENCE AGAINST WOMEN ACT

THE RISE OF SECOND-WAVE FEMINISM

Between the mid-1950s and early 1960s, civil rights activists brought racial justice to the center of the nation’s political consciousness through direct action protests, non-violent resistance, and state and federal legal battles. The civil rights movement’s success in eliciting a federal response to race-based discrimination raised expectations among feminist activists for a comparable response, causing President Kennedy to create the Presidential Commission on the Status of Women (PCSW) by executive order in December 1961.\(^4^4\) With the commission’s creation, feminists felt ready to tackle the impasse between those who favored and those who opposed passage of an Equal Rights Amendment (ERA). Organized labor’s support for protective legislation made union members particularly outspoken opponents of the ERA.

Pauli Murray, a civil rights lawyer whose career trajectory would be shaped by the tensions between the feminist and civil rights movements, was on the commission’s Committee on Civil Rights. Murray recommended the creation of a litigation campaign for equal rights for women’s similar to that used by the NAACP to fight for equal rights for blacks.\(^4^5\) Murray called for stronger ties between advocates for women’s and civil rights. The PCSW’s final report incorporating Murray’s ideas was published in 1963, the same year as Betty Friedan’s *The Feminine Mystique*. While the runaway success of Friedan’s book is widely known, the PCSW’s report, too, was something of a hit. Over 200,000 copies were ordered from the Government Printing Office in the first year of publication, bringing a wide number of previously-ignored


\(^{4^5}\) Ibid., 351-352.
into the realm of public debate.\textsuperscript{46} The PCSW’s final report, “American Women,” declared that equality should be achieved through a Supreme Court decision supporting women’s protection under the Fourteenth Amendment's equal protection clause. It was noncommittal on the ERA, stating that as women were already entitled to constitutional protection against discrimination, it could not immediately endorse a constitutional amendment. By not explicitly objecting to the ERA, the committee pointedly left it on the table as an option. At issue was the extent to which race and gender should receive similar treatment and the benefits of equal protection promised by the Fourteenth Amendment, as opposed to the prohibition on classification by gender proposed by the ERA.

Legally-minded feminists were much more successful at creating legal precepts based on a specific class of injury to particular women than at establishing more universal protections based on gender. One of their few unequivocal successes was the addition of the category of sex—joining race, color, religion and national origin—in Title VII of the 1964 Civil Rights Bill, which prohibited employment discrimination. Inclusion of sex undermined the necessity for further protective legislation and formalized a connection between the fights for black and women’s rights. In response to Title VII’s passage, Murray penned a piece called “Jane Crow and the Law: Sex Discrimination and Title VII,” which drew comparisons between Jim Crow laws and discriminatory laws against women.\textsuperscript{47}

Murray and several other women who had been on the PCSW created a loose network, known in feminist circles as the “Washington Underground,” to continue the PCSW’s momentum.\(^48\) In 1966 a number Murray and a number of fellow Washington Undergrounders attended the Third National Conference of State Commissions on the Status of Women, a successor to the PCSW. Frustrated at the slow pace with which the Equal Employment Opportunity Commission (EEOC) was responding to Title VII cases, several of these women met hastily in the hotel room of another attendee, political activist Betty Friedan, where they decided to form what one feminist called a “NAACP for women.” Murray contributed to NOW’s statement of purpose, which proclaimed that the goal of the organization was to bring women into full participation in the mainstream of American society.\(^49\) The statement railed against the EEOC’s unwillingness to enforce Title VII on behalf of women, many of who were “Negro women, who are the victims of the double discrimination of race and sex.” It continued:

> There is no civil rights movement to speak for women, as there has been for Negroes and other victims of discrimination. The National Organization for Women must therefore begin to speak. We believe that the power of American law, and the protection guaranteed by the U.S. Constitution to the civil rights of all individuals, must be effectively applied and enforced to isolate and remove patterns of sex discrimination, to ensure equality of opportunity in employment and education, and equality of civil and political rights and responsibilities on behalf of women, as well as for Negroes and other deprived groups.\(^50\)

From the beginning, legal change was central to NOW’s goals and identity. Also from the beginning, NOW had an intricate and confused relationship with the civil rights movement. Although its statement of purpose pointed out the double bind of black women, it also distanced itself from them by referencing the separate categories of “women” and “Negroes.” It also

\(^{48}\) Betty Friedan, "It Changed My Life," 76-83. Quoted in Georgia Duerst-Lahti, 250.


actively linked the struggle for women’s rights to that of civil rights, in this instance positing a direct parallel between the two.

During its first years, NOW focused on petitioning the EEOC to hold hearings to enforce Title VII. By 1967, the EEOC agreed to hold hearings, and NOW had set up picket lines at five national EEOC offices to protest newspapers’ routine publication of sex-specific “Help Wanted” ads. The following February, a member of NOW’s legal committee filed a suit against the commission. In August 1968 the EEOC bowed to pressure and barred segregated ads.

At NOW’s second national conference, in 1967, members voted to endorse passage of the ERA. Several women who had been working for ERA passage for decades thwarted attempts made by younger activists to create more expansive wording for the amendment. Working toward ERA passage ultimately monopolized the collective attention and energy of NOW members, and drained their attention and resources from other battles. Historian Serena Mayeri argues that decisions such as these help to explain the emergence of a formalistic, exclusive, and impoverished notion of equality that severed NOW’s activities from those of other social justice causes and ensured that NOW’s victories benefited the privileged classes at the expense of the poor and women of color.51 Disappointed with what she saw as NOW’s shortsighted decision, Murray resigned from the NOW board.52

NOW’s legal committee began its life by working for the Title VII litigation for the employment equality that had been at the root of its founding.53 To focus more sharply on

53 By 1968, the separate legal defense organization they had hoped for had not yet been founded, and several lawyers left NOW in frustration, taking two other landmark Title VII cases with them and forming a new organization. In March 1969, one-time NOW attorney Sylvia Roberts argued and won Weeks v. Southern Bell Telephone, the first sex discrimination case appealed under Title VII. She argued in the Fifth Circuit U.S. Court of Appeals that a thirty-pound lifting requirement that restricted Lorena Weeks, a secretary, from higher-paying
legislation, the committee formally split off in 1970 to become the NOW Legal Defense and Education Fund.\textsuperscript{54} Over time it expanded its legislative focus to include abortion rights and Title IX, and worked with NOW to promote passage of the ERA.\textsuperscript{55}

Because of the fractious and volatile nature of early second-wave feminist politics, NOW LDEF was just one of no fewer than nine organizations that broke away from NOW in its early years. Of these, four—including NOW LDEF—were created as friendly spin-offs and five were created as the result of angry schisms. In the schism category, Women’s Equity Action League (WEAL)—the organization that would give Reuss her entrée into Washington politics—split off from the National Organization for Women in 1968 because of its objection to NOW’s stance on abortion and frequent use of picketing as a political tactic.\textsuperscript{56}

**PRE-FEMINIST IDEAS ABOUT RAPE**

From the nation’s early years, rape had been represented as a crime of lust, and men depicted as unable to control themselves. Beginning in the twentieth century, Sigmund Freud and

\textsuperscript{54} NOW LDEF’s bylaws dictated that the membership of its board be made up primarily of NOW members. Legally, NOW LDEF was a totally separate organization but was vulnerable to changes in NOW. Routine elections in NOW meant changes to the LDEF board that LDEF had little or no control over. Kretschmer discusses NOW LDEF as an example breakaway from NOW, and examines the extent to which it was and was not able to establish its own identity. Although several other organizations have branched off relatively uneventfully from NOW in the course of its lifetime, NOW and NOW LDEF have had a complicated relationship from the start. The fact that they often shared not only office space but also board members meant that there was misunderstanding about the independent identities of both organizations. Because NOW was by far the larger organization, NOW LDEF’s activities were often attributed to NOW itself. The similarity in the two groups’ names (which NOW LDEF eliminated with a 2004 name change to Legal Momentum) was, of course, the basis for much of the confusion. In addition, NOW LDEF has at times served as counsel on cases in which NOW was the plaintiff, further blurring the boundary between the two organizations. Kelsy Noele Kretschmer, “Children of NOW: Pathways and consequences for breakaway organizations from the National Organization for Women” (Ph.D. Diss., University of California, Irvine, 2010).

\textsuperscript{55} As Muriel Fox, president of NOW LEF from 1978-1981 explained, “NOW LDEF worked very hard. We really shot our entire treasury and everything to get the ERA passed, and do whatever we could within our 501(c)(3) restrictions. We worked very, very hard for the ERA and we worked very closely with NOW.” Susan M. Hartmann, *The Other Feminists: Activists in the Liberal Establishment* (New Haven: Yale University Press, 1998), 84.

\textsuperscript{56} Kretschmer, 70
his peers, as well a coterie of newly minted sexologists, began to explore the motivations behind rapists’ behavior. As Estelle Freedman has documented, while theories abounded, most included the belief that rape was a perversion and that rapists—termed sexual psychopaths—were mentally ill. All of these theories negated the rapist’s responsibility for his actions since he was considered unable to control his impulses. During the immediate post war years, twenty-one states passed laws calling for rapists to be confined indefinitely to mental institutions rather than locked up. The idea that those who raped were mentally ill helped to police boundaries between supposedly normal and abnormal sexual behavior.

Representations of rape were often inextricably bound to ideas about race. In the South, the fusion of sexual and racial violence served as a tool of social coercion by which whites intimidated blacks into submission. Black male sexuality was considered dangerous and threatening, and rapists were often assumed to be black men. While black women were seen as “loose” and “rapeable,” white females were portrayed as pure and virtuous. The many public depictions and discussions of rape, of men who raped, and of women who were raped all shared an emphasis on the individuals involved in the crime. Little or no attention was paid to the social factors contributing to the crime and its frequency. At its core, much of the conflict about rape’s definition was a struggle over gender roles, ownership of women’s bodies, and contested access

to female sexuality.

Because of the forbidding thicket of rape laws and the taboo nature of the subject, NOW did not immediately see rape as a target for legislative change. In the late 1960s, judicial understandings of rape had remained virtually unchanged from their origins in eighteenth-century British common law. Rape laws in most states covered only those instances in which a man forced a woman who was not his wife to have sexual intercourse under the threat of bodily injury, she resisted strenuously, and there was outside corroboration. Before rape became the subject of feminist anger and inquiry, there had been no legal check on the assumption that women were complicit in the act. The idea that women were “asking for it” underwrote common and even legal understandings of the law. Almost always, the burden of proof for convincing a jury that a rape had occurred lay entirely on the survivor. Widespread corroboration requirements were hard to meet in a crime that, more often than not, is committed in isolation. Because of the skepticism they met in court, and the low rate of conviction for rape, survivors often hesitated to report the crime.

**Radical Feminism and The Emergence of Rape as a Feminist Issue**

The impulse to examine rape grew among radical feminists who were part of a subset of the feminist movement as a whole. These activists had their start in the political movement known as the New Left, a largely white youth movement that coalesced around the fight for racial justice and against the Vietnam War. They chose the name New Left to emphasize their

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relationship to the socialists and communists of the 1930s and 1940s and found connections between personal oppression and politics at large.\textsuperscript{64} Women in the movement were sorely disappointed when they began pushing for a New Left analysis of liberation to incorporate gender oppression and were heartily rebuffed.\textsuperscript{65} They were particularly disturbed by their treatment as they began challenging male supremacy inside the movement. Arguing that they were exploited as sexual objects, denied access to leadership roles, and consigned to menial tasks, many of these women became disaffected with the New Left and left to form radical feminist groups, which maintained a focus on the political nature of the personal.\textsuperscript{66}

Unhappy with the measured legal reform of those who had started the feminist movement, these groups called for a complete restructuring of society. In her 1970 book \textit{The Dialectic of Sex: The Case for Feminist Revolution}, Shulamith Firestone argued that the feminist revolution is based on—and surpasses—the socialist revolution.\textsuperscript{67} While existing socialist societies had tried to expand women’s roles without fundamentally altering them, the goal of the feminist revolution as defined by Firestone and others was to end the performance of manufactured gender roles.\textsuperscript{68}

In the words of historian Maria Bevacqua, radical feminists loved “to analyze, politicize, and publicize the most personal and potentially offensive issues in women’s lives.”\textsuperscript{69} They quickly began hosting private consciousness-raising groups as well as larger public speak-outs. At these events, women openly discussed their own experiences, including the enormous problem of rape, which they saw as symptomatic of fundamental economic and power

\begin{itemize}
\item \textsuperscript{64} Jacquet, 171.
\item \textsuperscript{65} Sara M Evans, \textit{Personal Politics: The Roots of Women's Liberation in the Civil Rights Movement and the New Left} (New York: Alfred A. Knopf, 1979): 89.
\item \textsuperscript{66} Ibid., 25.
\item \textsuperscript{68} Ibid.
\item \textsuperscript{69} Maria Bevacqua, “Coalition Politics in the Antirape Movement.”
\end{itemize}
imbalances between men and women. Unlike larger national feminist organizations—understandably constrained by pre-existing commitments to a particular brand of legal change and by a fear of appearing too outlandish or militant to their legislative and administrative partners—these radical feminists spoke bluntly about the problem of rape. In addition, radical feminism’s belief that “the personal is political” made those inspired by it eager to talk about the particulars of their own experiences.\(^70\)

Susan Brownmiller, who wrote the groundbreaking book *Against Our Will* and helped make rape a national topic, attributed her sensitization to the issue of rape to her involvement in such a consciousness-raising group.\(^71\) Her totalizing description of rape in *Against Our Will* exemplifies radical feminist thought on the topic, “From prehistoric times to the present…rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.”\(^72\) The radical feminist movement gave birth to a body of feminist scholarship that articulated a new theoretical understanding of rape. *Against Our Will* set the stage for much of the scholarship that emerged from the movement, many of which recognized rape as an act of violence, not a crime of passion.\(^73\) Scholars and activists redefined rape as a power-motivated act of violence rather than one of unbridled sexuality, one of many mechanisms for men to control women in a society where anyone *can* rape and anyone can be raped.\(^74\)

In 1972, activists in Washington, D.C. and Berkeley created the first two rape crisis centers. They sought to address the issue of rape as radical feminists understood it, and as such

\(^{70}\) The phrase, “the personal is political,” was coined in an essay of the same name written by feminist activist Carol Hanisch. Carol Hanisch, “The Personal Is Political,” in *Notes from the Second Year Women’s Liberation: Major Writings of the Radical Feminists*, ed. Shulamith Firestone and Annie Koedt (New York: Radical Feminism, 1970)

\(^{71}\) Brownmiller, 3.

\(^{72}\) Ibid, 33.

\(^{73}\) Donat and D’Emilio, 35-49.

\(^{74}\) Ibid.
both provided advocacy for survivors and tried to restore the sense of control that sexual assault had destroyed.\textsuperscript{75} Employing principles of participatory democracy borrowed from the New Left, rape crisis center volunteers tried not only to make day-to-day life easier for rape survivors, but also to embody on a micro level the kind of society they hoped feminism could create. To this end, they were run as collectives with all members taking part in decision-making.\textsuperscript{76} Women survivors were seen as new recruits to the movement as a whole. The first centers prompted the founding of other centers around the country; by 1976 more than 400 had been created.\textsuperscript{77}

**Black Feminism and Rape**

Despite the fact that several of the founders and early members of NOW saw the correlation between feminism and civil rights and considered themselves both feminists and civil rights activists, there was always a complicated relationship between the mainstream feminist and civil rights movements. At times black women active in the civil rights movement did not believe that NOW and other majority white feminist organizations represented them, fearing that white women did not see the interconnection between sexism and racism. As one early black anti-rape activist remembered, “I certainly saw the urge to try to make people split and choose; if you’re black, you can’t be a feminist and if you’re a feminist, you’re not black.”\textsuperscript{78}

For this reason, in the early 1970s black feminists created their own predominantly feminist groups, such as the National Black Feminist Organization (NBFO), to address issues

\textsuperscript{75} Bevacqua, 23.
\textsuperscript{77} Bevacqua, “Coalition Politics,” 75.
that were unique to black women. NBFO members were not only frequently alienated from white feminists, but like white women who had departed the New Left, also frustrated with the misogyny they found in the black power movement. NBFO’s statement of purpose declared:

We will continue to remind the Black Liberation Movement that there can’t be liberation for half the race. We must, together, as a people, work to eliminate racism, from without the black community, which is trying to destroy us as an entire people; but we must remember that sexism is destroying and crippling us from within.

Many black feminist activists recognized that race was essential to discourse about rape and had to be considered when constructing a history of rape in this country. For instance, Angela Davis’s 1975 piece in *Ms.* magazine, “Joan Little—The Dialectics of Rape,” was a case study of the many ways that racism and sexism fed off of one another. Joan Little was a black prisoner who had, in self-defense, killed the white jailer who tried to rape her. When discussing the Little case, Davis argued that the one feature that remained constant in different rape cases was “the overt and flagrant treatment of women, through rape, as property.” If particular rape cases expressed the different modes in which women were handled as property, Davis reasoned,

…when a white man rapes a black woman, the underlying meaning of this crime remains inaccessible if one is blind to the historical dimensions of the act…Whenever a campaign is erected around a black woman who has been raped by a white man, therefore, the content of the campaign must be explicitly antiracist. And, as incorrect as it would be to fail to attack racism, it would be equally incorrect to make light of the antisexist content of the movement.

Because white women ran the majority of rape crisis centers, the complicated relationship between black and white feminists extended to the movement’s on-the-ground presence.

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80 Roth (2004).
83 Ibid.
For instance, the founders of Philadelphia’s first rape crisis center, Women Organized Against Rape, who were themselves predominantly white, told a researcher that expanding their membership base to include black and working class women was difficult largely because local blacks were wary of the anti-rape movement and saw it as involved in a political fight that ultimately served whites and imprisoned blacks. They also had trouble recruiting black women leery of the fraught tradition of blacks lynched for the imagined rape of whites.

This tension ebbed and flowed throughout the history of the second wave and had not disappeared by the time VAWA was introduced in 1990. Even some points of contention remained consistent; black women consistently had a more holistic view of women’s oppression and—as both a cause and effect of this fact—placed more emphasis on civil rights.

**Rape and Law Enforcement**

From the start of the anti-rape movement, activists worried about whether and to what extent they should ally themselves with law enforcement efforts to address rape and domestic violence. Although aware of the compromises inherent in working with public officials—whose apathy and disregard many believed had contributed to and helped perpetuate a culture that condoned rape—many feminists believed compromise was necessary to smooth the path for women who wished to prosecute their attackers. Likewise, police and prosecutors saw the utility of a working relationship with members of a radical feminist movement whose politics they did not always support. Mary Ann Largen, an activist involved in NOW’s first forays into anti-rape activism, pointed out the bind radical feminists faced when they worked with those whom they

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84 Simon, “Social Movements and Institutionalization: Rape As A Case Study,” 52.
85 Ibid.
had implicated in rape’s existence to try to address the problem of rape itself:

…while the women’s movement continues to focus upon the societal sexism inherent in rape, society itself is taking up the rape issue under the “law and order” banner. This banner provokes emotion but fails to deal with the source of the problem; it is a Band-Aid solution to a problem which requires major surgery.86

Over time, advocates and members of law enforcement began collaborating on numerous projects., and rape was added to the agenda of police precincts and district attorney's offices throughout the country. New York was at the forefront of many such endeavors. In 1972 the New York City Police Department formed one of the first rape analysis units in the country.87 Then, in 1974, the Manhattan District Attorney founded the country’s first sex crimes prosecution unit, dedicating an entire bureau to prosecuting rape—something previously not heard of.

**Rape As A Mainstream Feminist Issue**

While it is not untrue that the feminist movement consisted of a more conservative liberal branch represented by NOW and a radical fringe, at times the movement could be much more fluid. NOW, NOW LDEF, and other feminist organizations could and did change strategies to suit the issue they were working on or the political climate they faced.88 By 1973, amidst all the publicity that anti-rape activists had garnered, the New York City chapter of NOW began working with the local group New York Women Against Rape to develop a legislative campaign

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87 Brief history of New York Women Against Rape, January 4, 1973, Box 1, Folder 1, New York Women Against Rape Papers, Schlesinger Library, Radcliffe Institute, Harvard University.
88 Freedman, *Redefining Rape*, 44.
to lobby for rape law reform. In addition, the national conference of NOW formed the NOW Task Force on Rape to propose revisions to state laws. In many cities throughout the country local NOW groups had their own local rape task forces that coordinated with the national NOW Task Force on Rape.

The first reformed state law in the country, Michigan’s Criminal Sexual Conduct Act, was passed in 1974 as the result of the efforts of the members of the Michigan Women’s Task Force on Rape. They reached out to the Ann Arbor City Council, which approved the creation of a community-wide anti-rape alliance. Two years later, the Ann Arbor group joined others from southeastern Michigan to create a statewide women’s task force on rape. The task force met with the Judiciary Committee of the state’s House of Representatives and local law enforcement agencies, and together worked to pass the Criminal Sexual Conduct Act. The act bucked the legislative trend of focusing on the consent or resistance of the survivor and instead focused on the behavior of the rapist. It also served as a template for those working to reform state laws throughout the country.

To those who collaborated with law enforcement to pass legislation, framing rape law reform as crime control seemed to be the most efficient route to meaningful legislative action. Reform efforts had four main components. First activists tried to remove the “non-consent requirement,” so that the prosecution no longer had to prove that the survivors of rape had actively resisted their attackers. Next, instead of one umbrella category of rape, activists sought

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89 Maria Bevacqua’s work shows that anti-rape activism was one of the areas in which coalitions of various factions of the feminist movement were able to strategize together and blur the lines between groups and issues. While this was true to a certain extent, ultimately as Nancy Matthews shows radicals could not continue to stay in rape crisis centers that began working closely with that state. Bevacqua, “Coalition Politics in the Antirape Movement,” 165.
90 Freedman, Redefining Rape, 68.
92 Ibid., 29.
to create a hierarchy of sexual offenses, with a gradated system of penalties. Third, through so-called “rape shield laws,” activists tried to limit defense teams’ ability to bring to trial information about a survivor’s supposedly lurid sexual history as evidence that she had somehow prompted her attack, because such evidence was deemed relevant only when the past sexual activity in question was the defendant. Finally, activists attempted to make sure that the law would protect previously vulnerable groups.95

Following Michigan’s lead, activists across the country worked to change the architecture of their own state legislation. By the end of the decade, thirty-eight states had removed corroboration requirements from their rape laws.96 Because reform was enacted state by state, there were huge variations in its depth and breadth. In many states, it was nearly impossible to institute gender neutrality, and it remained legal for a man to rape his wife. Within 20 years, every state had adapted legislation similar to Michigan’s groundbreaking rape shield law.97 However, state rape shield laws were far from complete.98

These cooperative efforts of feminist activists and theorists allied with the juridical and law enforcement apparatus led to the first changes in rape laws. However, while a portion of the movement saw the utility of partnering with law enforcement, many would ultimately choose not to maintain the alliances they had created. Having brought rape to the attention of a broader public, including that of the police, they chose to look elsewhere for support because of concerns about having their movement subsumed. The same year the Michigan law was passed, members of the pioneering Washington D.C. Rape Crisis Center founded the Feminist Alliance Against

95 Ibid., 35.
96 Marsh, 35.
98 Laws often listed specific circumstances under which particular testimony could be admitted and forbade exemptions everywhere else; for instance, New Jersey gave judges wide discretion in deciding when to permit testimony about the victim’s sexual proclivities.
Rape (FAAR) to address the potential co-optation of the movement by government agencies.\textsuperscript{99}

FAAR’s founding document stated:

> We feel there is a need for communication nationally (and internationally) and for more solidarity among our projects. This is particularly important at a time when government agencies and politicians are beginning to take an interest in the issue of rape. Because we see this interest as a potential threat to feminist control of the rape issue, we wish to form a united front to ensure that the interest in rape works for us rather than against us.\textsuperscript{100}

FAAR emphasized rape prevention—as opposed to the prosecution of the crime once it had already occurred—and sought to maximize the impact of feminist institutional reform to increase women’s control.\textsuperscript{101} Early FAAR members worried that:

> Incarceration does not change the societal attitudes that promote rape. In a society that deals with symptoms rather than causes of problems, prisons make perfect sense. Confronting the causes of rape would threaten the basic structure of society. By actively encouraging women to prosecute a rape we are helping to reinforce the legitimacy of the criminal justice system…\textsuperscript{102}

In 1973, Largen, who’d become the coordinator of NOW’s Task Force on Rape, worked closely with liberal Republican Senator Charles Mathias (R-MD) to craft a bill for the federal funding of rape crisis centers and the establishment of a national center for rape prevention that would run under the auspices of the National Institute of Mental Health.\textsuperscript{103} The bill was introduced to the Senate Committee of Labor and Public Welfare’s Subcommittee on Health. It called for the center to serve as a clearinghouse for studies on rape and offer training programs for various professionals who came into contact with rape survivors, such as doctors and policemen. In addition to funding rape crisis centers and creating a national center, the bill authorized a national study of the efficacy of state rape laws and was incorporated into a bigger


\textsuperscript{100} Ibid.

\textsuperscript{101} Ibid.


\textsuperscript{103} Jacquet, 186.
health services act.

As a piece of anti-rape legislation, the bill framed rape as a public health issue and thus can be used as a point of comparison to underscore the implications of the varying approaches to such legislation. It is easier to consider rape a systemic societal concern, rather than merely a gendered crime problem, when one sees how it affects the public. As if to emphasize this, the text of the bill called for an “examination of the relationship, if any, between traditional legal and social attitudes toward sexual roles, the act of rape, and the formulation of laws dealing with rape.”[^104] Thus, the bill suggested the possibility of a causal relationship between socially dictated sex roles and the high incidence of rape.

In 1977, Congresswoman Elizabeth Holtzman (D-NY) introduced a federal rape shield law, the Privacy Protection for Rape Victims Act, which limited a defendant’s ability to cross-examine rape complainants about their past sexual behavior.[^105] Holtzman argued that the amendment would “protect women from both injustice and indignity” by restricting “the vulnerability of rape victims to such humiliating cross-examination of their past sexual experiences and intimate personal histories.”[^106] With the Privacy Protection Act, federal legislation followed a trend that had begun at the state level as an effort to counteract the common defense tactic of implying that women who had been raped had somehow invited the attack through their promiscuity. President Carter signed the bill into law, lauding its value for ending “public degradation of rape victims” and for encouraging the reporting of rape.[^107]

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[^107]: Bevacqua, Rape on the Public Agenda, 193.
Domestic Violence on the Federal Agenda

From the start, domestic violence activists were less radical than their anti-rape counterparts.\textsuperscript{108} Gottschalk explains that the domestic violence movement was more vulnerable to co-optation and compromise than the anti-rape movement for several reasons.\textsuperscript{109} The domestic violence movement started several years after the rape movement, and was rooted in organizations that were service-oriented rather than strictly feminist in scope.\textsuperscript{110} Early shelters were established by churches, YWCAs, and Junior Chambers of Commerce and often did not have a blatantly feminist culture.\textsuperscript{111} Because activists framed domestic violence as a “family issue,” and delivered a deliberately subdued feminist message, law enforcement and legislators were less squeamish about working with them than with their anti-rape counterparts. To a certain extent, the issue of domestic violence was easier to broach in a public venue than rape. As one rape crisis advocate explained, “Police don’t want to talk about anything related to sex.”\textsuperscript{112}

The perception of domestic violence as a non-sexual gendered public crime issue would translate into more consistent funding for domestic violence shelters than for rape crisis centers. The funding, in turn, led domestic violence centers and shelters to align their activities more closely with government priorities.\textsuperscript{113} Feminists succeeded in turning the federal government’s attention to the issue of domestic violence when, in 1979, President Carter established the national Office of Domestic Violence. The Family Violence Prevention Fund put lobbying for

\textsuperscript{108} Gottschalk discusses the parallel but divergent growth of the two movements at length. Gottschalk, 138-142.
\textsuperscript{109} Ibid., 139.
\textsuperscript{110} Ibid., 140.
\textsuperscript{111} Ibid., 141.
\textsuperscript{112} Kata Issari. Telephone interview by author. October 9, 2014.
\textsuperscript{113} Gottschalk, 240.
direct shelter funding at the top of its agenda. This funding became a reality in 1984 with the passage of the Family Violence Prevention and Services Act.\textsuperscript{114}

There was prolonged tension between anti-domestic violence and anti-rape activists. Anti-domestic violence proponents worried that the stigma attached to the sometimes more radical techniques of anti-rape groups, and the greater discomfort associated with speaking about the explicitly sexual crime of rape would make anti-rape activists harmful allies. As one anti-rape activist remembered:

\begin{quote}
It got to a place around funding and access to systems and policy makers where the domestic violence people actually told the sexual assault people, you can’t, we don't want to go with you to talk to these people, and we don't want you there, and we don't want you to align yourselves with us because that will give us domestic violence attention but they won’t around sexual assault.\textsuperscript{115}
\end{quote}

Perhaps because of the distinct histories of rape crisis centers and domestic violence shelters, rape and domestic violence were most frequently addressed in scholarship and practice as completely separate entities. This was not always the case, however. Both activists and scholars at times used the phrase “violence against women.” In 1977, hundreds of women marched against violence against women in Washington D.C. That same year the Metropolitan Detroit Chapter of NOW cosponsored a public policy conference on violence against women, as did Metropolitan State Conference in Denver. However, this approach—combining rape and domestic violence under one umbrella category—was the exception rather than the rule.

\textbf{Post-War Law and Order Meets Feminism: The Emergence of A Victims’ Rights Movement}

The feminist attention to rape emerged at a time when local, state and federal authorities were aggressively pursuing a “tough-on-crime” agenda. The next section of this chapter

\begin{footnotesize}
\textsuperscript{115} Kata Issari. Telephone interview by author. October 9, 2014.
\end{footnotesize}
examines the birth of the tough-on-crime movement and subsequent creation of the Law Enforcement Assistance Administration (LEAA) in the 1968 crime bill. A discussion of the LEAA is also central to any understanding of the trajectory of the anti-rape and anti-domestic violence movements since it not only became a consistent source of funding for feminist centers, it also helped birth the victims’ rights movement, which quickly claimed the violence against women issue as its own. The tendency of feminist organizations—sometimes against their own instincts—to ally with law enforcement initiated the reframing of anti-rape legislation as anti-crime. The creation of the LEAA pushed the feminist movement further along this path and would help to usher in an understanding of women who experienced rape or domestic violence as quintessential victims. Historian Kristin Bumiller has demonstrated how the LEAA ultimately helped secure what she calls “the neoliberal appropriation of the feminist movement against sexual violence.”

Beginning in the 1960s, conservative politicians such as Barry Goldwater, George Wallace, and Richard Nixon made the issue of crime a national priority and pursued a rigorous campaign against crime that continued unabated into the 1970s. In the face of powerful social movements, grassroots protest, the decay of urban centers, and growing civil strife—particularly the race riots which exploded out of urban ghettos—conservative politicians used a “law and order” approach to exploit the public’s concerns over rising crime and civil unrest. The concept of law and order was an amorphous one, blurring the line between unease over the rise of crime with discomfort over changes wrought by the Civil Rights Movement, urban riots, and antiwar protests.

Because of the conflation of civil riots, protests, and crime, tough-on-crime language

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116 Bumiller, 123.
often included coded references to race. As historian Michael Flamm observes: “Law and order…became the vehicle by which urban whites transmitted their antipathy to neighborhood integration and racial violence from the municipal to the presidential arena.” Vesla Weaver extends Flamm’s argument, noting that this strategy both imbued crime with race and depoliticized racial struggle. Proponents of law and order pushed for punishment and control as the primary response to crime. The main policies in the law-and-order playbook were mandatory sentencing lengths, mandatory arrest, mandatory restitution, increased law enforcement presence, and prison expansion.

In 1964, Republican Barry Goldwater made law and order a central theme of his presidential campaign, elevating the fight against crime to a national issue. In the fall of 1964, President Johnson cast his war on poverty as a war on crime. This renewed focus on crime and protection led the federal government to establish several national commissions to study the problem of crime and criminals. President Johnson’s Commission on Law Enforcement and Administration, convened from 1965-1967, carried out three significant pilot studies of victims in 1965. These studies found that crime was going both unreported and unprosecuted and urged increased efficiency for the criminal justice system.

Johnson sent Congress the 1968 crime bill termed by one historian the “mother of all contemporary crime legislation.” One of the bill’s stated goals was allowing Congress to ensure the greater safety of the American people by better coordinating, intensifying, and optimizing state and local law enforcement efforts. For the first time in American history, direct

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118 Ibid., 13.
119 Weaver, 235.
121 Gottschalk, 84.
funding channels were created between the federal government and the criminal justice system. To this end, one of its main objectives was encouraging the adoption of more comprehensive anti-crime strategies. Because it had been formed partially to address urban riots and civil rights protests, it stipulated that monies could be used for the organization of law enforcement units specifically for the prevention and control of violent civil disorders.\(^{123}\) In addition, the bill encouraged the training of community service officers to assist law enforcement agencies and encourage neighborhood participation in crime prevention.\(^{124}\) It also funded the research and development of new approaches to modernize law enforcement and improve statistical record keeping to accommodate the Johnson Administration’s goal of helping local police departments update their data-gathering abilities and, some scholars have argued, enabling them to build criminal profiles of residents and target street patrols more effectively.\(^{125}\)

The LEAA was the grant-making body that would fund such plans. It provided more than $8 billion in federal grants to police departments for equipment, training, and pilot programs. The legislation that ultimately emerged had a distinctly Republican shape.\(^{126}\) Signing the act into law, Johnson declared,

"Today, I ask every Governor, every mayor, and every county and city commissioner and councilman to examine the adequacy of their State and local law enforcement systems to

\(^{123}\) Ibid.


\(^{125}\) Ibid.

\(^{126}\) The bill explicitly acknowledged that crime was a local problem, and claimed that intervention by the federal government was necessary for the coordination and intensification of crime prevention efforts. Its Title I included the following Declaration: “It is...the declared policy of the Congress to assist State and local governments in strengthening and improving law enforcement at every level by national assistance. It is the purpose of this title to (1) encourage States and units of general local government to prepare and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement; and (3) encourage research and development directed toward the improvement of law enforcement..."
move promptly to support the policemen, the law enforcement officers, and the men who wage the war on crime day after day in all the streets and roads and alleys in America.127

Of particular relevance to later anti-crime legislation was the bill’s reimagining of the crime victim as a privileged subject for government protection and its restructuring of national fiscal priorities.128 The LEAA provided a structure for funding to be given directly to state and local criminal justice bureaus, bypassing more liberal city agencies. Block grants were received by state planning agencies to be distributed as they saw fit. Mayors were rightfully leery of block grant distribution, worrying that state governments would bypass cities when divvying federal funds.129 Increased penalties and other sentencing reforms went hand-in-hand with the augmentation of state and federal crime-fighting capacity.

Much of the LEAA’s funding ultimately went to rape crisis centers. While increased financial resources were a boon for centers, the money did not come without exacting its own particular form of payment. Marie Gottschalk explains that the LEAA’s Crime Victim Initiative ultimate helped the government co-opt the women’s movement and conscript it in the war on crime.130 As the LEAA and other arms of the state became more involved in addressing rape, they successfully “recast the feminist definition of rape as a political issue into the problem of an individual victim in need of adequate services from the state so as to increase her willingness to help in the successful prosecution of her case.”131 LEAA money encouraged government absorption of many formerly independent rape crisis centers and their radical, volunteer, grassroots orientation into its professional, hierarchical bureaucracy.132

128 Ibid. 144.
130 Gottschalk, 125.
131 Matthews, 7-8.
132 Gottschalk, 125.
Feminist activists had at first been quite wary of accepting LEAA funding. In the early 1970s, the NOW Task Force on Rape conducted an investigation into LEAA spending to better understand its effects.\textsuperscript{133} The task force found evidence pointing to LEAA’s bias against private women’s groups, which translated into these groups’ inability to obtain funding as autonomous entities.\textsuperscript{134} In order to be considered for LEAA grant money, independent rape crisis centers needed to partner with another institution, such as the local police department. Once funds were dispersed, the task force discovered, the majority of money was distributed to the partner institution. The task force also found that once funding was dispersed, the institutional view of women’s groups as being “non-professional” often led to the partner institutions maintaining firm control of joint projects.\textsuperscript{135} Foreshadowing changes that would haunt the founders of rape crisis centers for years to come, the act contained a provision that mandated that all grantees had to receive the approval of the local government or local law enforcement agencies. This rule gave local law enforcement officials default control over which groups received federal money. Rape crisis centers ran the risk of not receiving funding if they were perceived as too radical or out of step with the local law enforcement community, creating financial pressure on them to conform. In addition, the heavy influx of government funds nurtured dependency on the state, helping to co-opt the women’s anti-violence movement.\textsuperscript{136}

\begin{footnotesize}
\begin{enumerate}
\item Ibid.
\item Gottschalk, 86.
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Victims’ Rights

While the victims’ rights movement was closely intermingled with and informed by the tough-on-crime movement, the two have separate trajectories: the first victims’ rights assistance programs were founded in the 1970s, and the 1982 passage of a federal Victim and Witness Protection Act spurred the first state constitutional amendments.

The LEAA funneled much of its budget into projects that addressed the criminal justice system’s treatment—or, some thought, mistreatment—of crime victims. Tougher penalties for criminals were key to the reimagining of what became called “victims’ rights.”137 The LEAA’s belief in the efficacy of a victims’ rights-centered policy led to the administration of pioneering studies and surveys to examine the plight of so-called victims. The LEAA’s early embrace of victims’ needs and focus on gaining their cooperation put the agency at the center of early efforts to build the victim’s rights movement with the funding of programs designed specifically to improve the relationship between victims and law enforcement.138

The victims’ rights movement had grew out of a coalition of a variety of constituencies, all of whom were dissatisfied with the criminal justice system. Proponents of victims’ rights believed that the so-called victimization rates were much higher than crime rates, and that this fact proved that many crimes remained unreported because of victims’ justified distrust of the criminal justice system. The first form of redress they called for was victim compensation measures, but victims’ rights advocates saw tougher penalties as central to their long-term agenda. In addition, convinced that indeterminate sentencing would not deter crimes, victims’ rights proponents advocated mandatory minimum sentences, three strikes laws, and truth-in-

137 Gottschalk, 90-100.
138 Ibid.
sentencing laws that tried to ensure prisoners would serve out their full terms. The movement’s first official body was the National Organization for Victim Assistance (NOVA), founded in 1975 to give a voice to the members of the nascent movement.

Relatively early in the growth of the movement, some feminists saw the utility of allying themselves with it. Feminist dissatisfaction with authorities’ handling of rape and domestic violence fit easily into the a victim-centric world view, and some feminists believed that focusing on women as victims would help women gain funding and mainstream legitimacy.\(^\text{139}\) At the same time, others in the feminist movement worried that the intense focus on victimization would come at the expense of a deeper and more critical political analysis and more potent forms of organizing.\(^\text{140}\) Focusing on women as generic victims detracted from concentrating on the economic and social specificities of their situation. In addition, such strong emphasis on victimization was incongruous with the feminist goal of empowering women.

Many feminists worried that the “woman as victim” rhetoric would further complicate the debate about rape and domestic violence by feeding into the fear born of multiple crime panics and the racial backlash that ensued. Indeed, there was something of a racial divide in the approach to victims’ rights, with white feminists supporting the movement’s goals far more than their black peers.\(^\text{141}\) Contemporary observers went so far as to accuse white women—whom they saw as blind to the inherent racism of right-leaning victims’ rights rhetoric—of using a rape scare to advance their political objectives.

However, there were enough anti-rape feminists who had adopted the victims’ rights ideology to allow participants at the 1977 NOVA conference to create NCASA, which would

\(^\text{139}\) Gottschalk, 103.
\(^\text{140}\) Ibid.
\(^\text{141}\) Gruber, “Rape, Feminism and the War on Crime,” 590–592.
serve as a new national umbrella organization for rape crisis centers.142 The fact that NCASA was organized at a NOVA conference was an example of the extent to which the two movements already had and would become inextricably linked.

**Violence Against Women as a Violation of Civil Rights: MacKinnon and the Anti-Pornography Ordinances**

In the late 1970s legal scholar and activist Catharine MacKinnon, already known for significant contributions to ndy,„yy7q6ming and prosecuting workplace sexual harassment, joined a feminist fight against media depictions of violent acts against women that had ultimately zeroed in on pornography as the main offender.143 She was part of an internecine struggle between feminist factions, labeled “anti-pornography” and “sex positive,” that began in the late 1970s and continued through the early 1980s, becoming increasingly acrimonious. The fight itself was centered on a range of media representations of violent acts against women, all of which it grouped under the umbrella term “violence against women.”

While many anti-pornography activists professed a link between mass media debasement of women and increases in the number and severity of violent sexual acts against them, MacKinnon and Dworkin believed that pornography itself was the root cause of all violence against women. In *Toward a Feminist Theory of the State*, MacKinnon wrote, “Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, and institution of gender inequality.”144 In the early 1980s she and fellow activist Andrea Dworkin proposed treating pornography itself as a violation of women’s civil rights and allowing women harmed by

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pornography to seek damages through civil lawsuits.\textsuperscript{145} According to this strategy, women could bring lawsuits for damages against producers, sellers, exhibitors or distributors of pornography.

Together MacKinnon and Dworkin introduced anti-pornography ordinances in several cities throughout the country, and versions of the ordinance were passed in Minneapolis in 1983 and in Indianapolis in 1984, but were blocked by city officials and struck down by courts, on the grounds that each violated First Amendment freedom of speech protections. While the anti-pornography ordinances died after a last gasp effort to have them instituted in Massachusetts in 1992.\textsuperscript{146} Several of their distinctive features—the legal argument that sexual violence violated women’s civil rights and the merger of several categories of sexual violence into a larger overarching group—would find new life in VAWA.

\textbf{Post-ERA Feminism: Two Steps Forward, One Step Back}

Ronald Reagan’s election as president in 1980 marked the ascendancy of the New Right, which was openly antagonistic to the feminist movement.\textsuperscript{147} In many respects, there was an outright political backlash against the gains that feminism had made during the previous decade, which forced many feminist groups to reorient themselves.\textsuperscript{148} The Republican Party removed the ERA from its platform for the first time in almost forty years, provoking a deep split between the

\textsuperscript{145} Dworkin authored ten books of radical feminist theory including \textit{Pornography: Men Possessing Women} which argued that the pornography industry was directly responsible for violence against women, both because it abuses women who work in the genre and because it encourages men to eroticize domination of and violence against women. Andrea Dworkin, \textit{Pornography: Men Possessing Women} (New York: Perigee Books, 1981).


\textsuperscript{147} Anne N. Costain, \textit{Inviting Women’s Rebellion: A Political Process Interpretation of the Women’s Movement} (Baltimore: Johns Hopkins University Press, 1992), 99.


Popular culture, too, contributed to an anti-feminist climate. Susan Faludi’s Backlash documents the extent to which the independence of cultural icons in shows of the 1980s such as Cagney & Lacey was scaled back to reflect a supposedly more feminine ethos. Movies such as Fatal Attraction offered a cautionary tale about the dangers of feminism’s boundary breaking.

Mainstream acceptance of many feminist ideas, while a boon for the movement in some ways, led to a bureaucratization and concurrent political defanging, sapping much of the vital energy from feminist efforts at change. Throughout the 1980s, distinctions between the liberal and radical wings of the movement continued to blur as liberal groups began to address formerly taboo topics and radical groups became more institutionalized social service providers.

NOW faced the difficult task of refocusing its members’ efforts after the defeat of the ERA and changed tack to focus on electoral politics, using a less strident approach for the group in particular and the feminist movement in general. While from this point on, some of NOW’s basic agenda items, particularly reproductive rights and gay and lesbian rights, would become more liberal than those of other groups.

NOW LDEF began to focus more strongly on the educational aspects of its mission. In 1980, NOW LDEF joined with the National Association of Women Judges to establish the National Judicial Education Program to Promote Equality for Women and Men in the Courts.

149 Ibid., 237.
152 Ibid., 213.
153 Matthews, 126.
155 Costain, 107.
NJEP pioneered the documentation of gender bias in courts. NJEP’s judicial education programs were the catalyst for a series of task forces established by state chief justices and federal circuit councils to examine gender bias in their own court systems.

In 1984, after a report by a New Jersey task force on gender bias—itself established through the work and leadership of NJEP—garnered national attention, the NJEP established a task force of its own to encourage each state to examine gender bias. The movement to do so gained steam when the 1988 joint annual meeting of the Conference of Chief Justices and the Conference of State Court Administrators got behind NJEP and urged chief justices to create their own state task forces. The group created educational campaigns aimed at members of the judiciary around particular issues to promote access to the justice system and equality for women and men in the courts. In 1982, New Jersey’s chief justice created the first state Supreme Court task force on gender bias in the courts. That year, the Conference of Chief Justices and the Conference of State Court Administrators adopted resolutions that every state should have a task force to examine gender bias and minority concerns in its courts. So popular did these conferences become that, in 1989, the first National Conference on Gender Bias in the Courts at the National Center for State Courts was held.

During the 1980s, NOW LDEF focused its legislative efforts on the decade’s long fight

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158 Of particular relevance is NJEP’s model curriculum on the judicial response to rape, which was released in 1994, and will be examined in more depth in a later chapter. Roberta Spalter-Roth and Ronne Schreiber together studied the phenomenon of institutionalization and argue that although the goals of the institutions themselves change, those who worked there did not lose sight of their fundamental feminist ideals, and many maintained their radical notions of the goals of the movement. Roberta Spalter-Roth and Ronne Schreiber, “Outsider Issues and Insider Tactics: Strategic Tensions in the Women’s Policy Network during the 1980s,” in Feminist Organizations: Harvest of the New Women’s Movement, by Myra Marx Ferree and Patricia Yancey Martin (Philadelphia, PA: Temple University Press, 1995), 105–27.
to end employment discrimination Title VII and NOW’s critical issue—reproductive rights—
while continuing to work for the ERA at the state and local level, in spite of the amendment’s
very public federal death. In 1979, NOW LDEF and the Women’s Law Project had established
an ERA Impact Project for just this purpose. In 1982, the project won its first state ERA case,
supporting the right of Pennsylvania women to be volunteer firefighters.\textsuperscript{160}

\textbf{The Further Mainstreaming of Feminist Ideas About Rape}

During the 1980s, ideas about rape that feminists had introduced during the previous
decade began to gain traction with the public to an unprecedented degree. The structural
transformation in sexual crime laws led to a huge increase in the number of rape cases reported
and brought to trial. Take Back the Night marches, begun in the mid 1970s as a more public
outgrowth of consciousness-raising groups, continued steadily and became regular features in
cities and on college campuses. While coverage of rape in the media continued to be problematic
for feminists, the sheer volume of this coverage expanded greatly.\textsuperscript{161} Images of rape proliferated
in film and on TV as well, and became an object of public fascination.\textsuperscript{162}

Media, scrutiny of rape trials became so intense that, in the spring of 1984, the Senate
Judiciary Committee’s Subcommittee on Criminal Law, of which Biden was a member, held a
hearing on the impact of media coverage on rape trials to explore a compromise between the
public’s right to know and the discomfort that new and intense exposure caused rape
survivors.\textsuperscript{163} At the same time, the number of rape crisis centers, which had peaked in the late

\textsuperscript{162} Sarah Projansky, \textit{Watching Rape: Film and Television in Postfeminist Culture} (New York: New York University

\textsuperscript{163} Senate Judiciary Committee Subcommittee on Criminal Law, \textit{Impact of Media Coverage of Rape Trials}. United

States Senate 98\textsuperscript{th} Congress, , S. REP. NO 98-112 2\textsuperscript{nd} Sess. (1984).
1970s at over 400, had slowly begun to decline in 1977. In a process described by Gottschalk and Bumiller, many of these centers had become dependent on government funding and thus lost the ability to model the transformative social change they had believed possible in their earliest days.

**Feminism and Victims’ Rights**

NCASA became fully ensconced in the victims’ rights movement, and began actively supporting federal victims’ legislation. In 1982 NCASA supported the passage of the Federal Victim and Witness Protection Act of 1982, designed to sensitize the federal criminal justice system to victims’ needs and provide legal protection from intimidation of witnesses.\(^\text{164}\)

It also worked in 1984 for passage of VOCA, which created a federal fund to compensate crime victims via the fines paid by criminals, granting priority to survivors of rape or domestic violence. Strapped for money, rape and domestic violence groups tapped into VOCA to keep their doors open. For example, the Illinois Coalition Against Sexual Assault received its first allocation of federal VOCA funds and used them to allow rape crisis centers to hire full-time advocates.\(^\text{165}\)

Historian Nancy Matthews uses California as a case study to explore the extent to which government funding pushed rape crisis centers to embrace the goals of state agencies, such as shoring up mental health and assisting law enforcement.\(^\text{166}\) California is particularly useful as a case study because there the life of the LEAA was extended through the creation of the Office of Criminal Justice Programs (OCJP), which continued to fund rape crisis centers even after the

\(^{164}\) Largen “Anti-Rape Movement Past and Present,” 12.
\(^{165}\) Illinois Coalition Against Sexual Assault, *Coalition Commentary* (Illinois: Illinois Coalition Against Sexual Assault, 2007).
\(^{166}\) Matthews, 125.
LEAA’s demise in 1979. The OCJP put pressure on rape crisis centers to forfeit their political goals and focus instead on providing more tangible social services, going so far as withholding funds from groups that refused to do so. Affiliation with law enforcement allowed rape crisis centers to prosper in a way that clinging to the founding principles of the anti-rape movement did not. Feminist ideology, which related the frequency of rape to women’s oppression, was both marginalized and at times suppressed. The rape crisis centers that profited the most were those that more closely affiliated themselves with state-sanctioned goals.\(^{167}\)

Domestic violence shelters fared somewhat better during the 1980s than rape crisis centers.\(^{168}\) In fact, by the end of the 1980s, most funding for shelters came directly from the state. Both rape crisis centers and domestic violence shelters were forced to apply for and accept government funding in order to survive. As the two structures became more dependent on government money, they were forced to be more accountable to outside authorities and concurrently to focus on temporary rather than long-term solutions to domestic violence.\(^{169}\)

**The War on Crime Becomes the War on Drugs**

Reagan’s presidency heralded a renewed interest in the law and order rubric. Following the lead of his conservative predecessors, Reagan expended a huge amount of energy on what he termed “crime in the streets” and argued that policing and social control were essential to the government’s real “constitutional” obligation.\(^ {170}\) In 1982, Reagan focused the crime fight on drugs, officially declaring a war on drugs. His Comprehensive Crime Control Act, passed in

\(^{167}\) Ibid.

\(^{168}\) Gottschalk discusses a number of reasons that domestic violence shelters were more willing to accept state funds and also were a more appealing recipient of funds from the government’s point of view. Gottschalk, 139.

\(^{169}\) Ibid., 147.

1984, was a turning point for federal criminal justice.\textsuperscript{171} It continued the expansion of the federal government’s participation in tacking crime issues that had previously been viewed as the purview of state and local governments. Key among its measures were the Bail Reform Act, which made possible sometimes-lengthy pre-trial detention of defendants who were deemed dangerous, and the Sentencing Reform Act, which created the United States Sentencing Commission, an independent judicial agency tasked with determining sentencing guidelines for federal courts.\textsuperscript{172}

During Biden’s tenure, Biden, who had first been elected to his Delaware Senate seat in 1972, took the first steps toward becoming the Democratic point person in the fight on crime. In 1984 Biden introduced and, as chairman of the Judiciary Committee, helped usher through the passage of Reagan’s Comprehensive Crime Control Act.\textsuperscript{173} Then, in 1986, Biden joined in pushing for the Anti-Drug Abuse Act, which had been introduced by Senate Majority Leader Bob Dole. The bill substantially increased federal penalties for possession and sale of even small quantities of the crack cocaine ravaging cities.\textsuperscript{174} It was Biden himself who proposed the 100-to-1 sentencing disparity codified between crack and powdered cocaine.\textsuperscript{175} Penalties for possession of powder cocaine, associated with more affluent residents of mostly-white suburbs, were only a fraction as harsh as those for crack, associated with poorer urban blacks.\textsuperscript{176} Many scholars argue that those sentencing differentials have led to significantly higher incarceration rates for blacks.\textsuperscript{177} Indeed, looking back on his decision in 2007, Biden remarked on the floor of the

\textsuperscript{172} Ibid.
\textsuperscript{173} At that time Biden was the Democratic floor manager.
\textsuperscript{176} Ibid.
\textsuperscript{177} Alexander,(2010)
Senate:

I joined senators (Robert) Byrd and Dole in leading the effort to enact the Anti-Drug Abuse Act of 1986, which established the current 100-to-1 disparity….Our intentions were good but we got it wrong….It is…clear that the harsh crack penalties have had a disproportionate impact on the African-American.178

Biden's aggressive manner did not win him universal admiration, especially among liberals, but many appreciated his determination to make crime a winning issue for Democrats—the party that had been derided as “soft on crime” since the Goldwater days. “Give me the crime issue,” the senator would plead repeatedly to Democratic Party caucuses, one staff member recalled, “and you'll never have trouble with it in an election.”179

Perhaps not coincidentally, Biden’s interest in crime prevention spiked in 1987. After bowing out of his bid for the Democratic Party’s presidential nomination that September, he ensconced himself in the world of law enforcement. His biographer pointedly counters unnamed critics who claimed that Biden’s frequent excursions to police organization meetings in the late 1980s showed an intensive interest in crime prevention that “may have been seen by skeptics as a conspicuous effort by Biden to rehabilitate himself in the wake of his…presidential bid.”180

In 1988, Biden and the Republican vice president, George H.W. Bush, began what would become an ongoing tug-of-war over control of the crime issue when Bush made fighting crime a key issue of his own presidential election campaign.181

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178 153 Cong. Rec S 8614. (June 27, 2007) (Senator Biden, statement on S. 1711)
The 1990s

In many ways the early 1990s were a liminal period in American society’s coming to terms with the fact of sexual violence against women. The number of groups doing feminist advocacy had continued to shrink throughout the 1980s. What few rape crisis centers remained had long lost their revolutionary agenda.

High-profile rape cases continued to receive comprehensive media coverage, as did the Clarence Thomas confirmation hearings, which included contentious discussion of sexual harassment. A media backlash against the idea of date rape also began to gather speed and ferocity. Legislation addressing violence against women had both gains and losses. While feminist lawmakers were thwarted in their attempts to have gender included in hate crimes legislation, anti-stalking laws were put on the books for the first time, opening up the door for the inclusion of anti-stalking language in VAWA.

Rape in the Public Consciousness

A series of highly publicized rape cases involving public figures escalated newspaper and TV frenzy around the issue. This began in 1991 with the trial and acquittal of Kennedy scion and Rhode Island House of Representatives member William Kennedy Smith. The coverage of the 1993 trial and conviction of boxer Mike Tyson for the rape of 18-year-old Miss Black Rhode Island was detailed and became a national obsession. Media fascination peaked when football star O.J. Simpson was shown fleeing the police on national TV after supposedly murdering his wife and her companion. The subsequently sensationalized trial was termed by many “the trial of the century” and became even more notorious after Simpson was acquitted. During a period when rape and violence against women was becoming ever-more present in the
public's consciousness, the three cases by such high profile public figures kept the issue in the spotlight.

Sociology professor Neil Gilbert 1991 article “The Phantom Epidemic of Sexual Assault” emphasized women’s responsibility for rape and challenged the veracity of the numerous reports that documented date rape’s prevalence.\textsuperscript{182} Many of the criticisms were ostensibly aimed at Mary Koss’s 1985 \textit{Ms.} magazine-sponsored study of date rape but actually took aim at feminism itself. There was a class component to much of the criticism. Koss’s study had been of date rape on college campuses, hardly an environment or populace representative of American women as a whole. Critics seized on this focus on colleges and college students to support allegations that feminists did not speak to the needs or desires of the average woman, instead remaining locked in self-referential ivory-tower conversations with themselves. Katie Roiphe’s widely disputed 1994 book \textit{The Morning After: Fear, Sex and Feminism}, scoffed at Koss’s assertions and tried to cast doubt on the idea of date rape’s prevalence.\textsuperscript{183}

\textbf{Clarence Thomas Hearings}

In July 1991, Biden presided over the confirmation hearings of Supreme Court Justice Clarence Thomas, during which Thomas faced very public allegations of sexual harassment by Anita Hill, who testified to his harassment some ten years earlier, when she had worked for him at the EEOC. These hearings are often credited with raising national awareness of sexual harassment and inspiring the “Year of the Woman,” in which, for the first time, four women were elected to the Senate in a single year. After the debacle of the Thomas hearings, in fact, Senator Patty Murray (D-WA) said of VAWA, “There was a strong message sent in the last

\textsuperscript{183} Katie Roiphe, \textit{The Morning After: Sex, Fear, and Feminism} (Boston: Little, Brown and Co., 1994).
election that women and women’s issues were not being addressed in Congress. That helps passage of bills like this.”

184 One writer from *The New Republic* quipped, “Most of the bill’s [VAWA’s] co-sponsors seem to view the legislation as merely the latest stop on the road of Anita Hill penance.”

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185 Ibid.
CHAPTER 2  
“SOMETHING ON WOMEN FOR THE CRIME BILL”

The 1968 crime bill provided the legislative template for both the Safe Streets for Women subtitle of VAWA and several other sections of the crime bill. Including VAWA in a larger anti-crime bill made legislative sense because of the convergence of the anti-rape and tough-on-crime and victims’ rights movements during the 1980s. The designation of VAWA’s rape provision as “Safe Streets for Women” can likewise be seen as logical. The image of streets, which had first been used as a metaphor in the 1960s, continued to be resonant in 1990.

Biden introduced VAWA in June 1990 when he was chairman of the Judiciary Committee, a position he held from 1987 through 1994, the year VAWA passed. As Nourse explained in an autobiographical piece, VAWA was considered “something on women” to be added to the crime bill. Although it was not incorporated into the crime bill until 1993, VAWA was structured to be part of that act and is best understood in the context of the crime bill’s architecture and goals.

VAWA’s eventual incorporation into a larger piece of legislation focused on reducing violence and controlling crime signaled the continuation of the ongoing movement of the public understanding of violence against women away from its feminist origins. While feminists had stressed empowering women and recognizing systemic, endemic violence against women as symptomatic of society’s larger structural flaws those supporting VAWA focused on empowering police to do their jobs and treating violence against women as unexceptional criminal activity. In the end, VAWA followed broader trends in criminal justice, concentrating on more and harsher punishments, mandatory minimum sentences, mandatory restitution for victims, and the involvement of law enforcement in community policing. Rather than providing
funding directly to rape crisis or domestic violence shelters, the bill adopted the 1968 crime bill’s block grant formula.

The opposition to both the fact and theory of VAWA’s civil rights remedy was a clear indication that it was only by packaging the bill as a law-and-order measure that it was made palatable to those who surely would have rejected it. The civil rights remedy was—in wording at least—a nugget of more radical feminism in a law-and-order package. VAWA’s more punitive provisions made the civil rights remedy palatable to non-feminists and in turn the civil rights remedy made VAWA’s more punitive provisions palatable to feminists.

In order to situate the provisions of VAWA within their historical and political context, this chapter begins with a discussion of the introduction of the bill that would come to be called “Biden’s” crime bill. Next, the chapter introduces the politicians and policy people who wrote VAWA, ushered it through Congress and helped amass support for its passage. Finally, it reviews the major components of VAWA, taking a section-by-section look at the provisions of the bill in order to prepare for a more in-depth exploration of the particular ideas and ideologies embedded in each section.

The Violent Crime Control and Law Enforcement Act Revisited

The bill that would come to be called “Biden’s” crime bill, the Violent Crime Control and Law Enforcement Act, emerged within the bitter partisan conflict of the late 1980s. This section describes the two parties’ initial wrangling over the issue of violent crime—the Republicans led by President Bush and the Democrats led by Biden—then briefly surveys the provisions of the

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crime bill that were at issue. Finally, it touches upon a common theme in both parties’ approaches to the violent crime: a latent racism that critics recognized in the crime bill from the very beginning.

“Not a Democratic or a Republican issue”

Beginning in February 1989, Bush and Biden introduced competing crime bills.\(^{187}\) When addressing the nation about his crime policy, Bush picked up an earlier refrain of safe streets and the emphasis on expanded law enforcement saying,

…we are determined to enforce the law, to make our streets and neighborhoods safe. So, to start, I’m proposing that we more than double Federal assistance to State and local law enforcement. Americans have a right to safety in and around their homes.\(^{188}\)

Biden, determined to take the issue back from him, argued that recent Democratic anti-crime legislative initiatives had neutralized crime to the point that “it was not a Democratic or a Republican issue.”\(^{189}\) Biden’s bill, introduced in November 1989, proposed $900 million in funding for law enforcement to Bush’s $450 million; 1,000 police strike forces to Bush’s 89, and 1,000 drug agents to Bush’s 272.\(^{190}\) Although the Senate approved Biden’s crime bill in 1990, there was too much partisan bickering for it to become law during the Bush administration. Biden may have outmaneuvered Bush in claiming the crime issue, but Bush was ultimately able to block the passage of Biden’s bill.\(^{191}\) Both Bush’s and Biden’s bills framed the fight against crime as a fight against drugs, which Bush called “the gravest domestic threat facing our nation

\(^{188}\) Video Recording No. 306.5974; “President Bush's Speech on Drugs with Democratic Response on Drug Strategy by Senator Biden,” September 5,1989; Papers of the U.S. Information Agency, Record Group 306; National Archives at College Park, College Park, MD.
\(^{191}\) Chernoff, Kelly, and Kroger, 557.
today” and Biden referred to as “the number one threat to our national security.”

Bush’s presidency ended before he and Biden could settle their dispute. During his first presidential campaign, President Clinton had signaled an emphasis on crime and crime control by putting his campaigning temporarily on hold to travel to his home state of Arkansas to preside over an execution. In the early days of his presidency, however, he shifted his focus from crime to healthcare reform, ignoring the advice of his transition staff to create a national crime strategy with VAWA as a key component. Clinton picked up the issue again only after the first 100 days of his presidency had passed, as it became clear that his administration would not be able to realize his health insurance reform agenda. Remarks made to The New York Times by Clinton’s first deputy attorney general about Clinton’s revised strategy were a reminder of the politicized nature of the war on crime:

Clinton…emphasized a moralistic message almost to the exclusion of practical measures to reduce crime on the streets. It’s been the most careful political calculation, with absolutely sublime indifference to the real nature of the problem. School uniforms, curfews, sexual predators—he’s appealing to social conservatives.

Biden’s career-long commitment to tough-on-crime legislation dovetailed nicely with Clinton’s renewed interest in fighting crime. The president’s newfound ownership of the crime issue increased the likelihood that Biden’s bill would pass.

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[192] “President Bush's Speech on Drugs with Democratic Response on Drug Strategy by Senator Biden.”
[195] The report advised Clinton, “Making community policing one of your signature ideas is not only the right thing to do but it would also signal your willingness to put your mark on an issue that too many Democrats have ducked in the past.” From and Reed, “The Clinton Revolution: A Domestic Policy Agenda for the First 100 Days.”
In August 1993, Clinton held a press conference to announce an agreement with congressional leadership about the need for and structure of a new crime bill. Clinton did not make passage of VAWA a priority, and instead focused his attention on what he viewed as the most important sections of the crime bill: community policing, prison “boot camps,” expansion of drug courts, safety in schools, and the assault weapons ban. Biden reintroduced his crime bill again the following September, and saw the bill voted out of the Senate that same November.

**Provisions of the Crime Bill**

When the Biden-sponsored crime bill finally passed both houses of Congress in August 1994, it became the largest crime bill in the history of the nation. It greatly expanded federal spending on law enforcement and included the largest-ever expansion of the federal death penalty. It also provided $30.2 billion in federal funding for anti-crime measures and markedly increased federal involvement in municipal and state crime control efforts, including earmarking $8.8 billion for the hiring of 100,000 new police officers, $7.9 billion for state construction grants for new prisons, and introducing incentives for states to adopt truth-in-sentencing laws requiring repeat offenders to serve at least eighty-five percent of their sentences. In addition, the bill allotted $7 billion to fund grants to cities, schools, and non-profit crime prevention programs to pay for afterschool recreation, tutoring, job placement assistance, and substance abuse prevention as well as block grants to local governments for education and research programs to prevent juvenile violence, gang participation, and drug sales.

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Furthermore, the crime bill stiffened criminal penalties in a number of different ways. It increased federal minimum penalties for many crimes—including adding new offenses that could be punished by death, made a number of these infractions federal crimes for the first time; and imposed what is colloquially known as the “three-strikes law”—a mandatory sentence of life imprisonment without parole for those convicted of a third serious violent felony.

Race and the Crime Bill

From the start, detractors of the crime bill argued that its measures, especially the three strikes provision, would inordinately affect blacks and Native Americans. While the bill was still in Congress, members of the Congressional Black Caucus had tried to temper the negative effects of the crime bill by endorsing a Racial Justice Act addendum, which contained provisions reducing racial disparities in death penalty sentences, and bolstering the bill’s crime prevention components. Their efforts, however, were thwarted.

In their study of the intense sparring around the crime bill’s funding for midnight basketball games—a small line item in the bill that came to be used as shorthand for crime prevention measures as a whole—sociologists Darren Wheelock and Douglas Hartmann argue that Republicans scuttled attempts to create a more balanced crime bill by using coded racial rhetoric that drew upon deeply entrenched images associating crime with young African-American men. They used veiled references linking race to criminality to subtly undercut

\[199\] Crime punishable by death included murder of law enforcement officers, drive-by shootings, drug trafficking, and carjackings that resulting in the death of a driver.


\[202\] Ibid.
arguments for the effectiveness of crime prevention programs. Their analysis makes clear the extent to which discussions of crime were steeped in and inextricable from inherited assumptions about race as well as the opaqueness that characterized conversations about race.

**The Introduction of VAWA: “Something On Women for the Crime Bill”**

When VAWA was introduced, it included the civil rights remedy and two additional titles more closely aligned with the rest of the crime bill—the Safe Streets for Women and Safe Homes for Women acts. VAWA inherited its parent bill’s focus on fighting crime; of the crime bill’s $30 billion, $1.6 billion was apportioned to VAWA. Of that, roughly half, or close to $800 million, was allotted to training grants for law enforcement.

Because several conflicting narratives exist describing VAWA’s introduction, there is no way to know for certain why Biden decided to introduce VAWA when and how he did. It is not out of the question that Biden was influenced by other interest in rape and domestic violence on Capitol Hill during the spring and summer of 1990. Representative Curt Weldon (R-PA) introduced a House hearing on rape by remarking that it was the “‘in” thing for Congress to be talking about rape.” Indeed, both rape and domestic violence received a fair amount of Congressional interest that spring and fall. In April, Senator Daniel Coats (R-IN) presided over the hearing Domestic Violence: Terrorism in the Home. Then in May, Senator Arlen Specter (R-PA) introduced a resolution designating October “National Domestic Violence Awareness Month.” In September, Coats and Biden together introduced the Domestic Violence Prevention

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203 Ibid.
The timing of VAWA’s introduction was certainly influenced by the extent to which the issue violence against women had lost so many of its feminist overtones in the political arena and had evolved to fit seamlessly into a larger crime bill focused on punishment and prosecution. Standing up against violence against women had also become conventional enough that Biden could sponsor VAWA and appear feminist with only minimal risk to his mainstream liberal persona.

Crafting VAWA

An examination of the first-person accounts of VAWA’s introduction by Biden, Goldfarb, Nourse, and MacKinnon reveals as much about competing claims to ownership of the issues VAWA addressed as it does about the actual history of the bill. Biden recounted his version of VAWA’s introduction in his autobiography, Promises to Keep: On Life and Politics, framing the discovery of violence against women as his own. He related,

I was constantly watching the crime statistics for anomalies and new problems. …While looking at Bureau of Justice crime statistics in 1990, I was struck by a particular number. The violent crimes perpetrated against men had fallen greatly in the previous ten years; the number of violent crimes against young women trended up.

For this reason, Biden continued, “In 1990, I assigned one of my staff on Judiciary [Nourse] full-time to the problem of violence against women.”

Biden not only took credit for conceptualizing the legislation, he also took credit for noticing the problem of rape in the first place. He did not situate his story in a feminist past, but rather framed it as a tale about numbers and crime. Furthermore, he implied that he had never

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207 Biden, Promises To Keep, 241.
fully understood the size of the problem of rape before 1990. Neither this account nor any of his many public statements to Congress made any significant mention of the decades of feminist activism that raised public awareness of rape and necessarily preceded VAWA’s introduction. Indeed, VAWA’s murky provenance was relatively divorced from any feminist context in Biden’s description, which presented VAWA as having arisen as orphan legislation, unencumbered by any previous legislative efforts, or grassroots political organizing. This explanation also, misleadingly, set Biden up as the lone man on Capitol Hill fighting for women’s rights, disingenuously discounting other legislative attempts to address rape and domestic violence.

The implication behind this telling of this account was that Biden had played a huge role in the discovery of the issues of rape and domestic violence. There is a certain political utility to this claim. Biden introduced VAWA in June 1990, following Coats’ domestic violence hearing. Violence against women had generated a degree of congressional interest, a fact that perhaps did not escape Biden. VAWA fit like a puzzle piece into the larger crime bill. Biden could add “something on women” to the crime bill and burnish his both pro-woman and tough-on-crime credentials simultaneously.

While understanding the importance of Biden’s contribution to anti-violence efforts, and often praising him for his bravery, the staff at NOW LDEF ultimately saw VAWA not as a the starting point, but as the culmination of years of work by feminists. In a 1991 action alert NOW distributed on the act, the organization wrote,

For two decades the women's movement has been supporting battered women's shelters, staffing rape crisis hot lines and passing laws at the local and state level that attempt to address the problem of violence against women. We almost enacted national domestic
violence legislation in 1980, but lost in the tide of the Reagan election. …WE MUST TRY AGAIN.\textsuperscript{208}

Not surprisingly, NOW LDEF staff conceptualized Biden’s contribution as “an attempt to bring national attention and federal leadership to our efforts.”\textsuperscript{209}

Unlike Biden, when discussing VAWA’s introduction Goldfarb, Nourse and MacKinnon focused much more strongly on the civil rights’ remedy’s provision of additional legal redress for women rather than on the criminality of rape.

Goldfarb recounted that her participation in VAWA began with her meeting Nourse, to whom she had never before spoken. Goldfarb was thrilled to learn that the federal government would throw its power and resources behind improvements in law enforcement, prevention, and victim services, but thought that, “most important of all, this legislation would declare for the first time that crimes of violence motivated by the victim's gender are a violation of the victim's civil rights.”\textsuperscript{210}

Goldfarb had studied law under MacKinnon and thus was familiar with her legal theories about pornography and civil rights. It was these theories that created the scaffolding for the civil rights remedy seen by NOW LDEF as VAWA's pièce de résistance. Thus Goldfarb’s account of VAWA’s creation duly stressed the civil rights remedy itself, the portion of the bill to which NOW LDEF was most dedicated.

Nourse’s account was included as part of an essay on her “accidental” relationship to feminism.\textsuperscript{211} As she told it, because she was the only woman in the room of the Senate Judiciary Committee, she was “faced with the vague injunction from the chairman” of drafting “something


\textsuperscript{209} Ibid.


\textsuperscript{211} Nourse, “The Accidental Feminist.”
on women for the ‘crime bill.’” Nourse did not mention having received any specific guidance
from Biden or anyone else on the Judiciary Committee about the form that VAWS should
take. Thus, she recounted that “…first, I needed some ladies. Having no real ones present, I went
in search of virtual ladies…In the law library of Congress.” There she found a trove of work
by feminist legal theorists. Nourse’s account does not mention speaking to Goldfarb. It does
make a passing reference to MacKinnon’s work on pornography as a civil rights violation. In her
rendition, Biden thought of the legislation but she came up with the architecture of it from
scratch. This account negates the very real presence of a cadre of feminist lawyers in Washington
at precisely the time she was at the library, giving her all the credit for a piece of legislation that
was undeniably a collaborative effort.

In striking contrast to Nourse, MacKinnon contends that she was, in fact, the author of
VAWA’s civil rights remedy. MacKinnon recounted that she herself:

…conceived the idea for a federal civil sex discrimination law for rape and domestic
violence and proposed it to Sally Goldfarb by phone (I was in a taxi in Washington D.C.
and used the taxi-driver’s phone). It is fundamentally the same theory as the legal claim
for sexual harassment, which I conceived, and the anti-pornography ordinances, which
Andrea Dworkin and I conceived and wrote. Sally conveyed the idea for a federal civil
rights law based on sex to address rape and domestic violence to Victoria Nourse, who
was working for Biden at the time. I was told by Sally that Biden “wanted to do
something for women…”

Whoever actually wrote VAWS’s civil rights remedy was necessarily indebted to
MacKinnon, whose scholarship had for years focused on violence against women as a violation
of civil liberties. As MacKinnon herself pointed out, this was essentially the same claim used for
the anti-pornography ordinances. Whereas the anti-pornography ordinances had asserted that
because pornography caused violence it was a violation of women’s civil rights, the civil rights

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212 Ibid.
214 Ibid.
remedy claimed, much more simply, that the violence itself was a violation of women’s civil rights. In her conception, violence against women is a synecdoche, standing in for all discrimination against women. Because of gender-based violence, American women and girls are relegated to a form of second-class citizenship. When explaining why she was not more vocal at the time about her authorship MacKinnon recalled:

I stayed silent about it because I didn't want the VAWA stigmatized. The stigma of pornography could have been fatal. ...I offered drafting language repeatedly through Sally in the process... 216

Indeed, an association of VAWA with anti-pornography activism would not have worked in VAWA’s favor. The ideological background for the civil rights remedy was much more radical than that of the rest of the bill. MacKinnon’s participation in its crafting was perhaps, as she alludes, kept under wraps because she herself was such a controversial figure. Linking pornography and violence and civil rights had been hugely contentious, but largely because of the First Amendment implications. Linking violence against women to civil rights, however, was not without debate.

The Competition to Shape VAWA

Wherever the first seeds of VAWA were planted, once Biden introduced the bill to Congress the competition to shape its provisions quickly became fierce. When VAWA was introduced, it included the civil rights remedy and two additional titles more closely aligned with the rest of the crime bill—Safe Streets for Women and Safe Homes for Women. In the four years before VAWA was passed, legislators from both parties tried on several occasions to have the crime bill absorb large chunks of VAWA. In addition, several Republican rivals of Biden

216 Ibid.
introduced their own competing legislation, and were steadfast in their desire to help shape the issue and even to wrest it from Democrats. Chief among these were Senator Bob Dole (R-KS), the Senate Republicans’ leader from 1987 to 1995, and Senator Orrin Hatch (R-UT), who became the ranking minority member of the Judiciary Committee in 1993.\textsuperscript{217} They consistently worked to reshape VAWA to fit their own agendas, which frequently meant suggesting the addition of more punitive measures, and the removal of the proposed civil rights remedy. Dole and Hatch both introduced competing violence against women legislation to try to influence the final shape of VAWA.\textsuperscript{218}

The complicated intersections between the tough-on-crime and women’s rights discourses evident in VAWA were something that Biden’s Republican rival in the Senate, Bob Dole, attempted to manipulate when discussing his competing bill. While Biden used VAWA to prove his status as the Democrat’s go-to man on crime, Dole sought to undercut Biden’s crime-fighting credentials. While Biden attempted to manipulate traditionally Republican rhetoric to forward Democratic aims, Dole tried to wrest ownership of this language back from Biden, questioning Biden’s commitment to attacking crime. Dole tried to undermine Biden by emphasizing the complicated worlds Biden was attempting to straddle, and the difficulty likely to ensue from such a stance, with comments such as these:

These proposals [in Dole’s “Women’s Equal Opportunity Bill’”] have created a dilemma for the Democratic leadership in Congress: Supporting these measures would run counter to their usual identification with criminal defense interests. However, opposing them would mean being on the wrong side of anti-rape, pro-women measures.\textsuperscript{219}

\textsuperscript{217} Dole tried to gain the Republican presidential nomination in 1988, but lost to then-Vice President George H.W. Bush. Hatch served as the chairman or ranking minority member of the Senate Judiciary Committee (depending on whether the Republicans controlled the Senate) from 1993 to 2005.\textsuperscript{218} Letter from Joan Zorza for Every State Coalition on Domestic Violence to Victoria Nourse. December 20, 1990; National Center for Women and Family Law Papers, 1977-1996. Carton 11. Schlesinger Library, Radcliffe Institute, Harvard University. A letter to Biden and Victoria Nourse from the state domestic violence coalitions announced even before Dole introduced this legislation that they would oppose any version of VAWA that included the death penalty.\textsuperscript{219} 137 Cong. Rec. S S2189 (February 21, 1991).
Dole also taunted Biden for softening anti-crime provisions in his omnibus crime legislation, calling it a “pseudo-crime bill” and arguing:

The Democrats…unilaterally worked out their own “compromise” bill before the meeting, which consistently incorporated measures…that weakened existing law and largely discarded important pro-law enforcement measures.220

While Biden wrote comprehensive crime legislation into which he later enveloped measures addressing violence against women, the Republicans’ crime bill included violence against women measures from the start. Dole made sure to point this fact out, arguing that Biden was not truly interested in helping women, and that his own bill was “more pro-women and more anti-criminal than any bill introduced by the Democratic leadership.”221 Each time VAWA came to markup, Dole and other senators attempted to attach crime-related amendments to it. Several of these, such as the death penalty for rape/murders and introduction of a defendant’s prior record at trial were ultimately inserted elsewhere in the crime bill VAWA was attached to, even though Biden initially thought they were not appropriate additions to the bill.222

In February 1991, Dole introduced the Women’s Equal Opportunity Act. Like VAWA, it included stronger penalties for sexual assault, increased restitution for survivors of sexual assault and provisions for the creation of a national task force on violence against women. Unlike VAWA, however, in place of a civil rights cause of action for gender-motivated violence, Dole’s act included an amendment to the Civil Rights Act of 1964 to allow penalties for workplace-related sexual harassment. Its final component was a Glass Ceiling Commission to work on expanding employment opportunities for women. The Department of Justice threw its support

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220 Ibid.
221 Cong. Rec. 103rd Congress, 1st Sess., Volume 139, Part 2, October 8, 1993.
behind Dole’s bill because of its stronger focus on more effective law enforcement measures.\textsuperscript{223} Representatives Susan Molinari, a moderate Republican from New York, and Jon Kyl, a victims’ rights-oriented conservative Republican from Arizona introduced Dole’s bill in the House.

By September 1992, when no action had been taken on the Women’s Equal Opportunity Act, Dole reintroduced it in a slightly different form, at the same time remarking that,

President Bush has always supported and proposed the toughest possible provisions to get tough with sexual offenders. The chairman of the Judiciary Committee has also proposed legislation on this topic, although it is much, much, weaker than the legislation I introduce today, or that which the President has proposed. I ask my friends on the other side of the aisle to look again at this legislation, to look again at the epidemic of violence against women, and to join those of us who want to pass the toughest legislation possible.\textsuperscript{224}

The new legislation’s sexual violence title included increased penalties for rapists and mandated testing people charged with sexual assault for HIV, something that the VAWA task force strongly opposed. Nourse worked with Hatch to arrange a hearing about his and Biden’s bills in Salt Lake City. The grassroots response Hatch saw there was enough to convince Hatch to support VAWA’s passage. For the first time, the Democrats had a strong Republican voice to push for the bill’s passage.

At the Judiciary Committee’s business meeting in May 1993, Biden, Hatch, and Dole wrote alternate phrasing for the civil rights provision which all three could support, making passage of VAWA much more likely.\textsuperscript{225} The new wording promised to make the bill more palatable across the political spectrum. Biden remembered that in November 1993, when VAWA had finally garnered much more support, “I knew the crime bill we’d voted out of Judiciary had


strong bipartisan support in the Senate that year … So I added the Violence Against Women Act to the bill.”  

Working together on the civil rights remedy, Biden and Hatch developed language that defined discriminatory motivation and limited the use of the civil rights remedy to felonies.

Biden attached VAWA to the crime bill while negotiating the terms of the crime bill itself. In order to ensure acceptance of VAWA’s addition to the crime bill, Biden cut a backroom deal with Phil Gramm (R-TX), the Chairman of the Senate Appropriations Committee. With Hatch’s encouragement, Gramm agreed to back VAWA if funding for the crime bill came from monies gained through the reduction of the size of the federal work force. Ultimately, the Clinton administration cut 300,000 people from the government payroll to pay for the crime bill.

During the summer of 1994, the House and Senate went into conference to discuss the crime bill to which VAWA had been attached. Both the House and Senate passed the bill, which President Clinton signed into law on September 13.

**VAWA Section by Section**

When VAWA finally passed, it included its original three titles—Safe Streets for Women, Safe Homes for Women, and Civil Rights for Women—plus additional titles on judicial education and immigrant women’s rights. During the years between its introduction and passage, VAWA also gained and lost a title on campus safety, which was added in 1990 but spun off into a separate bill in 1992.

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226 Biden, 278.  
227 Holmes, 75.  
Subtitle A: Safe Streets for Women

The Safe Streets for Women subtitle ostensibly addressed sexual assault. In actuality, only its first chapter, “Federal Penalties for Sex Crimes,” addressed this crime alone. While some sexual assaults do, indeed, occur on the streets, certainly most do not. Mirroring the 1968 crime bill, this part of VAWA classified crime by geography, a tricky proposition, as rape is not usually characterized by where it takes place. This resonance of the street metaphor can also be found in other parts of the rest of crime bill, such as the Safer Streets and Neighborhoods title. When promoting his crime bill on the floor of the Senate in 1990, Biden bragged, “It starts by attacking the crime and drug problem where it is most acutely felt, in the streets.” The implication of this understanding that rape is something that happens in the “streets” forces VAWA to fit into a mold that may not accurately address the issues at hand. While it does indeed focus on the criminality of rape, rape more often than not does not take place in the street, and there is no reference here to rape as violence particularly geared toward women.

As part of the larger crime bill, this section did very little to address the particularities of rape, and goes much further toward punishing criminals than empowering women. Its law enforcement strategies mirrored those first introduced in the 1968 crime bill. Most of the Safe Streets for Women subtitle was focused on applying a variety of stricter law-and-order measures—including increased penalties for crimes, mandatory sentencing requirements, and earmarking of increased amounts of money to fighting crime. Indeed, this chapter of VAWA was primarily concerned punishment of criminals and, as such, was part of the larger project of the

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230 Safe Street for Women was the Violence Against Women Act’s first title but was a subtitle of the Violence Against Women Act title of the crime bill.
231 Weaver, 230; Simon, “Governing through Crime Metaphors,” 1063.
crime bill.

_Safe Streets, Chapter 1: Federal Penalties for Sex Crimes_

Sexual assault was one of several crimes—including manslaughter, arson, and various forms of drug trafficking—for which the crime bill mandated increased penalties. The first section of this chapter doubled the possible term of imprisonment for “repeat offenders”; those with prior convictions for any variety of sexual assault. The second directed the United States Sentencing Commission to consider increasing federal penalties where more than one person was involved in a sexual assault and where federal penalties were lower than state penalties.

This section included one of only three mentions in VAWA of the disparities in understanding and reaction to “stranger” as opposed to “date” or “acquaintance” rape when it directed the United States Sentencing Commission to recommend changes to guidelines to address disparities between crimes when sex offenders are known to victim and those when he is not known. It also directed the commission to ensure that guidelines addressed the “general problem of recidivism in sex offenses.” This assumption of a higher rate of recidivism for offenders was contentious, at best.

This title also sought to standardize the mandatory restitution laws across the states. Restitution to crime victims had become a common demand in the victims’ rights movement, but since they were first instated in 1984, they had become a jumble of contradictions.

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233 The mechanism for this was an amendment to the United States Sentencing Code.
234 Senate Judiciary Committee, United States, _The Violence Against Women Act of 1991_. United States Senate, 102nd Congress, 1st Sess. S. REP NO. 102-197 at 54. (1991). (hereafter S. REP. NO. 102-197) The criteria were 1) whether more than one offender was involved in the crime, 2) whether there is parity for stranger/date rape (when sex offenders known to victim and not known); 3) whether the penalties for crimes committed on Federal territory are commensurate to those for crimes committed in states; and finally 4) the bill asked the committee to make sure penalties accounted for the “general problem of recidivism in cases of sex offenses, the severity of the offense, and its devastating effects on survivors.”
235 HR 3355, 103rd Cong. (1993).
Before the Judiciary Committee marked up VAWA for the last time in 1993, the Federal Penalties for Sex Crimes title included increased mandatory minimum sentences for sexual assault and aggravated sexual assault. The VAWA task force spearheaded an effort to pressure Biden to reconsider this measure. Rather than increasing sentences outright, the section instead merely instructed the United States Sentencing Commission to review federal sentences and to pay special attention to topics identified by the task force as central.236

House versions of the Federal Penalties for Sex Crimes chapter imagined the treatment of offenders very differently from their Senate counterparts. During the 102nd Congress, the House replaced the Senate’s penalties for sex offenders with mandated psychological treatment and rehabilitation. The bill also suggested supplementary chemical treatment, elsewhere known as “chemical castration.”237 In the 103rd Congress, the House bill removed psychological and chemical treatment and replaced it with “Offender Training and Information Programs.” Training was designed to assist probation and parole officers with “case management, supervision, and relapse prevention,” while Information Programs were designed to ensure that those being released from prison received information about sex offender treatment programs.238 The debate about the proper punishment of rapists touched upon numerous other debates related to the rapists’ identity. Castration had begun to receive attention in the mid-1980s, when it was first offered as an alternative to incarceration or as a condition for probation or early release.239 In 1992, a Texas judge granted a rapist’s request to be castrated, starting such a firestorm of protest

237 HR 1133, 103rd Cong. (1993).
238 Ibid.
that the judge decided to nullify his decision.\textsuperscript{240} If the rapist rapes because of his inherent nature as a rapist, can he be made to stop? Chapter 4 will examine the relationship between the identity of the rapist and the variety of approaches to “punishing,” “treating,” and “curing” him.

As contentious as ideas about what should be done with those convicted of rape in prison were ideas of how they should be treated upon their release. The removal of penalties made the House version of this section in some ways less punitive than its Senate counterpart. The discrepancy between the two versions of this chapter was due to the fact that the part of the political conversation about being tough on crime involved the exact measurement of punitive ingredients—retribution, deterrence, rehabilitation, incapacitation—that should be included in the punishment recipe. The House version of this section included a complicated mix of more-liberal, leaning toward rehabilitation, and more-conservative, tilting toward incapacitation.

\textit{Safe Streets, Chapter 2: Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women}

The law enforcement and prosecution grants—which received the bulk of VAWA’s funding—were the aspects of VAWA most obviously indebted to the Omnibus Crime Control and Safe Streets Act. They shared the 1968 crime bill’s goal of developing and strengthening effective law enforcement and prosecution strategies and borrowed from the structure of that bill, creating what came to be known as “STOP” grants (an acronym for service, training, officers, protection)—block grants that gave funding directly to state and local law enforcement entities. These grants emphasized coordinated efforts between law enforcement, prosecutors and

community service groups. 241 While states had to certify that programs they developed would be coordinated with local, private, nonprofit service agencies such as rape crisis centers and battered women’s shelters, community groups had no actual authority over the structure of programming. 242 Rape crisis centers and domestic violence shelters were locked out of a wide swath of funding if they did not want to involve the police in their activities. This lifeline, with many strings attached, is reminiscent of the LEAA and OCJP funding studied by Nancy Mathews.

The Safe Streets Act’s focus on training and equipping law enforcement was mirrored by this chapter’s allocation of $800,000,000 for training and expanding law enforcement, researching and implementing new police policies and expanding data collection systems.

This chapter’s stated focus on improving law enforcement was in sync with other crime prevention sections of the crime bill. For instance, the original language of this chapter, when introduced with the rest of VAWA in 1990, had discussed focusing efforts on the areas with the highest rates of violent crime against women. That language was moved to a special section on high-intensity-crime area grants in subsequent bills and then dropped from VAWA and moved to a generic crime prevention section of the crime bill. The high-intensity crime area grants tried to create similar kinds of anti-crime programs that involved a broad spectrum of community resources, including nonprofit community organizations and law enforcement agencies.

The stated purpose of this chapter was “to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women.” It did not specifically mention sexual violence, a fact that further elided VAWA with the rest of the crime

241 This section—the largest in VAWA—earmarked $26,000,000 for fiscal year 1995, $130,000,000 for fiscal year 1996, $145,000,000 for fiscal year 1997, $160,000,000 for fiscal year 1998, $165,000,000 for fiscal year 1999 and $174,000,000 for fiscal year 2000. H.R. 1133, 103rd Congress (1993).
Money was earmarked for identifying and responding to violent crimes against women, including (but not limited to) the crimes of sexual assault and domestic violence. An early draft of this title gave money only to police and prosecutors. The VAWA task force had to push back against the assumption that police were in control by lobbying successfully for the addition of the possibility for rape crisis centers and domestic violence shelters to receive money directly.243

Safe Streets, Chapter 3: Safety for Women in Public Transit and Public Parks

Safety for Women in Public Transit and Public Parks, not a part of VAWA’s first draft, was added when the bill was reported out of the Senate Judiciary Committee in 1990. It created grants for capital improvements to prevent crime in public transportation and parks by increasing the law enforcement presence there and adding more lights and security cameras at bus stops and parking lots.

The 1990 Senate report on VAWA described this chapter as taking “simple, but necessary, measures to ensure that women can travel safely in public parks and on public transit.”244 While this chapter did allocate a small percentage of its funding toward a study of ways to increase safety for women in public parks, very little else in this section applies specifically to rape or domestic violence. In fact, this portion of VAWA has as much in common with the crime bill’s urban recreation measures as it does with other sections of VAWA itself.245

The crime bill’s subtitle on urban recreation and at-risk youth included a section on “park and

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245 The Urban Park and Recreation Recovery Act of 1978 was amended by adding the following at the end: “It is further the purpose of this title to improve recreation facilities and expand recreation services in urban areas with a high incidence of crime and to help deter crime through the expansion of recreation opportunities for at-risk youth. It is the further purpose of this section to increase the security of urban parks and to promote collaboration between local agencies involved in parks and recreation, law enforcement, youth social services, and juvenile justice system.”
recreation recovery programs.” This component of the bill aimed both to deter crime by expanding recreation opportunities for at-risk youth and to increase the security of urban parks with lighting, cameras and increased collaboration between park personnel and law enforcement. Both sections fit well into the crime bill’s overall goal of further integrating law enforcement into community policing efforts.

**Safe Streets, Chapter 4: New Evidentiary Rules**

VAWA updated the Federal Rules of Evidence (FRE), the federal code that governs what is and is not admissible as evidence in civil and criminal trials by expanding it to apply to not only criminal but also civil cases. 246 Unique to the federal rules, which are normally written by the Supreme Court, Rule 412 was originally added to the FRE by Congresswoman Elizabeth Holtzman’s 1978 Privacy Protection for Rape Victims Act of 1978. 247 The changes to the rules were the subject of ongoing interest to both Congress and the Judicial Conference, the body charged with overseeing amendments to the FRE. 248 Members of the conference, who had begun watching VAWA warily in 1991, created an Ad Hoc Committee on Gender-Based Violence to address the bill. The conference discussed the rule during its annual meeting in 1992 Chief Justice Rehnquist objected to what he believed was the amendment’s potential to encroach upon the rights of defendants. 249 Because Congress, unlike the Judicial Conference, does not need Supreme Court approval to amend the rules, it was able to amend Rule 412 without Rehnquist’s approval.

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247 Ibid., 367.

248 Established in 1922 as the policymaking body of the United States Federal Courts, the Judicial Conference meets yearly and at special sessions called by the Chief Justice.

249 Sloan, 372.
FRE 413 made evidence of prior sexual criminal activity by the defendant admissible in federal sexual assault and child molestation cases. This was true whether the abuse was proven or just alleged; under the new rule, if a defendant was accused of having raped someone but never convicted of the crime, that accusation could be entered as evidence in a trial. Rule 413 had initially been part of the Bush administration’s Comprehensive Violent Crime Control Act of 1991. It was later picked up by Dole and Molinari in 1991 and introduced as part of their Women’s Equal Opportunity Act, a more-punitive alternative to VAWA. While the act itself died in committee, many of its provisions were preserved as part of the Sexual Assault Prevention Act in 1992 and 1993. The Senate eventually passed the proposed rules on November 5, 1993 as part of a crime bill amendment to the Clinton crime bill offered by Dole. The new rules became a part of the crime bill as a whole, not of VAWA itself.

Rule 413, by allowing the submission of evidence to prove that a defendant had a certain temperament or was “by nature” likely to have committed a particular crime, made a specific exception to an earlier rule, which forbade use of evidence pertaining to a person’s character traits. Several in Congress felt strongly enough that the new rule should be included that they were willing to ignore the wishes of the Judicial Conference. The House would not vote to include these rules because many members felt that the rules should be written by the Judicial.

251 Rule 413 was also introduced in President Bush’s Violent Crime Bill (S 635) in 1991 and added by Hatch to Biden’s the crime bill in 1991. S. 635 102nd Congress (1991) Title VIII Section 801; 102 S. 635.
252 FRE 404, Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
The version of the revised evidentiary rules that was ultimately included was a judicial proposal sent to the Congress and adopted as part of the final bill.254

The underlying premise of Rule 413 was that rapists were criminal by nature, and that they committed the crime of rape because of their very characters—a sharp departure from feminist understandings of the crime that saw all men as potential rapists.

*Safe Streets, Chapter 5: Assistance to Victims of Sexual Assault*

The first section chapter did not provide direct assistance to victims of sexual assault but instead allocated funding for rape prevention education to states to distribute to rape crisis centers and other non-profits. It authorized grants for education seminars, hotlines, and educating professionals and included a provision that twenty-five percent of funding would go to middle schools, junior high schools, and high schools.

Later portions of this chapter included the House-authored provision of funding for probation and parole officers to work with sex offenders in case management, supervision, and what it called “relapse prevention” after those who had been imprisoned for rape were released, as well as funding to ensure that released sex offenders would be taught about community treatment programs.

VAWA placed a great deal of emphasis on education, and assumes that education is prevention. This emphasis speaks volumes about the bill’s implicit understanding of cause and prevention of rape. VAWA’s section on “relapse prevention” provides essential clues as to the construction of the rapist as suffering from an “illness.”

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Subtitle B: Safe Homes for Women

The term “homes” delineates as somewhat more clearly defined space than “streets.” The fact that there was already a federal funding stream for domestic violence, via the Family Violence Prevention and Services Act, coupled with the extent to which the domestic violence movement had already organized meant that the task force was able to have a more measurable influence on this section of the bill.

Safe Homes’ ten chapters focused much more specifically on domestic violence than Safe Streets’ chapters did on rape. Its most sweeping policy additions were the interstate enforcement of restraining orders, mandatory arrest policies, and increased rights for battered immigrant women. VAWA mandated that for the first time orders of protection received in one state must be recognized by all states.255

Mandatory arrest policies were particularly controversial because of their monolithic approach to an exceedingly complicated problem and the increased amount of power they put in the hands of police officers called to the site of a domestic violence incident. Mandatory arrest policies were a one-size-fits-all solution to an exceedingly complicated problem. Advocates objected to the presumption included in mandatory arrest policies that the benefit of jailing abusers was more important than all other victim interests, including autonomy and financial support from the abuser.256

256 Gruber, “Rape, Feminism and the War on Crime,” 590–592.
Subtitle C: Civil Rights for Women

The remedy established a federal civil rights cause of action, making it possible for the first time for those who believed that violence against them had been motivated by their gender to bring private suit in federal court against their attackers for violating their civil rights. In its final form, the language of this section required the victim to show that the crime of violence committed against her was committed *because of gender or on the basis of gender and due, at least in part, to a gender-based animus*. Congress claimed the authority to enact this subtitle under the Equal Protection Clause of the Fourteenth Amendment.

The civil rights remedy—particularly that in VAWA’s first version—was in some ways anomalous to VAWA’s other titles. It shared their criminal justice focus and was focused again on what Matthews calls “managing rape.” In its first iteration it also had different fundamental understanding of the crime of rape, implying that the crime was inseparable from male attitudes toward women. It used the language of civil rights, not present elsewhere in the bill. Whether or not the bill actually created additional civil rights for women was contested, but the fact that it could be framed that way was essential to the passage of VAWA as a whole. Furthermore, the language of the bill stated that Congress had the right to enact the remedy because of powers granted to it by the commerce clause. Inherent in this was the idea that the fear of rape is disabling to women. This tacit acknowledgment that women have an ongoing reason to fear was a radical understanding of crime. Thus the bill used a radical understanding of rape combined with conservative way of addressing its existence.

The civil rights remedy was a point of contention for a powerful array of outside constituencies, including the Department of Justice and the Conference of Chief Justices of State Supreme Courts. Resistance to its passage was spearheaded by Rehnquist, whose assault was
part of a larger attack upon the expanding federal powers of Congress.\textsuperscript{257} The Department of Justice objected to its supposedly vague language, and the Conference of Chief Justices argued that it would inundate the courts with cases.

Opposition to the civil rights remedy gathered force after Biden introduced VAWA for the second time in January 1991. The Conference of Chief Justices was first to act, and adopted a resolution that supported the rest of VAWA but specifically opposed the civil rights remedy. After this, Rehnquist spoke out against the bill in his year-end report to Congress.\textsuperscript{258} Later in the year, Rehnquist created an Ad Hoc Committee on Gender-Based Violence to examine VAWA. Both Rehnquist himself in his year-end report and the Ad Hoc Committee on Gender-Based Violence took the stance that the civil rights remedy would result in an avalanche of cases that would “slow the wheels of justice.” Ultimately, there was a showdown in 1993 at the annual meeting of the American Bar Association during which the National Association of Women Judges, which NOW LDEF had been able to rally in support of VAWA, was able to prevent the American Bar Association from taking an official stand against VAWA’s civil rights remedy.\textsuperscript{259}

The issue of motivation—its definition, degree, and provability—was central to the debate around this title. When VAWA was reported out of the Senate at the end of 1990, it included (for one iteration of the bill only) the modifier “overwhelmingly” to describe

\textsuperscript{257} One noted legal scholar of the federal court system went so far as to call the Rehnquist court’s limiting of the federal power a federalist revolution. Erwin Chemerinsky, “Keynote Address: Rehnquist Court's Federalism Revolution,” 41:5 Willamette Law Review 82 (2005): 827-846.

\textsuperscript{258} Senate Judiciary Committee, Violence Against Women: Victims of the System: Hearing before the Committee on the Judiciary on S. 15, a Bill to Combat Violence and Crimes Against Women on the Streets and in Homes. United States Senate, 102\textsuperscript{nd} Congress, 1\textsuperscript{st} Sess., S. REP NO. 102-369 at 315 (1992). (hereafter S. REP NO. 102-369)

motivation. When MacKinnon learned of this new language, she wrote to Goldfarb urging her to reconsider and warned:

What the perpetrator intends or is motivated by is not only elusive and ambiguous in many cases; proof of it is almost totally within defendants’ control. Besides, discrimination is not a thought in the head of the discriminator so much as an injury in the life of the victim—one done because of who the victim is. The “motive” construction tends to make discrimination more a sin than an act more mental than material. In short, this language locates the harm in the wrong place and makes this a law that we will not be able to use effectively in many if not most gender-based attacks.

The existing models for determining racial motivation had the potential to limit the civil rights remedy’s ability to redress gender-subordinating violence the violence that women experience is frequently not accompanied by overt expressions of hatred or hostility that are the hallmarks of racial bias.

Whether or not a crime motivated by a victim’s gender was automatically a bias crime was another point of contention. The dispute about this issue points to the central question of whether women should be considered a protected class. When VAWA was introduced, the civil rights remedy included language referring to equal protection and immunities that suggested as such. To make the bill more palatable this language was dropped, substantially limiting the reach of the remedy.

As originally drafted, this title had covered only sex-related crimes—including rape, sexual assault and abusive sexual contact. New language incorporated in 1991 expanded the definition of crimes covered to include all crimes of violence motivated by gender, not simply

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260 It read, “All persons within the United States shall have the same rights, privileges and immunities in every State as is enjoyed by all other persons to be free from crimes of violence overwhelmingly motivated by the victim’s gender.”

261 Letter from Catharine Mackinnon to Sally Goldfarb, December 3, 1990. NOW Papers (additional records of the National Organization for Women), Box 373 Folder 3.


263 S 2754 read: Crimes motivated by the victim's gender constitute bias crime in violation of the victim's right to equal protection of the laws, equal privileges and immunities under the laws, and in violation of the victim's right to be free from discrimination on the basis of gender.
sex-related crimes. In 1990, both House and Senate versions of the bill had defined the term “crime of violence motivated by the victim’s gender” as “any rape, sexual assault, or abusive sexual contact motivated by gender-based animus.” This language was changed, however, so that “crime of violence motivated by gender” was defined as “any crime of violence, as defined in this section, including rape, sexual assault, sexual abuse, abusive sexual contact, or any other crime of violence committed because of gender or on the basis of gender.” Whereas the first definition had assumed that sexual crimes were always motivated by gender, the second assumed that some sexual crimes were be motivated by gender while others were not.

An agreement made between Biden and Hatch in 1993 created the final changes to the wording of the civil rights remedy. Together, Biden and Hatch chose to limit the title’s coverage to felonious crimes. They also tried to narrow the possibility that there would be an assumption made in court that women were attacked because they were women by changing the phrase “crimes committed because of gender” to crimes committed “at least in part due to an animus based on the victim’s gender.” Prior to VAWA’s introduction NOW LDEF and Nourse had worked together to negotiate use of the word “animus” with several of the federal judges who had previously been unhappy with the wording of the intent requirement of the civil rights remedy. While meant to clarify the impetus of the violence, this new wording sometimes caused confusion; Biden originally used the term “animus” in the sense of motivation, while the colloquial use of the word describes a form of hatred.

There is a continuum between the efforts of Murray’s cohort of feminists to apply the

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267 Ibid., 25.
268 Ibid., 35.
Fourteenth amendment to the rights of women and that of VAWA’s crafters to do the same. When discussing the bill Biden and NOW LDEF staff often made direct analogies. In fact, Biden said about VAWA that,

This society has long condemned, in the harshest of terms, hate beatings of blacks, Asians, or Hispanics. When the victim has been singled out because of his race or religion or the color of his skin, society condemns not only the crime but also the intentional deprivation of the survivor’s civil rights. This bill extends the same protection to the women of America. Crimes committed because of gender are not simply random acts of violence. Ninety-seven percent of all sex assaults in this country are committed against women. We all know this; indeed, we assume it; but we ignore the implications. Crimes committed because of gender should be condemned in the same terms as crimes committed because of race or religion—in terms as strong as this society can possibly muster—as violent deprivations of civil rights.271

Likewise, when NOW LDEF’s executive director Helen Neuborne testified in favor of VAWA’s civil rights remedy she stated, “Just as a democratic society cannot tolerate crimes motivated by the victim’s membership in a minority racial group and must pass special laws to combat such oppression, so too we must put into place effective laws to prevent and redress violent crime motivated by the victim’s sex.” 272

Indeed, discussion about the civil rights remedy raised fundamental questions about the category of gender, such as if and when women are indeed a separate class and if and when it is empowering to view them as such. Murray had eloquently introduced the parallel between the rights of women and blacks when the Commission on the Status of Women asked her to conceptualize a way forward for women’s rights. The civil rights remedy’s exclusion of blacks was for many a cause for worry. Those at the ACLU and LCCR were convinced that a civil rights remedy based on gender (but excluding race) would water down other civil rights efforts. 273 Although the race-sex analogy worked well in theory, as courts turned theory into law, the analogy lost what Serena Mayeri calls the “intersectional nuances” it had originally

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contained. Depending on the context, the race/sex analogy could limit rather than expand possibilities. Lost from these decisions was any understanding of the complicated historical relationship between racial and gender inequalities.274

The civil rights remedy left the fate of victims at the intersection of the categories of race and gender unclear. Although as early as the December 1992 VAWA task force meetings, members of the task force debated expanding the civil rights remedy to include other categories such as race and religion.275 In November 1993, Representative Jerrold Nadler (D-NY) introduced a bill that provided civil rights remedy for victims of violence motivated not just by gender but also by race, ethnicity, and sexual orientation.276

Subtitle D: Equal Justice for Women in the Courts

Equal Justice for Women in the Courts provided funding for the education and training of federal and state judges on issues relating to violence against women and treatment of women in the courts.277 While the bill was an important addendum to VAWA, its inclusion was a reminder of another of the compromises made when feminism stepped into the public agenda. Rather than seeking to enact any kind of structural change, the Simon bill called for the education of the judiciary.

NOW LDEF worked closely with NJEP to help prepare this addition, which was introduced by Senator Paul Simon (D-IL) in October 1990.278 Simon’s interest in the issue of judicial education was piqued by a report issued in April by the Illinois Task Force on Gender

274 Mayeri, “‘A Common Fate of Discrimination,’” 1075.
277 H.R. Rep No. 103-395 at 27.
Bias in the Courts which found that, despite sweeping changes to the way the legal system handled violence against women, there remained a persistent institutionalized bias toward female litigants and attorneys that jeopardized their right to fair treatment in cases involving divorce, domestic violence, and sexual assault. NOW LDEF’s partner, the National Judicial Education Program (NJEP) had been hugely instrumental in creating the first task forces on court-based gender bias. The Illinois task force itself was one of seventeen that had been set up by 1990, and was closely affiliated with NJEP.

In 1994, the year of VAWA’s passage NJEP released a curriculum for judges, Understanding Sexual Violence: The Judicial Response to Stranger and Non-stranger Rape and Sexual Assault.

Subtitle F: National Stalker and Domestic Violence Reduction

This chapter was introduced in the summer of 1994, after the passage of a number of new state laws in the early 1990s, and aimed to help Congress assist state anti-stalking measures. It gave courts access to existing national crime databases for use in domestic violence and stalking cases and money to improve their data collection on domestic violence and stalking cases.

Stalker measures gave much credence to the idea that criminals can be catalogued, as well as the idea that certain crimes are more likely to be recidivist than others.

Biden’s transformation as a legislator is embodied by his introduction, of this—the first

federal anti-stalking legislation. Stalking first gained widespread attention during the early 1990s. Its emergence as a topic of concern coincided with VAWA’s journey through the House and Senate. Biden’s vested interest in VAWA made him poised to act on changing public perceptions of violence; it is hard, but not impossible, to imagine Biden’s pushing anti-stalking legislation when he first became an advocate for anti-violence legislation. Biden’s public stance on stalking was also yet another example of his straddling the feminist and tough-on-crime worlds. The idea that stalking merited federal notice was relatively progressive, while the measures planned against it were standard anti-criminal fare.

Subtitle G: Safe homes for immigrant women

VAWA made it possible for battered immigrant women to petition without their husbands’ knowledge or consent for conditional permanent residency for both themselves and their undocumented children. It also enabled the suspension of deportation proceedings for battered women. This section first made its way into VAWA through an amendment introduced in November 1992 by liberal representatives Louise Slaughter (D-NY) and Charles Schumer (D-NY), as well as Republican Morella.

What’s Not There: Omissions From VAWA

The Commission that Wasn’t: The National Commission on Violent Crime Against Women

The first version of VAWA called for the creation of a National Commission on Violent Crime Against Women. The commission was kept in the bill until 1993, when the House Committee on the Judiciary’s Subcommittee on Crime and Criminal Justice scaled it back to a task force. The commission and the task force had similar responsibilities. Both were charged
with evaluating the adequacy of and making recommendations regarding various aspects of local state and federal responses to violence against women. By the time VAWA passed, the task force had been removed from VAWA itself and folded into the larger crime bill, which included a National Commission on Violent Crime. Of the commission’s ten stated goals, only one applied specifically to violence against women.282

The Title That Wasn’t: Safe Campuses For Women

Safe Campuses for Women called for funding for campus education about rape and guaranteed survivors the right to know the legal fate of those who had raped them. It was included when VAWA was reported out of committee in October 1990. The title was introduced because of feedback from anti-rape activists and because, as the Judiciary Committee reported, hearings revealed “a special problem of violence, a problem that affects young women on campus. Those women are at the greatest risk for the most violent of crimes—rape.”283 Representative Barbara Boxer (D-CA) explained that the idea behind education grants was for the federal government to provide leadership and encourage consistency for the many campuses introducing education programs about sexual assault.284

In May 1991, at the urging of the VAWA task force, Jim Ramstad introduced the Campus Sexual Assault Victims’ Bill of Rights, which included the campus-focused sections of VAWA and passed as part of the Higher Education Amendments of 1992.285 Safe Campuses for Women incorporated a major VAWA theme by viewing rape through the prism of geographic

283 S. REP. NO. 101-545 at 45.
boundaries. The section was true to the rest of bill in terms of its assumptions about the class and race of victims of sexual violence: later chapters will examine the extent to which VAWA explicitly and implicitly placed a premium on protecting white, educated, middle-class women.

**Responses to VAWA**

One rare exception to the relatively uniform media acclaim for VAWA immediately after the bill’s passage was a piece written when *Ms. Magazine* asked law professor Mari Matsuda for a feminist analysis of capital punishment and the crime bill. Matsuda bemoaned the crime bill’s focus on punishment, explaining,

> It is the things we have asked for all along that will stop crime—quality child care and paid parental leave, guaranteed minimum income, universal literacy, affirmative action, and free health care, including mental health care.²⁸⁶

While not specifically addressing VAWA’s relationship to the bill as a whole, Matsuda saw feminists’ lack of vocal opposition to the crime bill’s reliance on increased death penalties as a huge failure on the part of the movement. Matsuda argued that the feminist fight for recognition of women as the victims of crime deflected attention from the crimes of the criminal justice system itself, compromising the integrity of the movement.²⁸⁷

²⁸⁷ Ibid.
This chapter examines the strategies employed by NOW LDEF and the task force it assembled to help shape VAWA and to garner support for its passage. Often this was a process that involved what one member of the task force called “passing feminist legislation without appearing too feminist.”

When speaking to members of Congress and congressional staff, task force members focused on VAWA’s potential as anti-crime, anti-violence legislation and downplayed its feminist credentials. Such a rubric appealed to the sensibilities of senators primed to pass Biden’s larger crime bill. Reuss, Goldfarb, and other members of the task force knew from the beginning of their VAWA advocacy that passing major federal legislation necessitated modulating the stridency of their feminist demands to a register audible to politicians.

A law-and-order argument also appealed to segments of the population willing and sometimes eager to accept increasingly punitive law enforcement measures. Support for VAWA was fueled in part by a public that saw crime as out of control and favored strong, punitive measures as a response. A synergistic relationship developed between the fact that the task force’s message helped it solicit support from a much wider range of organizations and the fact that a wider audience for the bill helped it appear not quite so feminist.

Since VAWA’s parts were different enough to make the legislation, in some ways, two

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288 It appears from the minutes, but there is no way to know for sure, that this statement was made by NOW LDEF attorney Ruth Jones Minutes of the April 1, 1991 Violence Against Women Act Task Force meeting included in a April 11, 1991 memo from Sally Goldfarb and Ruth Jones. NOW Legal Defense and Education Fund Papers, Box 400, Folder 3. Schlesinger Library, Radcliffe Institute, Harvard University. (hereafter NOW LDEF papers)
bills in one, arguments for its passage were malleable. When targeted at fellow advocates, the

task force message would more often than not be focused on the transformative possibilities of
the civil rights remedy. Packaged with law enforcement measures, the civil rights remedy looked
less activist. Paired together the two parts of the bill each tempered the other. For instance, when
increased enforcement and penalties were bundled with civil rights measures they appeared less
draconian.

Washington-based civil and women’s rights groups were two constituencies that
remained consistently unconvinced by any argument for VAWA. In fact, almost as soon as
VAWA was introduced, the WRP and the NAACP LDF began speaking out privately against it.
While the discord between these groups was based on concern about VAWA, it was also about
contested understandings of feminism. Who is a feminist? And who speaks for the movement?

NOW LDEF had always espoused a very particular strain of historically white, liberal
feminism. It was a category of feminism from which many black women had long felt excluded.
NOW LDEF’s wholehearted embrace of a civil rights remedy that applied to gender and not race
was just the kind of divisive strategy that had caused tension before. In the case of VAWA
traditional tensions were elevated because of the unusual relationship between the civil rights
remedy and its strange bedfellow—law and order legislation fraught with racist undertones. The
situation was not helped by the fact that, to lend VAWA legitimacy as a feminist endeavor Biden
represented NOW LDEF (and NOW LDEF represented itself) as quintessentially feminist and
able to speak for all feminists.

False Starts

Before approaching NOW LDEF for help constructing VAWA, Nourse had initially
contacted a number of so-called inside-the-Beltway women’s groups, all of which refused to
support VAWA. Nourse has hinted that their resistance to VAWA could have been due to the fact that these groups saw the issue of violence against women as politically dangerous.  

Neuborne related a similar experience, recalling that after she and Goldfarb agreed to help with VAWA,  

I went out and I talked to the other women leaders of women's groups at the time to see if they wanted to join with us to really share some of the responsibility and work and building that would go on around this issue. And surprisingly, they all said no.  

Biden recollected in his autobiography that women’s groups were not initially interested in supporting VAWA. “I was a bit surprised at the resistance I met from the inside-the-Beltway women’s groups.” Biden himself remembered,  

I knew these groups didn’t entirely trust me because I wasn’t pure on the issue of abortion. …But there were other things beyond the groups’ long-held suspicions of me. I got the sense that the inside-the-Beltway domestic violence advocacy groups were worried that the VAWA would be a distraction from the main issues.”  

Reuss attributed feminist groups’ resistance to work on VAWA to the boldness of the legislation, remembering:  

They [inside-the-Beltway women’s groups] were just angry that there was one more thing that seemed hopeless that some senator wanted to do. They said, “Good luck, but we don't even have time to look at it or work on it.”  

According to Joan Zorza, a New York-based lawyer specializing in domestic violence, no one in the activist community conceptualized violence against women as a federal issue, so the

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290 Alex Aleinkoff et al., “Present at the Creation,” 515.
291 The dominant pieces of legislation occupying the attention of Washington feminist groups at that time were the Civil Rights Act and the Freedom of Choice Act.
292 Biden, Promises to Keep, 242–243.
legislation seemed irrelevant to many at first.\textsuperscript{294}

Some groups that should have had a vested interest in getting the bill passed either could not or would not work directly with the task force. None of these organizations ever publicly addressed its initial lack of support for VAWA, so there is no way of knowing for sure what motivated it. It could perhaps have been a lack of trust in Biden, as he himself intimated. It could have been because these groups believed that VAWA could not be passed, something else that Reuss suggested.\textsuperscript{295}

The women’s groups Biden and Neuborne first turned to have not been publicly named anywhere but most certainly included organizations such as the Women’s Legal Defense Fund and the NWLC. Their resistance to supporting VAWA was something of a secret hidden in plain site. Far from being too distracted to work on VAWA or seeing violence against women legislation as irrelevant or hopelessly impossible to pass, members of these groups were, in actuality, actively nervous about VAWA’s very real potential to do harm. Cynthia Hogan, who replaced Ron Klain as chief counsel to the Judiciary Committee in 1992 remembered,

The civil rights community doesn't like it [the civil rights remedy] because they think it gives a better civil rights cause of action to women than racial minorities have…and the women's movement is very closely aligned with the civil rights movement, and so when the bill was first introduced, the women's movement did not embrace it and were very troubled in particular by Title III.\textsuperscript{296}

Biden’s and the NOW LDEF staff’s professed puzzlement about these groups’ lack of interest in VAWA was at least to a certain degree feigned. The NWLC and its allies contacted Biden’s office repeatedly to inform the senator of their concerns.\textsuperscript{297} Their assumed befuddlement allows them to acknowledge that there were natural constituents who by all rights should have been

\textsuperscript{294} Joan Zorza. Telephone interview by author. March 16, 2014.  
\textsuperscript{295} Pat Reuss. Telephone interview by author. November 24, 2014.  
\textsuperscript{297} Brenda Smith. Telephone interview by author. December 14, 2014.
engaged with VAWA but weren’t without openly acknowledging the very real threat these groups saw in VAWA.

**NOW LDEF Takes the Challenge**

Goldfarb stated on several occasions that the passage of the civil rights remedy was her top priority. For instance, she explained by letter to Representative Patricia Schroeder (D-CO) that,

> Although NOW LDEF informally chairs this task force made up of over 400 organizational and individual members from all across the United States, our primary area of interest and expertise is…the civil rights section that is Title III of the Act.\(^\text{298}\)

While a belief in the importance of the civil rights remedy was the driving force behind NOW LDEF’s dedication to VAWA, additional facets of working on VAWA could also have appealed to the Goldfarb, Neuborne or Reuss. There was the hope that VAWA would create a national platform for an issue with tremendous relevance to women. The allocations discussed in VAWA were an order of magnitude higher than those in the 1984 Family Violence Prevention and Services Act, the only other federal domestic violence legislation. NOW LDEF may also have been dedicated to VAWA’s judicial education portions because of the extensive role that the National Judicial Education Program had played in crafting them.

The relatively recent death of the ERA and even more recent exclusion of gender as a category from federal hate crimes legislation lent added urgency to the struggle for establishing gender as a privileged category. The civil rights remedy continued the long-term feminist goal of extending Fourteenth Amendment protections to women. This was the first time that rape or

\(^{298}\)Sally Goldfarb to Honorable Patricia Schroeder. December 18, 1992. NOW Legal Defense & Education Fund Papers, Box 410, Folder 1.
domestic violence had been addressed under the Fourteenth Amendment’s Equal Protection Clause.

Working on the bill offered NOW LDEF a chance to sit at the table with Biden, the chair of the Senate Judiciary Committee. It was an opportunity for NOW LDEF to demonstrate a new degree of establishment acceptance and respectability, not just for itself as an organization, but also for the women’s movement as a whole.

Throughout the early 1990s, VAWA both benefitted from and benefitted the slow but steady growth in public awareness of rape and domestic violence. Family Violence Prevention Fund president Esta Soler, who had actively lobbied for the 1984 Family Violence Prevention and Services Act, saw the passage of VAWA as one part of a multi-faceted effort to raise awareness of violence against women. She hired political strategy firm Bass and Howes to “create a national conversation about domestic violence” which included lobbying for VAWA. Other threads in the conversation included a campaign to educate doctors through the American Medical Association and the PSA campaign “There’s No Excuse,” created by Bass and Howes in conjunction with the Advertising Council.

**VAWA Task Force Beginnings**

After helping to craft VAWA in May 1990, Goldfarb quickly became aware of the need for a coalition to raise awareness of and support for VAWA, and—not sure that anyone else had the motivation to do so—in August began to gather one herself. After VAWA’s introduction,

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301 Ibid.
302 Strebeigh, 344.
Goldfarb herself sent out a letter to a variety of organizations, inviting them to the first meeting of what would become the National Task Force on the Violence Against Women Act.\textsuperscript{303} The meeting was held in September in NOW LDEF’s New York City offices. The task force would continue to meet monthly or bi-monthly through VAWA’s passage in 1994.\textsuperscript{304}

In early 1991, Neuborne hired Reuss to help expand the task force and to help navigate VAWA through Congress. Throughout their years at the helm of the taskforce Goldfarb and Reuss used political artistry to help ensure its dynamism and longevity. The task force not only met as a whole but also in smaller subcommittees that addressed particularly disputed issues. At the first task force meeting, a subcommittee was formed to review federal rape law.\textsuperscript{305} At subsequent meetings religious, sentencing, mandatory HIV and treatment subcommittees were all formed. Reuss, in particular, organized lobbying days, arranged meetings with congressional staff, and figured out how to get and keep the many different members of the task force invested in and involved in the legislative process.

Representatives from four main constituencies—national domestic violence coalitions, women’s rights groups, civil rights policy organizations, and religious organizations—attended early meetings.\textsuperscript{306} For the first two years of its existence, the most active constituencies in the task force remained domestic violence coalitions and religious groups. Without their support, VAWA would not have begun to build momentum. The task force was able to activate this base of supporters, encouraging it to be vocal about its support for VAWA.

Domestic violence coalitions also brought small groups of women from throughout the country to Washington, soliciting feedback from a range of members and giving the domestic

\textsuperscript{303} Aleinikoff et al., “Present at the Creation,” 520.
\textsuperscript{304} After which it became the National Task Force to End Sexual and Domestic Violence Against Women and continued to lobby for anti-violence legislation.
\textsuperscript{306} Ibid.
violence advocacy population a much more active voice than it would otherwise have had.\textsuperscript{307} Karen Artichoker, a domestic violence activist and member of the Rosebud Sioux Tribe, remembers being flown to Washington D.C. by the NCADV. At the time, she represented rural groups in the NCADV, but she ended up pushing for the inclusion of Native Americans in VAWA.\textsuperscript{308}

Religious organizations, too, were able to make use of already-existing networks to help increase awareness of and support for VAWA. The Women of Reform Judaism, a member of the religious subcommittee, passed a resolution against violence against women that closely mirrored the language of VAWA itself, calling upon Temple sisterhoods to “advocate for the passage of legislation at the appropriate governmental levels to combat crimes against women, including provisions for increased protection from violence in the home, on the streets and on campuses.”\textsuperscript{309}

**Task Force Expansion**

While the roster for the first task force meeting had been populated with the names of a cross section of feminist and civil rights organizations, the roster for the last task meeting before VAWA was passed resembled a who’s who of Washington bureaucracy. More constituent support was needed, because if women’s groups alone supported VAWA, it would have been easier for congressmen to write off the bill as not relevant to them.

Despite the continued efforts by task force stalwarts, by early 1992 Reuss had already begun casting a wider net in search of more varied support for the bill. She was able to mobilize organizations whose missions were less directly concerned with rape and domestic violence,

\textsuperscript{307} Karen Artichoker. Telephone interview by author. May 29, 2014
\textsuperscript{308} Ibid.
including unions such as the AFL-CIO, the American Federation of State, County and Municipal Employees, and United Auto Workers. Her efforts benefited from a public that saw crime as out of control and favored strong, punitive measures in response.\footnote{Carroll, 3.}

Slowly but steadily, support for VAWA moved further into the mainstream, broadening its appeal. At the same time, the Family Violence Prevention Fund’s domestic violence outreach to the medical profession began to gain traction, continuing to push the issue further into the public domain. The May 1992 issues of \textit{The Journal of the American Medical Association} included several articles about domestic violence, and the American College of Obstetricians and Gynecologists renewed campaign against domestic violence was in full swing.\footnote{T Randall, “American Congress of Obstetricians and Gynecologists Renews Domestic Violence Campaign, Calls for Changes in Medical School Curricula,” \textit{JAMA} 267, no. 23 (1992): 3131–3135.}

By the spring of 1993, the task force had both grown and changed considerably. By May 750 organizations were included on the task force mailing list, compared to 150 in 1991.\footnote{Minutes of the May 5, 1993 Violence Against Women Act Task Force included in a May 28, 1993 memo from Sally Goldfarb, Ruth Jones and Kathleen Lyon. NOW Papers. Box 97, Folder 13.} AFSCME included an editorial by Biden on VAWA in its spring 1993 news service that was circulated to 2,500 newspapers nationwide.\footnote{Ibid.} In April, the Family Violence Prevention Fund released the results of a domestic violence study it had commissioned.\footnote{Family Violence Prevention Fund, “Domestic Violence Is A Staggering Social Problem.” in Harriet Sigerman, ed \textit{The Columbia Documentary History of American Women Since 1941} (New York: Columbia University Press, 2007), 511-514.}

During the last months of 1993, a much more disparate group of organizations than ever before participated in task force meetings. In October 1993, the AFL-CIO passed a resolution called “Women in America” that included support for VAWA.\footnote{AFL-CIO 20th Convention, “Women in America.” October 1993. Bass and Howes Papers, Box 114, Folder 13. Schlesinger Library, Radcliffe Institute, Harvard University. (hereafter Bass and Howes Papers).} Without mentioning VAWA by name, the resolution articulated support for many of VAWA’s individual provisions. It

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\footnote{Carroll, 3.}  
\footnote{T Randall, “American Congress of Obstetricians and Gynecologists Renews Domestic Violence Campaign, Calls for Changes in Medical School Curricula,” \textit{JAMA} 267, no. 23 (1992): 3131–3135.}  
\footnote{Minutes of the May 5, 1993 Violence Against Women Act Task Force included in a May 28, 1993 memo from Sally Goldfarb, Ruth Jones and Kathleen Lyon. NOW Papers. Box 97, Folder 13.}  
\footnote{Ibid.}  
\end{flushright}
premised its support for these measures on the idea that, “Violence against women is rooted in attitudes and structures that demean women and confine them to a subordinate position in society.” 316

When Goldfarb testified at a House Judiciary Committee meeting in November, she was able to boast of chairing just the kind of far-flung middle-of-the-road task force it had been aiming to create. Goldfarb identified herself saying, “On behalf of the NOW Legal Defense and Education Fund, I chair a national task force of hundreds of religious, labor, medical mental health, aging, civil rights, women’s, children’s, and victims rights organizations, all of which are concerned about the impact of violence on the lives of women and girls.”317 This was truly a broad-based feminism.

By March 1994, the Teamsters Union had sent its first task force representative, and that winter task force meeting attendees included representatives from United Airlines and the American Psychiatric Association.318 At that point the “There’s No Excuse” PSA campaign by FVPF had taken flight and the message of the task force and its allies began to spread throughout the nation.319

**STRATEGY OF THE TASK FORCE:**

**“PASSING FEMINIST LEGISLATION WITHOUT APPEARING TOO FEMINIST”**

**Talking Points**

316 Ibid.
Throughout the years that Goldfarb, Reuss, and others helped maneuver VAWA through Congress, they were aware of the delicacy of their negotiations. Too much feminism could alienate the politicians whose votes were needed to pass the bill. Too little feminism would make it possible for the supporters NOW LDEF was enlisting to become disaffected. The task force mustered considerable support for VAWA precisely because it straddled the line between these two possibilities, making a case for the bill as anti-crime rather than pro-feminist while concurrently stressing the debilitating cost of violence against women.

Notes taken during a 1992 task force meeting include the observation that “the problem in the wake of the [Anita] Hill [and Clarence Thomas] hearings and the Kennedy Smith trial [was the] perception on the Hill that feminism was put to vote and lost.”\(^{320}\) The lesson was to make sure to use hearings on VAWA to stress the anti-violence aspect of the bill, and to make sure the bill was “not a referendum on whether women are oppressed in the United States or a vote for or against feminism.”\(^{321}\) Despite the advantages that being able to back major legislation offered them, staff of NOW LDEF were well aware of the compromises inherent in framing anti-rape legislation as anti-crime legislation.

For instance, task force members who participated in the religious lobbying day realized that “members of Congress seem to feel the women’s vote is not an important consideration” given the conclusion of the Clarence Thomas hearings.\(^{322}\) They decided, therefore, to “emphasize that this is more than a bill for the feminists,” and came up with a series of talking points for doing so.\(^{323}\) Key among these was the high economic cost society pays for rape and domestic

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\(^{320}\) Ruth Jones notes, January 24, 1992 Task Force Meeting. NOW Papers. Box 97, Folder 16.

\(^{321}\) Ibid


\(^{323}\) Ibid.
violence. They also argued that domestic violence is “not solely a women’s issue” but also affects the family, and that idea went hand-in-hand with the assertion of the importance of VAWA as a general crime prevention effort, as opposed to a woman-specific one.

Other task force talking points included VAWA’s various money-saving or money-neutral features, such as the medical costs that can be gained from reducing violence, and the fact that there was no federal expense associated with the civil rights remedy. Many of VAWA’s provisions, such as adding additional lighting to parks and public transportation, were dependent on moving monies from already existing budgets (in this case the Departments of Parks and Transportation) and not earmarking additional funds. Only when these points were made would the task force transition to the idea that men should assume responsibility for the problem of rape and domestic violence, and that violence must be eliminated where people learn it.

To make the most of straddling both sides of the issue, the task force not only chose talking points that stressed a very particular version of VAWA, they also worked hard in their lobbying to balance the competing interests of those who were moderately tough on crime and those who were extremely tough on crime. By using language with various connotations, the task force was able to have a wider appeal.

**Alliance with the Congressional Caucus on Women’s Issues**

Goldfarb’s December 1992 letter to Schroeder also included a straightforward and forthright description of their political alliance,

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324 The bill stated that Congress’s power to remedy this kind of discrimination stems from the same constitutional sources that underpin other antidiscrimination legislation: the commerce clause, and the Fourteenth Amendment. Testimony at hearings held on the civil rights remedy showed that gender-based crimes and the fear of gender-based crimes restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending, all of which affect interstate commerce and the national economy. S. REP. NO. 101-545 at 45.
“So glad you’re going to take a lead next year; we look forward to working with you and the Congressional Caucus on Women’s Issues.” In return for your support and dedication to ending gender-based violence, we pledge to gather sponsors for the bill, provide educational materials for both Congress and the public at large, and gather a large and diverse group of organizations in support of the House legislation that is known as the Violence Against Women Act.325

Goldfarb and Reuss forged an alliance with the Congressional Women’s Caucus (the caucus) and were consistently able to relay the task force's recommendations to staff members of the leading House co-sponsors. Likewise, they were intimately acquainted with the strategies being employed by the caucus itself and thus could respond quickly with pressure on lawmakers when needed.

Reuss was intimately acquainted with the complicated political calculus of passing legislation, and thus was able to provide the task force with a much-needed legislative plan.

According to Bonnie Campbell, then attorney general of Iowa:

The organizational role that NOW LDEF had played in getting the hearings set up and getting the right people there and that might have been the first time I truly understood the significant role—leadership role—they played.326

Task force members, worried that Dole would push Biden even further to the right, believed that they could maximize their impact by,

…supporting the Biden bill while letting Biden know that our support is contingent on there being no further changes that would either hurt women or create other problems. It would also be desirable to get Biden publicly committed to the bill in its current form to forestall future compromises with Dole.327

For this reason, they were eager to work with California Rep. Barbara Boxer, who introduced the House version of VAWA to draft a bill more liberal than Biden’s. Commenting on this, Reuss, recommended that the task force,

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325 Sally Goldfarb to Honorable Patricia Schroeder. December 18, 1992. NOW LDEF Papers, Box 410, Folder 1.
326 Holmes, 212.
327 Ibid
…work with Boxer to get a bill even better than Biden’s bill. Since Boxer identifies herself as a liberal and plans to run for senator in the near future, she is in the best position to write the most desirable bill. We can then argue that Biden’s bill is our bottom-line compromise position.328

NOW LDEF was asked by the caucus to put pressure on senators and representatives who at key points in VAWA’s trajectory. Political scientist Susan Carroll studied the activities of the caucus to see at which point in VAWA’s trajectory these had their greatest impact. It is clear from the minutes of the task force that no small portion of the influence of the caucus was due to the lobbying efforts of the task force.

Together the caucus and task force had their most significant collective impact at two specific points. First, in November 1993, while VAWA was still in the Judiciary Committee, the caucus and task force pressured Judiciary Committee chairman Jack Brooks (D-TX) and Rep. Don Edward (D-CA), Chair of the House Judiciary Civil and Constitutional Rights Subcommittee, to take action on the bill. Second, while the bill was in final conference, the caucus and task force lobbied the conference committee to keep both the civil rights provision and the battered immigrant woman provisions in the bill.329

In addition, task force members tried to influence the shape of the bill with focused attacks on what they saw as its weaknesses. Leery of the increased sentences included in VAWA’s Safe Streets for Women subtitle, the task force spearheaded the effort to pressure Biden to reconsider this measure. Rather than increasing sentences outright, the section instead instructed the U.S. Sentencing Commission to review federal sentences, paying special attention to topics identified as central by the task force. An early draft of the Safe Streets’ Law Enforcement and Prosecution Grants title had given money directly to police and prosecutors.

The task force pushed back against assumptions that police are in control by lobbying successfully for additional funding to be given directly to domestic violence shelters.

Members of the subcommittee on mandatory HIV testing tried to intercept Dole’s efforts to insert a measure requiring this. An April 1991 letter the task force drafted for its membership to send to senators pronounced:

We agree with members of Congress that women who have been raped should not have to live in fear that they have been exposed to the HIV virus by their attackers; and we appreciate any efforts to bring to Congress the important issue of rape and AIDS. However, we strongly oppose mandatory HIV testing of accused sex offenders. Instead, we believe Congress should directly focus on the needs of the survivor herself. Immediately after the rape, a survivor should have available to her anonymous HIV testing. …By contrast, requiring testing of charged rapists is a misdirected approach to this problem, as it will shift the focus of public concern away from the women who need these services.330

Goldfarb and Reuss served as matchmakers between domestic violence advocates and members of the Congressional Caucus on Women’s Issues. Their alliance with the caucus created an entry for a greater domestic violence activist presence in the House and Senate. Domestic violence groups were able to take advantage of the opportunities granted them because they were relatively well organized and had a strong Washington presence in the form of individual lobbyists and a coalition of state activists, the National Coalition Against Domestic Violence (NCADV).331

At least one new domestic violence bill was introduced, modeled on provisions found in the Senate version of VAWA and created as a result of the task force’s work with the Congressional Caucus on Women’s Issues.332 Furthermore, the idea of including provisions for

331 There were two national domestic violence coalitions in the 1990s. The NCADV was the NCADV was the coalition of service providers and the women they served while the National Network to End Domestic Violence was the coalition of state coalitions.
immigrant women in VAWA was first discussed by members of the task force in the spring of 1991 when a subcommittee on battered immigrant women was formed. Members of the subcommittee surmised that Boxer and Slaughter could and would work together on these provisions and that Boxer would prove especially dedicated, as a representative of an area in California where immigrant rights carry considerable weight. The task force members and the Family Violence Prevention Fund lobbyist worked closely with Senate staff to add the category of immigrant women to the Safe Homes provisions of the House version of VAWA.

In contrast to this, the domestic violence and rape movements were fractured within themselves and often unable to work together because of tense competition for money. NOW LDEF tried, with varying degrees of success, to use the VAWA task force tried as a venue in which it was possible for them to come together and a platform from which they could speak with one voice.

**Opposition to VAWA**

Pinzler (of the WRP) and Smith (of the NWLC) both tried initially to discourage VAWA’s introduction and, when that failed, to reshape the sections she saw as most harmful both through engagement with the task force and independent political maneuvering. Pinzler and others at the WRP objected to VAWA’s provisions across the board. Pinzler herself attended one of the first VAWA task force meetings and told those present that ACLU policy did not permit support of increased criminal penalties. She suggested tabling any and all consideration of

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333 Minutes of the April 1, 1991 Violence Against Women Act Task Force meeting included in a April 11, 1991 memo from Sally Goldfarb and Ruth Jones. NOW LDEF Papers, Box 400, Folder 3.
VAWA and instead undertaking a comprehensive examination of women and the criminal justice system, culminating in drafting original legislation.\textsuperscript{335}

When her suggestion fell on deaf years, Pinzler continued to find ways to object to VAWA. In 1991 the ACLU released a policy memo that enumerated its misgivings. These included the fact that VAWA’s civil rights provision provided a remedy for gender-based violence without providing a similar one for race, ethnicity, religion or sexual orientation. The ACLU expressed concern that this could have the long-term effect of watering down the civil rights of other groups.\textsuperscript{336} Finally, the memo took aim at VAWA’s punitive measures, suggesting that the problem with law enforcement was not inadequate penalties but rather inadequate enforcement of penalties.\textsuperscript{337} In 1993 the WRP submitted testimony written by Pinzler that questioned VAWA’s civil rights title at a House hearing held solely on that topic.\textsuperscript{338} This time Pinzler questioned the civil rights remedy’s undue vagueness, and asked how it would be possible for a plaintiff to prove that a rape was carried out due to the survivor’s gender.

Smith, on the other hand, was most apprehensive about what she saw as the troublesome conflation of gender and race in the remedy because it ignored fundamental differences between race-based and gender-based violence. The civil rights remedy’s separation of gender from other categories oversimplified a multiplicity of crimes. She remembers:

“This was very complicated for me as an African American woman. You will see this in a lot of the black feminist scholarship, problems with white women, how they defined what the priorities were and we were just supposed to go along with them…”\textsuperscript{339}

\textsuperscript{335} Minutes of the September 25, 1990 Violence Against Women Act Task Force. NOW Papers. Box, Folder 18.
\textsuperscript{337} Ibid.
\textsuperscript{338} H.R. REP. NO. 101-80 at 2.
\textsuperscript{339} Brenda Smith. Telephone interview by author. December 14, 2014.
In addition, while the civil rights remedy’s possible symbolic value appealed a great deal to those at the helm, to Smith its effective use seemed like a fool’s errand. In order for women to sue their attackers in court, they would have to have a great deal of money, which meant that at its best the remedy would be useful to only a certain few.

While opposition to VAWA was fragmented, there was a loose network of people and organizations opposing it that at times worked together. In 1993 Pinzler’s WRP and Smith’s NWLC, as well as the United Methodist Church and the NAACP were listed as supporters on a letter objecting to VAWA sent by the members of the Turtle Mountain Chippewa Tribe, whose interests were represented by the Native American Rights Fund (NARF). The NARF letter was in direct opposition to the one written by The Women’s Circle. Unlike The Women’s Circle, Chippewa believed that Indians would bear the weight of increased penalties and that this in itself was an outcome to be avoided. In place of lengthened sentences, the NARF suggested mandating treatment.

While Pinzler came to very few meetings and did not engage actively with the task force, in 1993 Smith was part of a task force civil rights subcommittee. Smith recalled that she felt comfortable talking about her concerns with other members of the subcommittee, but remembered a slightly hostile environment at full task force meetings. At one point Smith and several other lawyers who opposed all or part of the bill, including the United Methodist Church’s Hilary Shelton sent a letter directly to the Senate Judiciary Committee. What followed was a tense and awkward lunch with Ron Klain, chief counsel for the Judiciary Committee. As Smith remembers it, Klain could not see past his assessment that the bill would help women. He

340 S. REP NO. 102-369 at 301.
341 Brenda Smith. Telephone interview by author. December 14, 2014; Ron Klain. Email correspondence with author. February 8, 2014.
was confounded by her concern for the people who would be prosecuted under VAWA, and wondered out loud who could possibly be worrying about those who abuse women.\footnote{Ibid.}

The LCCR harbored continued doubts about VAWA’s civil rights remedy and refused to give the bill its much sought-after approval.\footnote{Ralph G. Neas, “Dear Representative” letter. Bass and Howes Papers. Box 114, Folder 15.} Because of the stature and size of the organization, it was not clear that the LCCR would not derail VAWA. As late as March 1994, at a meeting between Sally Goldfarb as well as a staff person, Amy Allina, from Bass and Howes and senators Biden and Boxer, the LCCR was still concerned about Title III. According to Amy Allina, Biden’s staff worried that “the civil rights community’s opposition to the title is stronger than the women’s community’s support for it.”\footnote{Amy Allina, memo to Esta Soler. March 22, 1994. Bass and Howes Papers. Box 114 Folder 15.} Finally, in April the LCCR wrote a letter of muted support for Title III.\footnote{Ralph G. Neas, “Dear Representative” letter. Bass and Howes Papers. Box 114, Folder 15.} The LCCR agreed to support the House version of VAWA (which did not include the civil rights remedy), to commit to the \textit{principle} of Title III as passed by the Senate and to commit to continue working to achieve a consensus on the operative language of Title III.\footnote{Minutes of the February 15, 1994 Violence Against Women Act Task Force included in a March 7, 1994 memo from Sally Goldfarb, Pat Reuss and Laura Maliszewski. NOW LDEF papers, Box 415, Folder 3.} Toward this last goal, the LCCR created a technical drafting committee to discuss expanding civil rights protections to other affected classes and substituting “intentionally selects” for “animus.” Throughout the spring of 1994, NOW LDEF continued to reach out to task force members on behalf of LCCR, encouraging them to work to craft suitable phrasing for Title III.

The issue of increased law enforcement measures was a complicated one precisely because communities that would be most directly affected by these measures sometimes saw them in a positive light. A case in point is the letter written by the members of Women’s Circle, a coalition of mostly Native American domestic violence advocacy groups and shelters. In the
letter members of the Women’s Circle expressed their support for increased sentences mandated in VAWA’s Safe Streets Act:

We recognize that the law enforcement and judicial systems are disproportionately harsh on people of color. We also recognize that the increase in penalties in S.15 will most effect [sic] Indian people. However, while we as Indian women stand side by side with our brothers in the fight against racial oppression, violence against Indian women is causing great and irreparable harm not only to Indian women but to our families and communities as a whole. Federal sentences need to be increased because compared to the violence committed, no one is being convicted or sentenced, Indian or non-Indian, on or off reservations.  

The members of the Women’s Circle did not come to the decision to support VAWA easily. A session of hand wringing preceded their fraught choice. Karen Artichoker, the activist from the Rosebud Sioux Tribe, remembers hours of back and forth conversation, “because the women were saying they felt like we had to choose between the women that we were serving for our work and our own personal experiences with the federal criminal justice system that is racist.” But finally one woman whose son was in prison turned the tide when she said “we can't sacrifice our daughters for our sons…The women in the shelter, they're our daughters.”

**How NOW LDEF Presented its Own Strategy**

For NOW LDEF, Biden was publicly proclaimed a savior and privately viewed as a proxy. The fact that NOW LDEF was in good standing with Biden and others in Congress meant that the organization could claim ownership of the bill during public events. In order to reify their argument that the bill was not too feminist, NOW LDEF members presented themselves to various publics as having warm feelings for Biden, not as his antagonist. All those working for NOW LDEF expressed the opinion that Biden was a fair player who wanted what was best for

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349 Ibid.
women. Behind closed doors, however, it was clear—from comments such as Reuss’s remark about passing a bill better than Biden’s—that their feelings for him and his legislation were much more complicated.

Current Supreme Court Justice Ruth Bader Ginsburg, when discussing her own legislative efforts, said,

Those with whom I associated kept firmly in mind the importance of knowing the audience and playing to that audience—largely men of a certain age. ….We sought to spark judges’ and lawmakers’ understanding that their own daughters and granddaughters could be disadvantaged by the way things were.350

Reuss echoed Ginsburg’s sentiments but took them a step further, calling NOW LDEF’s tactics “nice girls manipulating.”351 In public, she and others on the task force played up their gratitude to Biden for things they had done themselves. For instance, at a symposium in honor of the fifteenth anniversary of VAWA’s passage, then-president of NOW LDEF Irasema Garza praised Biden for his staunch support of VAWA. Her words of admiration, however, were quite exaggerated. With a comment that virtually erased over two decades of work by feminist organizations, Garza said,

Passage of the VAWA in 1994 was a culmination of Senator Biden’s four-year struggle to put the issue of violence against women in the national spotlight. At the public hearings he convened in mid-June of 1990, Senator Biden spoke with passion and conviction asking the nation to break the silence. He said we have ignored the fight of women to be free from the fear of attacks based on their gender. He went on to say that for too long we have kept silent about the obvious.352

The public staging of the struggle to pass the civil rights remedy was as notable for what it didn’t say as for what it did say. In Strebeigh’s Equal, the main danger to VAWA was presented as its derailment by federal judges, who argued that were the civil rights remedy to

352 Alex Aleinikoff et al., “Present at the Creation.”
pass their courts would be flooded with cases. Arguments from civil rights groups were potentially just as harmful and arguably more trenchant.\textsuperscript{353} Strebeigh’s rendition pits a band of fearless female lawyers against a host of male lawyers, stressing NOW LDEF’s success against great odds and evil interlopers.\textsuperscript{354} However, he makes little to no mention of the fact that NOW LDEF was also facing off against traditionally liberal civil rights groups who questioned the remedy’s usefulness and definition of gender in meaningful ways.

Nourse, too, discussed judges’ opposition to the civil rights remedy in detail but made no mention of civil rights groups’ opposition. She related, “if Chairman Biden was going to get VAWA, he would have to take on the judiciary.”\textsuperscript{355} A chauvinistic and needlessly antagonistic judiciary making specious claims is a perfect bully to vanquish. A confrontation with the WRP or NAACP is much harder to paint in flattering terms.

**How grassroots was it?**

VAWA was often presented as legislation that grew organically out of the grassroots. When speaking on the floor of the House in 1993, Representative Patricia Schroeder said, “this bill is the result of grassroots activists on the front lines speaking out; the people in our communities have been the primary lobbyists on this bill-not Washington lawyers.”\textsuperscript{356}

In fact, VAWA originated in Washington as a senator’s project and much of the activism that arose to support it was spearheaded by national organizations invested in passing the bill. NOW LDEF were quite successful in creating a campaign for VAWA. In doing so, NOW LDEF created the demand for the legislation (and not the other way around), harnessing energies from the constituencies it recruited to the cause.

\textsuperscript{353} Strebeigh, 407.
\textsuperscript{354} Ibid., 408-412.
\textsuperscript{355} Nourse, “The Accidental Feminist,” 345.
\textsuperscript{356} 139 Cong. Rec. H10362 (November 20, 1993) (Representative Schroeder discussing VAWA).
NOW LDEF staff was circumspect when discussing the organization’s relationship to those it helped mobilize behind VAWA. The task force collected enough nationwide support for VAWA that NOW LDEF could claim that there was a grassroots movement to pass the bill—and by 1993 one existed. However, NOW LDEF was not part of that grassroots. Reuss was essentially an inside-the-Beltway operative posing as a grassroots person. According to Reuss:

…at the moment we never envisioned any—we didn't run shelters, we didn't have any—law enforcement got a whole lot of, and still does get prosecutors VAWA money, and cities, and states get VAWA money. And so in a funny way we were above it.\(^{357}\)

NOW LDEF worked on the issues it held near and dear and helped to coordinate the efforts of the grassroots members of the task force. Again, Reuss recollected:

Early on NOW LDEF said “we’ll do the lion's share of the work if you let us have the civil rights remedy and the battered immigrant.” And everybody went, oh god we didn’t know … about any of that. Sure go ahead, you can have that. And then that was…the brilliance of Sally Goldfarb and me was that everybody had a say.\(^{358}\)

NOW LDEF was also able to call upon NOW, which was membership-based. NOW’s imprimatur lent VAWA extra credibility and burnished the VAWA task force’s grassroots credentials. Indeed, NOW LDEF continued working almost as closely with its parent organization as it did with its child, NJEP, during VAWA’s duration in Congress. Throughout 1990-1994, NOW supported efforts to pass the legislation. In fact, NOW LDEF and NOW joint sent Sally Goldfarb’s first letter seeking support for VAWA.\(^{359}\) Molly Yard, NOW’s president from 1987-1991, wrote a letter to the Senate about HIV testing, sent out in support of VAWA under NOW’s auspices.\(^{360}\)

\(^{357}\) Pat Reuss. Telephone interview by author. November 24, 2014.

\(^{358}\) Holmes, 125.

\(^{359}\) “We and NOW hope to mobilize an effective network of advocacy groups and grassroots members to ensure the best possible outcome.” Sally Goldfarb, “To Friend”, August 23, 1990. NOW Papers. Box 97, Folder 11.

\(^{360}\) Ibid.
NOW LDEF did, indeed, generate a great deal of grassroots support for VAWA, but the original push for the bill was a top-down rather than bottom-up. Other groups perceived NOW LDEF’s claim to represent a grassroots movement as disingenuous. While the task force was also often presented in the media as grassroots, and indeed received a lot of support from activists around the country, VAWA would not have been introduced or passed without the impetus and staying power of NOW LDEF.\footnote{For instance, Barbara Vobejda, “Battered Women's Cry Relayed Up From Grass Roots,” \textit{Wall Street Journal} (July 6, 1994), A1.} NOW LDEF’s leadership role elicited mixed feelings in the activists who worked on the task force. On the one hand, activists were extremely grateful to have NOW LDEF’s political and organizational firepower behind them, knowing that NOW LDEF could do what they could not. Many were particularly pleased at the strong statement they believed federal legislation would make.\footnote{Joan Zorza. Telephone interview by author. March 16, 2014.}

On the other hand, many activists resented the fact that NOW LDEF was laying claim to an issue that was seen as belonging to the activists themselves and not to NOW LDEF. As one Washington D.C.-based activist remembered,

There was a group in the domestic violence community who took umbrage at NOW Legal Defense being involved. From their perspective NOW Legal Defense was not the expert on these issues and so should not be driving the content of the bill…They felt like they were not being included as much in the drafting.\footnote{NOW LDEF staff attorney, quoted by Holmes, 85.}

While domestic violence groups may have felt animosity toward NOW LDEF and the task force, for the most part they were quite actively engaged in the process of shaping and gathering support for VAWA. In fact, the size and scope of anti-domestic violence groups’ participation was in stark contrast to that of rape crisis groups, which were noticeably less represented. Domestic violence advocates, always slightly better funded than rape activists, had a
much larger and more complex infrastructure in Washington, but there may have been another reason for the disparity in the presences of the two groups.

Some members of anti-rape groups disliked the content of VAWA and expressed their distaste by staying as far away as possible from the legislation. Kata Issari, co-president of NCASA right before VAWA’s introduction and an active member in NCASA’s Women of Color Caucus throughout the 1990s, remembered that before she joined the board in 1993 there had been a well-established relationship between NCASA and the task force, but “we didn't want to deal with any of the legislators or policy makers or criminal justice people….So our choice was to step back from it.”364 Her and her like-minded board members’ focus was on serving their communities, and their apprehension was based in VAWA’s punitive aims. Issari remembers,

I think those of us that were this kind of young strident group on the board didn’t feel that VAWA was valuable, especially because there was a strong criminal justice element to it. And then as now, criminal justice was going to disproportionately target men of color, and disproportionately underrepresent the needs of women of color. So there was a lot of feeling that VAWA was not going to address the needs or be beneficial, and in fact could potentially be problematic for our constituents.365

Race, Gender and the Civil Rights Remedy

The first words spoken by NOW LDEF staff about VAWA on the official record were those of NOW LDEF’s executive director Helen Neuborne. At the June 1990 Senate hearing held in conjunction VAWA’s introduction Neuborne stated, “We are here today to confront the fact that an epidemic of violence directed against women is depriving half of America's citizens

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364 NCASA had been founded in 1978 and early on had created a Women of Color Caucus that hosted an annual Women of Color Institute to address issues of particular concern (there were also lesbian, rural women and survivor caucuses). Clear acknowledgement that there were issues that were not or could not be addressed by the organization as a whole. Issari described the institute as “a combination of training and networking and support and connection.” Kata Issari. Telephone interview by author. October 9, 2014.

365 Ibid.
of their most basic civil rights.” Because she was referring to the threat of violence rather than the violence itself, this statement was certainly slightly hyperbolic. The threat of violence inarguably proscribes women’s lives, but it is much less clear exactly which civil rights the threat of violence removes. Biden himself said about VAWA that,

This society has long condemned, in the harshest of terms, hate beatings of blacks, Asians, or Hispanics. When the victim has been singled out because of his religion or the color of his skin, society condemns not only the crime but also the intentional deprivation of the survivor's civil rights. This bill extends the same protection to the women of America. Crimes committed because of gender are not simply random acts of violence. ... Crimes committed because of gender should be condemned in the same terms as crimes committed because of race or religion—in terms as strong as this society can possibly muster—as violent deprivations of civil rights.

It was harder to prove that violence against women is committed because of gender than because of race. Violent racist acts can be fundamentally different from violent sexist acts. That women can be of all classes, all races, and all religions further complicates the process of determining motivation, making it even more difficult to isolate gender as the catalyst for a violent attack.

VAWA had been crafted to fit into the larger crime bill. Securing additional rights for all classes of citizen was a much larger—and perhaps unrealistic—legislative goal than securing them for women. One of civil rights groups’ biggest concerns about the civil rights remedy was that the qualifications put on violence by the remedy (that it had to be a felony, that the motivation of the attacker had to be proven) were too strict. Civil rights groups feared that

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368 The early language had read “overwhelmingly motivated by gender,” later language read “due to animus based on the victim’s gender.
VAWA’s civil rights remedy would create a standard that eroded civil rights generally.\textsuperscript{369} It was bittersweet and perhaps slightly cynical that VAWA used a direct analogy between gender and race to secure gender-based rights for women that would not be available for victims of race-based crime, especially since the passage of the civil rights remedy was largely symbolic. Normally, the designation and proof of a civil rights violation leads to a lawsuit filed at the expense of the federal government. With the civil rights remedy, the survivor—if she could assemble the financial and legal resources—gained only the right to bring her own suit. If she won she theoretically would have received monetary damages, but only provided the defendant had enough money to pay these. Thus the remedy was seen by WRP’s Pinzler as essentially “do it yourself” justice; the plaintiff would receive no help from the government and have little chance of prevailing.\textsuperscript{370}

\textsuperscript{370} Isabelle Katz Pinzler. Telephone interview by author. October 9, 2014.
CHAPTER 4

VAWA’S MALLEABLE UNDERSTANDINGS OF RAPE

Introduction

Chapter 4 provides a close textual reading of both VAWA’s drafts and the bill’s final version as well as of the bill’s collateral materials—the reports and hearings that make up its official historical record. It seeks to uncover the assumptions about women’s vulnerability, the identity of the rapist, and the role of politicians embedded in both the bill’s language and measures.371

The bill melded rape and domestic violence into a single class “violence against women” which had not appeared in previous legislation. VAWA’s use of this category helped semantically merge rape and domestic violence with the other forms of violence addressed in the crime bill as a whole, and contributed to wrestling of the crime of rape from its feminist roots. This construction led to a deepening of women’s presentation as generic crime victims.

Once women were portrayed as such, the extra provisions they received in VAWA gave them special, or über, victim status. Women’s rendering as victims in the bill paralleled the performative representation of women’s vulnerability and deference in reports and during hearings.

The content and structure of VAWA’s Safe Streets for Women subtitle, moored to the framework of the 1968 crime bill, assumed rapists had an essentially criminal nature. The title’s placement of rape in “the streets”—a category that still held resonances from

371 Picart; Wells and Motley, 127; Baker.
its origins in Johnson’s racially-charged anti-crime legislation—lead to a very particular representation of the rapist as a black criminal inhabiting the streets.

This interpretation necessarily merged anti-rape efforts with other anti-crime activities, further enmeshing anti-rape efforts into the structure of anti-criminality. Furthermore, female victims at the mercy of criminal rapists were to be rescued by redeemer politicians—like those in the House and Senate who wrote and sponsored VAWA.

The Category of Violence Against Women

One of the goals of feminism had been to show that rape was a crime of violence, not a crime of passion.\textsuperscript{372} Unfortunately, VAWA took this idea to extremes while past legislation had addressed only rape or domestic violence. Through the category of violence against women, VAWA blurred the boundaries between the two crimes themselves and, by emphasizing the violence in each, excised the sexual meaning of both. Of course there are ways that this combination makes sense conceptually—rape and domestic violence are by definition “violence against women.” However, using the term as shorthand for both in the context of addressing other forms of violence changed their meanings in fundamental ways.

Indeed, as early as 1981, Catharine MacKinnon had suggested that the use of this category would create a heightened opportunity for co-optation of feminism by the criminal justice movement. She worried that pressing rape into the category of “violence”

\textsuperscript{372} Donat and D’Emilio, “A Feminist Redefinition of Rape and Sexual Assault.”
erased the inherently sexual nature of the crime. MacKinnon blamed the melding of rape, sexual harassment, pornography, and domestic violence into the category of violence against women on women themselves. She argued that since women were afraid to appear prudish and “against sex,” they focused on the violence of rape, ignoring its intricate mix of violence and sexuality. The problem with this construction was, in MacKinnon’s words, “So long as we say that those things are abuses of violence, not sex, we fail to criticize what has been made of sex, what has been done to women through sex...” That construction, as MacKinnon also points out, did not allow for the exploration of the possibility that sexuality, as socially constructed in our society through gender roles is itself a power structure. It also prevented women from asserting that they were fighting for the affirmative control of their own sexuality. At issue was not only the nature of the violence against women itself, but its relationship to women’s self-determination and their ability to control access to their own bodies.

While use of the phrase “violence against women” grew dramatically in the mid-1970s, it had never before been used in a piece of state or federal legislation. Ron Klain, the Judiciary Committee legal counsel, credits himself for adding this construction to VAWA, but does not say why he decided to use it. Presumably it was to allow both rape and domestic violence to fit more easily into a bill about other violent crimes.

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374 Ibid.
375 Ibid.
376 Google Ngram Viewer https://books.google.com/ngrams/graph?content=violence+against+women&year_start=1800&year_end=2000&corpus=15&smoothing=3&share=&direct_url=t1%3B%2Cviolence%20against%20women%3B%2Cc0
377 Klain said in an email, “It was my idea to combine legislation about sexual assault and legislation about domestic violence (previously very separate topics) and combine them in a single legislative proposal under the label the “Violence Against Women Act.” Ron Klain. Email correspondence with author. February 8, 2014.
The Senate Judiciary Committee report, *The Response to Rape: Detours on the Road to Equal Justice*, succinctly exemplified the erasure of the particularity of rape and domestic violence in its introduction: “The purpose of this report is to help us recognize that ‘violence against women’ is simply ‘violence.’”\(^{378}\) To a certain degree this statement is shorthand for the idea that it is imperative to take these crimes as seriously as other forms of violence. It is a tacit acknowledgement that the grievous effects of rape and domestic violence described by the report were worthy of government intervention. Such a statement emanating from a Senate committee was important in and of itself. Indeed, VAWA has been seen by some as a symbolic act, meant primarily for educative purposes.\(^{379}\) Throughout VAWA’s sojourn in Congress, politicians discussing the bill minimized the differences between violence against women and violence against other citizens. For instance, when introducing the June 1991 Senate Judiciary Committee hearing *Violence Against Women: Victims of the System*, Senator Charles Grassley (R-IA) remarked,

> Crimes of violence, whether committed against an elderly pensioner or a child abused by a drug-addicted parent, or against women, the subject of this hearing, are happening in every corner of the country.\(^{380}\)

While this statement makes sense in the context of VAWA’s inclusion in the crime bill, it is discordant in a feminist context, since the categories of victims of violence are not analogous. While violence perpetrated against a child by a drug-addicted parent and violence against women are both violence, they differ from each other in fundamental ways. Once the particularities of rape and domestic violence were removed

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\(^{380}\) S. REP. NO. 102-369 at 3.
and the meanings of the two had been elided, the next step was folding both into the larger category of violence and excising the sexual characteristics of both. Former model Marla Hanson’s testimony, given at the June 1990 Senate Judiciary Committee hearing, *Women and Violence*, is an illustration of the idea that under VAWA violence against women could and did include violence that perhaps had sexual undertones but was neither rape nor domestic violence *per se.* Hanson had her career destroyed by her landlord, who hired thugs to slash her face after she refused to date him. Several points of intersection can be found between the crime against Hanson and actual cases of rape and domestic violence, so her testimony was not entirely irrelevant. But the fact that Hanson was chosen to testify indicates the extent to which the boundaries of violence against women had been stretched to include a great deal more than rape and domestic violence.

In December 1992, VAWA task force members discussed the fact that VAWA’s visibility had “brought wider attention to issues of violence generally.” Several members worried, however, that the issue of violence against women could get lost, or that other kinds of violence could be presented in a way that hurt women.

**Language of the Safe Streets for Women and Civil Rights for Women Subtitles**

VAWA further fused sexual violence against women to other kinds of violence against them by not specifically narrowing the focus of the two sections ostensibly written to address rape and sexual violence respectively: the law enforcement chapter of the Safe Streets for Women subtitle and the civil rights remedy. For instance, Law

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381 S. REP. NO. 101-939 pt 1 at 27.
383 Ibid.
Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women—the second chapter of the Safe Streets for Women subtitle—had aimed to strengthen law enforcement strategies to combat “violent crimes against women.”\textsuperscript{384} The first version of VAWA specified that violence against women included sexual assault, while its final version stipulated that violence against women included both sexual assault and domestic violence.\textsuperscript{385}

The first version of VAWA had contained this definition of crimes of violence motivated by the victim’s gender: “any rape, sexual assault, or abusive sexual contact motivated by gender-based animus.”\textsuperscript{386} The definition in the final version, introduced in 1994, excluded any mention of rape, sexual assault, or abusive sexual contact and instead defined a crime of violence motivated by gender as simply “a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.”\textsuperscript{387} This change guaranteed that the civil rights remedy no longer applied to sexual violence alone, but also to any kind of felonious violence against women. This final characterization, like the category “violence against women” melded different kinds of sexual violence against women and combined sexual with asexual violence. According to Nourse, it was this omission made sure that “the presumption that sexual crimes were gender-motivated was deleted from the bill.”\textsuperscript{388} This deletion removed both the specificity of different crimes of violence, as well as the specificity of crimes aimed at women.

\textsuperscript{384} The purpose of this part is to assist states, Indian tribal governments, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

\textsuperscript{385} S. 2754, 101st Cong. (1990), S. 15, 103rd Cong. (1994).

\textsuperscript{386} S. 2754, 101st Cong. (1990).

\textsuperscript{387} HR 1133, 103rd Cong. (1993).

\textsuperscript{388} Nourse, “Where Violence, Relationship, and Equality Meet,” 25.
**Women as Victims I: Über-Victim Status**

To some extent the success of the victims’ rights movement was responsible for the elision of meanings in VAWA. While the representation of rapists in VAWA fluctuated, that of women was fairly consistent. Funding for VAWA’s Law Enforcement and Prosecution Grants chapter defined the term “victim services” as a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including rape crisis centers, battered women’s shelters, and other sexual assault or domestic violence programs.\(^{389}\) Throughout VAWA, rape survivors are referred to simply as victims—not *rape* victims. Women who have experienced domestic violence are likewise termed victims.

Because much of the crime bill focused on victims’ rights, Nourse consulted victims’ rights groups when writing VAWA, and several parts of VAWA were written with victims in mind. VAWA’s insertion into the crime bill and adoption of the language of victimization meant that women in VAWA became über-victims. As Hanson, the model whose face had been slashed, testified to the Senate Judiciary Committee:

> I was suffering more from the stigma of victimization than from the actual violation…It had never occurred to me to be ashamed at being attacked…until the courts, the press, the society began to…question if I were the architect of my own suffering.\(^{390}\)

Several Senate Judiciary Committee reports exemplified the textual presentation of women as singularly victimized. To underscore the need for federal intervention, the Senate Judiciary Committee first published *Violence Against Women: The Increase of*

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\(^{389}\) HR 1133, 103rd Cong. (1994).

\(^{390}\) S. REP. NO. 101-939 pt 1 at 27.
Rape in America in March 1991. The report began with the underlined assertion that “American women are in greater peril now from attack than they have ever been in the history of our nation.”

Violence Against Women: A Week in the Life of America followed in 1992 and, by providing intricate details of a week’s worth of violence against women, attempted to corroborate assertions of an epidemic. Both reports were noteworthy for exaggerated language and morbidly violent descriptions of violence against women. Both reports combine a pronounced focus on particularly gruesome crimes and crime statistics framing the ordinary as extraordinary. For instance, the first section of Violence Against Women: The Increase of Rape in America presented the inflammatory claim that, “The picture is bleak: there is an epidemic of rape spreading across the county.” It included the subsection “The Rape Problem is Immense…And Growing.” Nowhere did the report acknowledge the possibility of a relationship between the existence of rape crisis centers, more discussion of rape, and greater reportage of the crime.

Violence Against Women: A Week in the Life of America included a so-called “timeline of violence”—twenty pages of barebones sketches of violence against women culled from information gathered during one week spent surveying hospitals, rape crisis centers, and domestic violence shelters across the country. The report asserted that the timeline was the “tip of the iceberg” and, to convey an increased sense of urgency,
pointed out that only 1/100\textsuperscript{th} of the violent attacks against women reported to the police every week had been included and that,

If we were to include every reported incident, our timeline would be more than 2,000 pages long—just for a single week. And if we were to add all the unreported crimes, our timeline would extend to more than 7,000 pages.\textsuperscript{396}

Number of pages is certainly an unusual and perhaps histrionic way to measure violence against women. The report itself is oddly impersonal, nowhere mentioning the cost of the violence on the lives of the women themselves. In addition, the report includes no first-person accounts, which furthers the removal of women’s perceived agency.

The idea of women as victims folded neatly into the larger victim discourse. Many of those who gave testimony during VAWA hearings had also participated in victims’ rights groups. Many oblique and explicit references to women as victims in other hearings and reports were also included. This framed women as the victims not only of violent crimes men experience but also of the special category of crime termed “violence against women,” rendering them über-victims. As The Response to Rape, Detours on the Road to Equal Justice explained, “Women in America suffer all the crimes that plague the Nation—muggings, car thefts, and burglaries, to name a few. But there are also some crimes, including rape and family violence, that disproportionately burden women.”\textsuperscript{397}

Philosophy professor Ann Cahill’s observation that, “A significant element of the woman victim’s experience of rape is directly related to the constitutive element of a power discourse that produces her body as violable, weak and alien to her subjectivity” is particularly relevant here.\textsuperscript{398} In the case of VAWA, the power discourse was lodged in

\textsuperscript{396} S. REP NO. 522-3.
\textsuperscript{397} Ibid.
\textsuperscript{398} Ann J. Cahill, Rethinking Rape (Ithaca: Cornell University Press, 2001), 11.
the materials presenting the bill, which depicted not only women’s bodies as violable and weak, but also women themselves as such.

Often women’s victimization was presented implicitly through their portrayal as disembodied human beings. For instance, the timeline that makes up the bulk of Violence Against Women: A Week in the Life of America includes brief three-to-four sentence vignettes for each reported incident. The only information consistently provided in each sketch is the time and location the attack took place as well as the age of the woman attacked and, if applicable, what happened to her children while she was being assaulted.

The inundation of story snippets lessens the overall impact of the information being presented. The graphic nature of the stories, combined with the fact that the women depicted are anonymous and disembodied contributes to extent to which the stories themselves take on a tone of pornographic titillation. Like pornography, the timeline includes extreme depictions of sexualized force against anonymous women. The lack of any specificity when referring to these women changes them from human beings into bodies—in this case, bodies that are the target of violence. Physically, Violence Against Women: a Week in the Life of America decontextualized crime and focused on body

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Tuesday, September 1, 1992

12:45 a.m., rural California. A woman with five children (11 months old to 11 years old) is physically abused by her husband. He punches her in the head with his fist. She sustains bruises. She escapes and runs to a friend’s house for the night. She reports that she is afraid to call the sheriff because her husband threatens to take their 11-month-old baby (10)

Late afternoon, Maine. A woman in her early twenties is thrown out of her trailer home by her live-in boyfriend as her two sons, ages 2 and 3, watch. Bruised and cut she attempts to leave with her sons. The 2-year-old child is taken from her hands by her boyfriend as she is ordered to leave and threatened with further physical violence. (11)

Early evening, a town in Michigan. A 44-year-old woman is beaten by her husband when he returns home from work. She reports that he has choked her and beaten her with his fists and various household objects. Their two young children are present.(12)

Wednesday, September 2, 1992

10:00 a.m., a small city in Connecticut. A 35-year-old mother of three is raped by her daughter’s 21-year-old boyfriend. He has a knife and cuts her during the assault.(13)
parts. There was no attempt made to discern a pattern or make any broader conjectures about the nature of the violence.

The presentation of women as vulnerable paralleled the performative representation of women’s defenselessness during several other VAWA hearings. For instance, the 1990 Senate Judiciary Committee hearings, *Women and Violence*, included testimony by two women, both of whom had been raped in their teens or early twenties.\(^{400}\) The first, Christine Shunk, was twenty-five years old at the time of the hearing and testified about being raped twice. The first rape, she described, was an acquaintance rape that took place during her freshman year at college; the second occurred two years later when, having transferred schools, Shunk was raped by a stranger outside her dormitory. Nicole Snow, the other woman who testified, was twenty-one years old at the time of the hearing and testified about being raped when she was a fifteen-year-old high school student. The testimony of the two drew attention to their fear and emphasized their deference to Biden. During the initial interaction between Biden and Snow, Biden emphasized the apprehension Snow must be feeling and she, in turn, reminded those listening that Biden was the one who could allay her fear:

Biden: You are not scared, are you?
Witness [Nicole Snow]: Yes, I am scared too….You have the power to make it less frightening for survivors and you have the power to make it a lot more frightening for rapists.\(^{401}\)

Shunk, likewise, began her testimony saying, “I am terrified, so please be patient with me.”\(^{402}\) Snow later summoned the government as protector:

The answers aren't all that difficult, and the solutions are palpable—it has to come

\(^{400}\) S. REP. NO. 101-939 pt 2 at 24.
\(^{401}\) Ibid. at 5-7.
\(^{402}\) Ibid.
from the top. It has to come from our government’s acknowledgement, protection through laws and support. And Senator Joseph Biden’s bill is the first step.\textsuperscript{403}

Several Senate reports pointed out women’s sense of what they termed “double victimization,” referring to the extent to which the disbelief women face at the hands of the judicial and criminal justice systems is experienced as another victimization.\textsuperscript{404} It is true that women have historically faced hostility and disbelief when bringing rape charges, however feminism has tried to address this issue by empowering women. In contrast to this, during hearings on VAWA, women’s victimization was presented as immutable.

Sociologist Jennifer Wood calls the legitimization of government power to punish through protection \textit{symbolic violence}, because it gives a voice to those in whose name it is authorized to speak. She argues that,

\begin{quote}
A protection racket is at work in the development of these crime policies, in that they enhance the state’s power to punish, a power that is hidden behind the idealized images of…particular victims who are represented as powerless. The victims’ powerlessness becomes the state’s alibi for the violence that the state commits in the victims’ names.\textsuperscript{405}
\end{quote}

\textbf{Women as Victims II: Rape as Epidemic}

Much of VAWA’s legislative history—including numerous hearings and reports—employed the recurring trope of a rape epidemic. The claim that the frequency of rape had increased exponentially was repeated not only by many who testified during VAWA’s evolution, but also by members of congress weighing in on VAWA on the floor of the House and Senate and referenced in testimony by lobbyists including those

\textsuperscript{403} S. REP NO. 101-939 pt 2 at 24.
\textsuperscript{404} S. REP. NO. 101-545; S. REP. NO. 102-197.
from NOW LDEF. For instance, the 1991 report *Violence Against Women: The Increase of Rape in America*, included this statement by Biden, “Today’s findings…document the spread of a rape epidemic across the country.”\(^{406}\) Furthermore, the report’s first chapter was aptly titled “Women in Danger: the National Rape Epidemic.”\(^{407}\)

By presenting a picture of burgeoning violence against women across the country, VAWA’s proponents were better able to make an argument for the necessity of the federal action called for by VAWA. However, there was no overwhelming evidence to support the idea that there was more rape, and the fact of rape’s frequency hadn’t been enough to motivate the introduction of new legislation earlier. To make the case for VAWA’s importance, it was useful to argue that something unique was happening at this particular time. The tactic of manipulating public opinion by emphasizing unusually high or depraved sexual happenings is not unique to VAWA. In fact, several historians have documented the connection between sex panic and increased punitive measures.\(^{408}\)

The subtext of the proposition that VAWA *was* being introduced to fight an epidemic was that it was not being introduced because feminism had reached a saturation point or because rape was horrific and always had been. It was the crime itself that appeared to have changed, not the public perception of the crime. Rape and domestic violence were indeed the subjects of a very public hearing, but by focusing on unprovable claims of an epidemic, politicians and advocates subtly undermined feminist accomplishments.

This argument was presented as part of a larger claim that there was a crime

\(^{406}\) S. REP. NO. 522-3.
\(^{407}\) Ibid.
epidemic; there was more crime in general, and especially more crime against women. Again, women were framed as especially victimized. Sometimes the idea that there was an epidemic of rape was paired with the idea that reporting about rape was unreliable, but no mention was made of the inherent contradiction between these two ideas. For instance, Mary Koss, the sociology professor who conducted the 1985 study of date rape with Ms. magazine, focused the majority of her testimony during a 1990 Senate hearing on an explication of the problems with the Department of Justice’s National Crime Survey.\textsuperscript{409} The Justice Department, Koss explained, often gathered data about rape in situations where those being questioned were not free to answer (for instance, asking children about sexual abuse by family members with those family members in the room). Despite this, there was virtually no acknowledgment that the mushrooming amount of information available about rape—coupled with the nationwide push to open rape crisis centers to facilitate the reporting and prosecution of rape—may have affected the rate at which rape was reported. \textit{Violence Against Women: The Increase of Rape in America}’s lone mention of data discrepancies was in reference to under-, not over-reporting; when discussing Montana’s reported decrease in the crime, it asserted, “…we have reason to believe that Montana’s impressive decrease is due more to reporting problems than a ‘real’ drop in the number of rapes.”\textsuperscript{410}

There is also the possibility that Biden was goaded by the controversy surrounding VAWA to embellish statistics. This prospect becomes more likely if one compares his bold claims of the inflation of rape pre-VAWA with his equally bold claims of deflation after the bill’s passage. During a 2002 hearing Biden remarked,

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{409} S. REP. NO. 101-939, pt 2.
\item \textsuperscript{410} S. REP NO. 522-3.
\end{itemize}
\end{footnotesize}
Federal dollars, federal leadership, federal commitment, and, most importantly federal-state collaboration are making a real difference in the lives of women in America. ...Since its passage, there has been a 41% decrease in the rate of intimate partner victimization of women. ...Since then, we have also seen a similar drop in the rates of criminal rape and sexual assault during the same time frame, almost a 43% decrease.\textsuperscript{411}

Throughout reports and hearings, the increase in the incidence of rape was consistently presented as nationwide, in order to emphasize the need for federal action. For instance, a section of Violence Against Women: The Increase of Rape in America was titled, “Rape is an American Problem,” and included statements like the following: “While we have surrounded ourselves in gender-specific violence, women in no other nation or culture are more likely to be raped than those around us.”\textsuperscript{412} The report claimed that, “All corners of the country—and everywhere in between—have been plagued by...record-breaking increases.” It further argued, “...This means that in 1990, American women were more likely to be raped than ever before...”\textsuperscript{413}

The purported increase in the frequency of rape was also consistently presented as uniquely American—with the understanding that other countries were not experiencing skyrocketing rape numbers to the extent that the United States was. Nowhere did the reports question the political situation in Europe or examine whether any of the factors that had led to increased reporting in the United States existed elsewhere.

The reports were all but mum on why rape was increasing exponentially and why the numbers were so inflated in the United States.

Feminists themselves, meanwhile, sometimes repeated the epidemic catchphrase to buoy support for VAWA in the conservative, male-dominated milieu of the House and

\textsuperscript{411} Senate Judiciary Committee Subcommittee on Crime and Drugs, \textit{Leading the Fight: the Violence Against Women Office}. United States Senate, 107\textsuperscript{th} Congress, 2\textsuperscript{nd} Sess. S. REP. NO. 107-72 (2002).
\textsuperscript{412} S. REP NO. 522-3.
\textsuperscript{413} Ibid.
Senate. For instance, a NOW LDEF petition sent to Don Edwards (D-CA), for a hearing on VAWA, referenced an “epidemic of violence.” When testifying at a House Judiciary Committee hearing in 1993, Goldfarb said, “Currently, there is an epidemic of violent crime against women, and women and girls are targets for many types of violence because of their sex.” Those working behind the scenes for VAWA also used the specter of an epidemic, even when communicating with other advocates. In a letter to the NOW’s political liaison, Ginny Montes, Neuborne wrote, “The sooner we can get heightened national programmatic assistance to women, the sooner we can begin to stem the epidemic of rape and domestic violence.”

**Women as Victims III: Fighting the Fear**

Another belief frequently expressed by VAWA’s lawmakers was that there was an inherent connection between the increase in the frequency of rape and the imperative for women to be afraid. The 1990 report *Violence Against Women: The Increase of Rape in America* asserted,

> It is easy to understand why women in this country do not feel safe. At one point, their fears were confined to dark, secluded alleys. Now women must worry about crowded offices, local restaurants, and comfortable homes. For women, there is no longer any place that they can call “secure.”

This statement is not entirely logical. Women's fears were never confined to alleyways. What was new was not the form rape had taken, but an increased willingness to discuss the crime that had led to a national conversation about what constituted rape.

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414 Petition to Don Edwards to hold hearings on VAWA April 1992. NOW LDEF Papers Box 337 Folder 1.
417 S. REP NO. 522-3 at 2.
A 1993 hearing on violence against women in rural areas, called *Violence Against Women: Fighting the Fear*, underscored the need for fear:

Today as never before, women are forced to live in fear. This report shows just how “real” that fear is. Knowing that 1 in 5 women will be raped at some point in her life, each woman must ask herself—every day of her life—“will it be me?” and if so, “will it happen today?”⁴¹⁸

Fear is only one of a number of possible responses women can have to the prospect of rape. It is certainly not the only response, a point made clear by the fury-driven Take Back the Night marches of the 1970s. By implying otherwise, the Judiciary Committee reports chose to define women’s experiences for them and usurp a narrative privilege over women’s lives.⁴¹⁹ VAWA dictated not only how the state should respond to rape, but how women should respond to it as well.

**Women as Victims IV: Women as Family Members**

Another way that lawmakers reinforced women’s victim status was by referring to them not as citizens of the world, but as family members—highlighting men’s jobs outside the home and women’s roles inside it. When introducing *Violence Against Women: The Increase of Rape in America*, Biden stated, “Through S.15, the Violence Against Women Act, I hope to implement the much needed programs that will help reverse current trends. Otherwise, the raging epidemic will brutally touch the lives of hundreds of thousands more mothers, wives, sisters, and daughters...and their families.”⁴²⁰

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⁴¹⁸ S. REP. NO. 101-545 at 31.
⁴¹⁹ Cahill, 11.
⁴²⁰ S. REP. NO. 522-3 at 4.
Biden was not the only one who employed the construct of women as family members. Many other politicians used a similar formulation. For instance, when Senator William Cohen (R-ME) offered his support for VAWA on the floor of the Senate in 1990, he stated:

Women throughout the country, in our Nation’s urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbors, and coworkers who are being victimized…

Echoing this point of view, the 1990 Judiciary Committee report on VAWA lamented, “…in New York, one program turns away approximately 100 battered women per week. It is shameful, but this society has invested more in our pets than our wives…there are three times as many animal shelters as shelters harboring battered women”

Speaking at the June 1990 Senate Judiciary Committee hearing, Strom Thurmond reflected that:

These disturbing statistics [of violent crimes against women] are not the only evidence of the seriousness of this problem. The simple fact that our daughters and wives fear walking down city streets alone or entering their homes at night reminds us of the reality of violent crime.

Descriptions of rapes in Violence Against Women: A Week in the Life of America included very little information about the women being attacked, but often made note which women were mothers, with inflammatory statements like this: “Maine woman is raped by her husband as their children cry outside the bedroom door.”

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421 136 Cong. Rec. S8682 (June 26, 1990)
422 S. REP. NO. 101-545 at 39.
423 S. REP NO.101-939 pt 1 at 19.
424 S. REP. NO. 522-13 at 5.
This emphasis on women as mothers and daughters assumed women were being helped because of their relationship to men, not because of their own status as American citizens. It also took for granted that women were not in Congress themselves; the “our” in Thurmond’s statement referred specifically to the men in the room while he was speaking and, more generally, to the men in power. Men, it was implied, would be the ones to pass new laws; women would be the ones to be helped. As such, male politicians were active helpers, while women were the passive recipients of their aid.

Presenting rape and domestic violence as important crimes because they could happen to people’s families belittles their seriousness. The inference here is that if these crimes happened to women who were not the family members of politicians, they would not be so bad. This rendering would prove particularly paradoxical when applied to domestic violence. For years, many senators and congressional representatives who supported VAWA argued that domestic violence had been considered a second-class crime because it happened inside the home. Thus, at the same time that those politicians who supported VAWA argued that it should be passed to protect their mothers/wives/daughters they argued for an understanding of domestic violence as not just a “family matter.”

Representative Schumer introduced the hearing Domestic Violence: Not Just a Family Matter with these words, “Our first goal [at this hearing] is to let you know that the next woman beaten by her husband could be your daughter, your friend, your

\[425\] For instance, Representative Sangmeister (D-IL) said during a House hearing that it was important to “work to change the perception that domestic violence is a family matter.” House Judiciary Committee Subcommittee on Crime and Criminal. Hearing on Violence Against Women. House of Representatives, 102nd Congress, 2nd Sess. at 4. (1992).
colleague, or your neighbor.”426 By uttering this statement, Schumer indicated the danger of his own casual androcentrism and underscored the fact that he himself was guilty of the very perception he was trying to change. A Senate report on VAWA explained,

> Our country has an unfortunate blind spot when it comes to certain crimes against women. Historically, crimes against women have been perceived as anything but crime—as a “family” problem, as a “private” matter, as sexual “miscommunication.” That tradition of ambivalence has led to oxymoronic labels such as “date rape,” and “domestic violence,” both of which suggest that the violence described is somehow less violent or less harmful or less serious if it takes place in a social setting or at home.427

VAWA, while presented as progressive, often solidified ingrained ideas about women’s roles and their relationship to society.

**Women as Victims V: Young and White**

The first Senate report on VAWA proclaimed: “While rape rates are increasing, it is the young who are at the greatest risk: women aged 16 to 19 are the most likely to be raped.”428 One expert testified: “The women between the ages of 18 and 24 are among those most likely to be raped. And a large portion of these young women are in college.”429 Statements such as this, combined with the fact that VAWA originally had a campus rape component, hint at an assumption that the average rape survivor is young, educated, and white, a “fact” not necessarily born out by statistics.

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427 S. REP. NO. 102-197
429 Ibid.
When these women such as Christine Shunk and Nicole Snow testified, their youth and education was stressed. Both women were young and college-educated, which made them ideal victims.

Who Was the Rapist?

Conflicting Ideas of the Rapist

VAWA inherited some implicit understandings of the rapist’s identity from the 1968 crime bill’s language. In addition, the bill frequently reflected tension between a host of pre- and post-feminist portraits of the rapist. While VAWA’s Law Enforcement and Prosecution Grants title did include a definition of sexual assault, there was no definition of the rapist, so ideas about his identity must be deduced from VAWA’s various measures.430 The image of the rapist as an aberrant criminal coexisted with that of him as mentally ill or spiritually sick as well as with the feminist redefinition of him as an everyman—and of rape as a reflection of a fundamental power imbalance between men and women. A woman testifying at a 1992 hearing perfectly captured the friction between the different “kinds” of rapists when she said,

One group is the kind that Ms. Poland [a witness] and I are dealing with, people that have a mental illness and some sort of twisted perception, whatever that is. And then I think there is another group. I don’t think everybody that does this is

430 The term ‘sexual assault’ in VAWA was defined by United States Code as, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim. The Jacob Wetterling Crimes Against Children and Sexual Violent Offender Act, which was a part of Title XVII of the crime bill, and applied to people who were convicted of contained a definition of the phrase “sexually violent predator,” which it defined in this way: The term “sexually violent predator” means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. …The term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that pre-disposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.
crazy. I think there is another group that does this because it has something to do with men’s privilege and they think it is O.K. to do this to women, and while I wouldn't call them well-balanced people, I wouldn't call them crazy.\textsuperscript{431}

\textbf{The Rapist as a Black Street Criminal}

VAWA's geographic partitioning of crimes was an updated version of similar apportioning found in the 1968 crime bill. VAWA also borrowed several of that bill’s strategies toward such crimes. This format suffused VAWA with the racial undertones prevalent in the 1968 crime bill. Classifying crime by geography is a tricky proposition, as violent crime against women is not otherwise categorized by where it takes place. Because they based VAWA’s Safe Streets for Women subtitle on the 1968 crime bill, the authors of VAWA were forced, in effect, to pour sexual assault legislation into the mold that had been created to address so-called street crime. Because of the historically fraught idea of danger linked to streets, VAWA’s Safe Streets measures can be viewed as the confluence between ideas about crime as located in the streets and perpetrated by poor blacks and the overlapping historical image of the rapist. “Safe streets” would be those rid of poor blacks. When promoting his crime bill on the floor of the Senate in 1990, Biden proclaimed, “It starts by attacking the crime and drug problem where it is most acutely felt, in the streets.”\textsuperscript{432}

Even the Safe Streets for Women subtitle’s provisions for lighting in parks and on public transportation were slanted toward crime that occurred in cities—the bill aimed to increase safety specifically in urban parks. The idea that better lighting would prevent rape was perfectly in sync with the idea of a criminal rapist jumping out of the shadows

\textsuperscript{431} Senate Judiciary Committee, \textit{Hearing on Antistalking Legislation}. United States Senate 102\textsuperscript{nd} Congress, 2\textsuperscript{nd} Sess. S. REP. NO. 102-37 (1992).
to attack, and statements such as these underscore the orientation of the bill not just toward streets, but particularly toward urban streets.

**The Rapist as Sick**

VAWA also included traces of the sick rapist whose history was chronicled by Estelle Freedman. For instance, the Safe Streets for Women subtitle earmarked money to assist probation and parole officers who worked with released sex offenders with “relapse prevention.” The possibility of relapse implies that the desire to rape is a disease, and that a cure is possible—in this instance through some form of therapy. It is not clear in this context whether there is an implication that the rapist can be cured or just prevented from attacking again. This idea did not sit well with several on the House Judiciary Committee. Schumer, for one, complained that he was opposed to treatment programs because rapists should be treated as criminals.

**The Rapist As Everyman**

The civil rights remedy included the idea of animus, a word which assumes that some violence against women (including but not limited to rape) is committed because of the way certain men feel about women and some is not. As Wells and Motley make clear, before the animus requirement was added, the remedy made the assumption that violence against women (rape in particular) was committed because of the way that all men feel about all women. It did this by applying to crimes committed “because of gender or on

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433 HR 1133, 103rd Cong. (1994).
434 Ibid., 13.
the basis of gender.” This language was a tacit acknowledgement of systemic misogyny, placing emphasis on society, not on individual men. The remedy’s language was changed, however, so that it applied to crimes were not only because of gender but also committed “at least in part, to an animus based on the victim’s gender.” 436 Wells and Motley contend that this change was meant to indicate a requirement that each individual perpetrating violence against women have gender-bias as his motivation. 437 While this language still included an implicit acknowledgement of gender bias, it was not an assumption that all such crimes were committed because of gender bias. Ultimately the civil rights remedy made manifest the idea that only some men—consciously or unconsciously—harbor gender bias that is expressed when committing rape and domestic violence 438

VAWA’s education provisions suggested that rape was not the act of a hardened criminal but the mistake of a confused or errant individual. Safe Streets for Women, Safe Homes for Women, and Equal Justice for Women in the Courts all earmarked monies for education. Twenty-five percent of the money in the Safe Streets for Women subtitle was allocated for teaching middle school, junior high school, and high school students. All of the education dollars at Safe Homes were funneled toward creating model programs for primary school through college-aged students. VAWA’s education efforts were based on the implicit assumption that the rapist was not a criminal but instead a misguided or unlearned person. The inclusion of education measures implied that rape is a learned behavior, not behavior that happens because of a mental abnormality, or because of an inherent bias against women.

436 Wells and Motley, 144.
437 Ibid.
438 Wells and Motley, 140.
Whereas more radical feminists had long insisted that men were aware of the nature of their crimes when they raped, mainstream liberal feminists incorporated the idea that a lack of understanding undergirded some of men’s violence, a problem education could correct. In a 1991 VAWA task force meeting, members theorized that Dole could be sponsoring the Women’s Equal Opportunity Act, a bill to the right of Biden’s, simply because he needed to be educated about the nature of rape. “It is unclear what Dole’s rationale is for introducing legislation on violence against women…if Senator Dole can be educated as to the nature and extent of the problem, he could potentially be an ally.”

There is a basic incongruity between the idea that the rapist was an aberrant criminal and that education could help prevent rape. If the rapist were, indeed, deviant, than it would be a waste of money to educate him about the crime of rape. The Safe Streets and Safe Homes subtitles were vague about the content of the educational programs, mentioning only that the education should help to prevent rape. This was in contrast to Equal Justice for Women in the Courts, with its very specific course of study for judges.

Retributive Justice


\[440\] The curriculum developed by NJEP included issues such as the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest; (2) the underreporting of rape, sexual assault, and child sexual abuse; (3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing; (4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing; (5) the historical evolution of laws and attitudes on rape and sexual assault; (6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice; and (7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping.
VAWA’s emphasis on the criminality of rape was of a piece with its focus on retributive justice as the answer to the crime. VAWA imagined the path toward helping women as largely dependent on federal policing and prosecution, with punishment as a recurring motif. In a hearing on the trajectory of rape legislation, Biden said:

> The first step in altering our attitudes toward this violence is to understand the failures of our laws and policies in this regard. Our criminal laws must be judged by their effectiveness in responding to the injustices done to victims of violence.  

This focus on punishment was based on an assumption that justice could be served by responding to violence against women after it had occurred—an abandonment of the feminist premise that societal power relations must be restructured to prevent rape. VAWA’s concentration on punishment, therefore, cannot be separated from either its conceptualization of rapists as criminals, or its presentation of women as helpless victims.

VAWA’s civil rights remedy reinforced the idea of the rapist as angry and violent. The changes in its language that were made to subdue mounting opposition to the original wording limited coverage of the remedy to felonious acts.  

This new language butted up against one of the key goals of state rape law reform, which had been to rid rape law of the resistance requirement. The concept that extra violence is needed to make a rape a violation corroded the idea that rape in itself was a violent act.

The idea of the rapist as particularly recidivist, integral to pre-feminist portraits of him, continued to hold sway in VAWA. The underlying premise of the idea of rapist-as-recidivist was that rapists were criminal by nature, and that they raped because of their essential characters. Feminists countered that because of a gendered power imbalance,
society construed women as inherently available for men’s enjoyment, giving every man the potential to rape.444

This earlier conception was implicit in the Safe Streets for Women subtitle’s Federal Penalties chapter, which specified that the review of the sentencing guidelines it called for pay particular attention to what was termed “the problem of recidivism in cases of sex offenses.” It was also implicit in the newly created FRE 413, which made evidence of prior sexual assaults by a defendant admissible in federal sexual assault cases, whether the sexual assault used as proof was proven or just alleged. As scholars Wells and Motley point out, this rule is premised on the idea that past behavior accurately predicts future conduct—particularly in the case of those accused of rape.445

Politicians as Saviors I: Biden as Protector

It was this focus on women and the ramifications of their behavior that led to their presumed need for male guardianship. In Sex Panic and the Punitive State, cultural studies theorist Roger Lancaster writes about the staying power of America’s national guardian myth, which “casts white men as protectors of white women and children.”446

Biden and other congressmen who worked on VAWA consciously or unconsciously bought into this myth, expressing their custodial status in a number of ways.

Biden often took credit for an extensive array of achievements surrounding VAWA, conspicuously downplaying what feminists had accomplished to make the legislation possible. One of his expressed aims for introducing VAWA was bringing violence against women the attention of the American public. With statements such as:

444 Smart, 221.
445 Wells and Motley, 140.
446 Lancaster, 124.
“One of the things we have to change is the attitudes about rape. I don't know how to do it unless we start to discuss it,” he wiped out twenty-plus years of feminist activism that had already brought rape and domestic violence to the attention of the American people. Indeed, he exhibited a neglectful ignorance of the fact that feminists had put these crimes violence into the public eye as well as of the proliferation of rape crisis centers and domestic violence shelters that grew out of feminist activism.447 Biden’s contention that he discovered the issue of violence against women is therefore either negligent or disingenuous.

Biden’s tactics allowed him to claim expertise on rape and domestic violence. His assertions about bringing violence against women to the attention of the public were somewhat self-serving. The general public’s pre-existing awareness of rape was essential for widespread acceptance of VAWA’s relevance. An already sizeable group of anti-rape activists provided Biden both with his expert witnesses and with the cognitive map with which to navigate the landscape of responses toward violence against women. Incongruously, Biden presented VAWA as in line with feminist demands while simultaneously minimizing the actual contributions wrought by feminist activism around those demands. In so doing, he both helped define the contours of the Senate and House dialogues about rape while reviving rape as an important legislative subject.

When appearing at hearings for VAWA, Biden stressed that, as victims of their attackers, women should passively wait for Congress to protect them. Biden was not entirely ignorant of the juxtaposition between protected and protector, and referred to it when he described telling his wife about VAWA for the first time. Biden recounted in his autobiography that,

447 S. REP. NO. 101-939 pt 1 at 53.
She [Jill] was getting ready…when I turned to her and explained how excited and proud I was about the act we were writing. I was half-expecting—and surely hoping—that my wife would give me a big hug and tell me how proud she was of me. But after a long silence she said, ‘Why are you doing that? We don’t need protection.’

Politicians as Saviors II: The Appropriation of Feminist Arguments

Sometimes, in contrast to their understated subversion of feminism, Biden and other politicians used extravagant “feminist-style” claims to buttress the case they made for VAWA. Often their declarations were made with exaggerated anger, to drive home to the listener the extent of their supposed outrage at women’s treatment.

For instance, during the Senate Judiciary Committee’s August 1990 hearing on VAWA, Biden questioned Christine Skunk and Nicole Snow, both of whom spoke as survivors of acquaintance rape. Biden expressed distaste for the fact that both of these women felt a sense of guilt after their attacks. He proclaimed,

“I think that it is real important for one basic message to go out, and for everybody to understand it. There is no circumstance ever, ever, ever, ever—no circumstance ever where a man has a right, for any reason, to use force on a woman. Never, never. Whether he is a husband, a date, an acquaintance, no matter what.”

The outrage Biden expressed allowed him to separate himself from the kind of men who do use force against women and allowed him to position himself as impervious to the sexism that befalls so many others. In this instance Biden further positioned himself in opposition to the rest of the world:

I think the saddest thing and the most important thing that both of you have said here..is that each of you said something that I hope the whole damn country listens to…Why in God’s name should you have any sense of guilt?"
When Snow explained that women “don’t ask to be raped,” Biden responded,

    Say that again. No matter what, no matter what, no woman asks to be raped. Never. Right?....Say it again, so everybody hears it, because people do not seem to get that message. 451

Biden separated himself from “people,” implying that the problem is with the general population, of which he is not a part. He also implied that if the general population heard his message often enough, people would change their behavior. By default Biden’s statements implied that the legislation he was there to discuss was itself feminist.

451 Ibid., 10
CONCLUSION

TAKING WOMEN OUT OF THE VIOLENCE AGAINST WOMEN ACT

VAWA has been reauthorized three times since its original passage in 1994—in 2000, 2004 and 2013. Just as in the first version of VAWA, the largest budget item in each of VAWA’s reauthorizations has been that which reauthorized the STOP grants created in 1994.452

VAWA’s reauthorizations have broken the mold set by VAWA in several ways. They do not share their parent law’s overt reference to streets as the location for rape. In addition, because they are no longer tethered to a larger crime bill, they have collected components that have been able to free themselves slightly from the tough-on-crime stranglehold that held the first version of VAWA. To some extent, the later bills are able to place violence against women in a larger context. For instance, by providing economic support for domestic violence survivors, the most recent VAWA reauthorization takes a stab at addressing the economic issues surrounding that crime. In addition, each reauthorization has expanded the groups covered by VAWA. In spite of these changes, the fact that most funding goes to law enforcement ensures that they all perpetuate its most damaging characteristics.

452 VAWA’s first reauthorization was approved as part of an anti-sex trafficking act (Sexual Trafficking Victim Protection Act, H.R. 3244). It was noted for creating a victim legal assistance program and for expanding the definition of crimes covered to include dating violence and stalking. The second reauthorization in 2005 (H.R.3171) included a campus provision, as well as a title on training healthcare practitioners, emergency housing and emergency leave for survivors of sexual violence. VAWA’s third reauthorization saw the most controversy since the original VAWA was introduced because it extended protections to gay, bisexual and transgender victims of domestic abuse. For the first time it made it possible for Native American women assaulted on reservations by non-Native Americans to take their cases to tribal courts.
Since its original passage, VAWA’s vocabulary and approach have become further embedded in the language used by the federal government when addressing rape, domestic violence, and other violent sexual crimes. Since a divided Supreme Court declared VAWA’s civil rights remedy unconstitutional in 2000, the remaining portion of VAWA are those which hew much more closely to the goals of the rest of the crime bill.\(^{453}\) With the death of the civil rights remedy gone is the public discussion of violence and its relationship women’s civil rights.

With the addition of new crimes, such as stalking, covered by successive versions of VAWA, even more violent sexual crimes against women have combined into the single category of violence against women without reference to the individual characteristics of each. Women construed as victims are once again necessarily targeted for protection. And once again the fiscal focus of these bills is not always but most often on the crimes in question after they have been committed.

The experience of Karen Artichoker, the member of the Rosebud Sioux who penned the letter sent by the Women’s Circle in 1991 encouraging passage of Safe Street’s increased federal sentences, serves as a poignant reminder of the extent to which VAWA has put control of rape crisis and domestic violence centers in the hands of law enforcement.

Artichoker was flown to Washington, D.C. to consult with other activists from the NCADV as well as congressional staff. Her participation in crafting and lobbying for major federal legislation was a first—for Artichoker certainly, as she’d never been to Washington DC before she arrived to work with fellow activists on VAWA—but perhaps

\(^{453}\) In *United States v. Morrison*, the Court overturned the remedy on the grounds that its passage exceeded the federal government’s powers under the [Commerce Clause](https://en.wikipedia.org/wiki/Commerce_Clause) and Fourteenth Amendment.
for Washington DC as well—rarely if ever before had the country called upon its Native American feminist activist citizens to pitch in for the good of the polity.

The inclusivity of NCADV made it possible for her to come to the Capitol, and the connections forged by NOW LDEF made it possible for her opinion to be heard and recognized. Indeed, when she wrote the letter that was sent on behalf of The Women’s Circle to the Judiciary Committee in support of VAWA’s law enforcement chapter, Reuss made a point of taking her up to Biden and introducing her. Artichoker remembers that Reuss told Biden, “This is Karen and she's the one that wrote that letter that got the Navajos off your back.”

But Artichoker’s communion with Reuss and Biden was short-lived. It became painfully clear to her fairly quickly that her initial hopes for meaningful legislative change had been misplaced. Worse still, it seemed that a bad deal could truly be worse than no deal at all.

She remembered the first time the true meaning of the language of VAWA’s funding provisions was made manifest. She had returned to South Dakota and looked over the plan for the state’s allocation of its STOP funding. She was speaking to a South Dakota legislator.

But we hated the state’s STOP plan. We had Governor [Bill] Janklow here then. So we said we wouldn't approve it. And then they said, “Well you don't have to approve it. According to the legislation we just have to let you see it. But you don't have to approve it.” Janklow called my counterpart. He really – it was really cops and prosecutors and buried the whole shelter piece we just hated it.

And then slowly, she realized what had happened to the language of the act as a whole.

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455 Karen Artichoker. Telephone interview by author. May 29, 2014
But the co-opting is a pretty hard pill to swallow. I remember saying to the violence against women office, when I'm reading grants I said, is there any -- I mean I notice when I’m sitting here visiting with all of you federal officials, that none of you say the word woman, you always say victim. “This is the Violence Against Women Act. I said, is it okay to use the word woman?”... And then one of them finally said, “Well you can, Karen, but we can't.” So they've really kind of taken the woman out of the Violence Against Women Act.456

Artichoker was not alone in feeling that she’d somehow been tricked by VAWA’s final shape. VAWA has made it possible for the federal and local governments to insert themselves into anti-rape efforts at a level not seen before. Grants encouraging arrest policies encouraged the incarceration of black men and women alike.

VAWA’s measures have contributed to the unyielding focus on incarceration and increased policing as the main approach toward violent sexual crimes against women. Part of the country’s drift toward more and longer sentences, VAWA has contributed to American incarceration rates that are dwarf those of every other industrialized country; even though the United States has less than five percent of the world’s population it houses almost a quarter of the world’s prisoners.457 The racial disparities in the makeup of the prison population are harrowing. Blacks now constitute nearly 1 million of the total 2.3 million people incarcerated; they are incarcerated at nearly six times the rate of whites with 1 in 100 African-American women in prison.458

In response to this, a group of anti-rape activists “fed up with the existing organizations that couldn’t (or wouldn’t) address violence faced by women of color” created INCITE! in 2000 “to develop political projects that address the multiple forms of

456 Ibid.
violence women of color experience”. The INCITE! statement of purpose identifies “violence against women of color” as a combination of “violence directed at communities,” such as police violence and “violence within communities,” such as sexual and domestic violence.

With the growth public awareness, in 2003 Ms. magazine published a report examining the relationship between feminism and incarceration. It was a very public acknowledgement of the missteps that the anti-rape and domestic violence movements had made. The report’s authors asked several trenchant questions, including the following:

Can we prevent violence against women through a broader agenda that invests in education, employment, housing, and other basic needs? What might it look like if communities had resources to explore effective interventions and services that would keep decision-making power within the community…?

The publication was indicative of the growing mainstream acceptance of a particular strain of criticism of the anti-violence movement and was part of a growing chorus calling for reform. In her 2006 book Split Decisions: How and Why to Take a Break From Feminism Janet Halley devised the term governance feminism to describe what she sees as “fierce turn in American feminism toward the state” and a powerful tendency toward “criminalising and illegalising as many of the bad things that men did to women as feminism could articulate.” An unintended result has been that feminism "has lost a certain power of critical thinking". Even more recently, Elizabeth Bernstein

463 Ibid.
modified Halley’s phrase slightly to discuss what she terms carceral feminism.\textsuperscript{464}

Such criticisms have fueled a long-overdue public conversation—a conversation had by people such as Brenda Smith and Isabel Katz Pinzler and the membership of the LCCR while VAWA was being debated, but then only behind closed doors. Tragically this discussion is too little too late, as the basic theoretical and funding structures put solidly into place by VAWA have become standard fare. Indeed the success of VAWA’s framework—still called feminist but so far removed from many of the original tenets of the movement—is confirmation of Beth Richie’s observation that anti-rape and domestic violence activists have “won the mainstream but lost the movement.”\textsuperscript{465}


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LBJ Presidential Library
Southern Oral History Program Collection
University of Maryland Women’s Studies Database
Voices of Feminism Project, Smith College
William J. Clinton Presidential Library

**Interviews**

Karen Artichoker. Telephone interview by author. May 29, 2014
Kata Issari. Telephone interview by author. October 9, 2014.
Ron Klain. Email correspondence with author. February 8, 2014.
Isabelle Katz Pinzler. Telephone interview by author. October 9, 2014.

**Government Publications**

**House**


**Senate**


**Department of Justice**


**Newspapers and Periodicals**

*Chicago Tribune*
*Mother Jones*
*Public Interest*
*Slate*
*The New Republic*
*The New York Times*
*Wall Street Journal*

**Journal Articles and Conference Papers**


**Theses**


**Books and Book Chapters**


