

THE CHALLENGES OF ADULT VICTIM SEXUAL ASSAULT CASES

*Raped or “Seduced”?
How Language Helps
Shape Our Response
to Sexual Violence*

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*A project of Legal Momentum in cooperation with the
National Association of Women Judges

National Judicial Education Program*

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Raped or “Seduced”?

How Language Helps Shape Our Response to Sexual Violence

FACULTY MANUAL

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Overview

The language we use to discuss sexual violence helps shape our response to it. Legal language is particularly influential in defining how we talk about sexual violence and in creating or reinforcing societal attitudes on the issue. This interactive module explores the research on the language we use to describe sexual violence, why that language is important, and how the use of accurate language by the judiciary has a far-reaching impact on societal understanding of and responses to sexual violence. The two-hour module covers five topics:

- Using the language of consensual acts to describe assaultive acts
- Describing victims in terms that objectify them or blame them for the violence
- Using linguistic avoidance
 - To create an “invisible perpetrator”
 - To minimize the violence
- Judge-imposed restrictions on language used by witnesses—word bans
- Recommendations for judges on their use of language in cases involving sexual violence

After learning about the current research, judges participate in interactive exercises in which they identify problematic language and rewrite case law excerpts and other texts using appropriate language.

Learning Objectives

- Participants will be able to identify uses of the language of consensual sex to describe assaultive acts
- Participants will be able to identify language that objectifies victims of sexual violence or blames them for the violence
- Participants will be able to identify the use of linguistic avoidance in describing sex offenders and assaultive acts
- Participants will be able to speak and write about sexual violence using accountable language and avoiding the pitfalls addressed in this module

Components of this Module

This module includes the following components:

- A PowerPoint presentation, with suggested commentary for the faculty and extensive references
- A sample agenda
- The following Appendices to facilitate the presentation of the material:
 - Appendix A: Roman Polanski Case Summary
 - Appendix B: *Jastorff Pleads Not Guilty to More than 30 Counts of Rape*
 - Appendix C: Celebrity “Confessions” of Child Sexual Abuse
 - Appendix D: *Violence Against Women*—Jackson Katz—Exercise
 - Appendix E: Case Law Exercise—Participant Handout
 - Appendix F: Case Law Exercise—Facilitator’s Guide
 - Appendix G: The Nebraska Case: *Bowen v. Cheuvront* Case Summary
 - Appendix H: The Nevada Project: Judge Chuck Weller’s Media Guide
 - Appendix I: Judicial Language Project, New England Law | Boston – Greenberg Letter
 - Appendix J: Judicial Language Project, New England Law | Boston – Murphy Letter
 - Appendix K: Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*
 - Appendix L: Casey Gwinn, *The Birthday Boy*
 - Appendix M: Reprint Permissions

The Appendices contain background information for the facilitator, including details about cases mentioned in the presentation, as well as materials for the exercises contained in this module.

Suggested Uses for this Module

This module can either be used as a stand-alone program or judicial educators can integrate it into an existing judicial education program.

The following is a list of the types of programs into which this module can be integrated:

- A program on opinion writing, appellate writing or writing for judges
- A criminal law program
- A program on sexual assault
- A program about domestic violence
- A program about sexual assault in the domestic violence context
- A program about elder victims of sexual abuse
- A program about violence against women

Planning the Program

Judges and judicial educators wishing to present this module or to integrate its subject matter into other judicial education programs should plan as follows:

- Determine the time available for conducting the program. This module and sample agenda were developed for a two-hour program. If you are planning a longer or shorter program, you will need to modify the PowerPoint presentation and the agenda accordingly.
- Adapt the material to local law and practice, if necessary (see section below).
- Select the presenter/moderator for the program.
- This module is designed as a large group program. There are short discussion questions included in the presentation that are geared for a general group discussion. The two writing exercises are designed so that participants rewrite case law excerpts or short texts and then discuss them as a group. However, if you have a very large group (more than 30-40 participants), you may want to divide the participants into smaller groups for the discussions.

- If you are going to use small groups, you need to decide whether you will choose small group discussion leaders in advance. If so, you need to identify them.
- If you are not going to choose your small group leaders in advance, the exercise directions give you a way to choose group leaders quickly, in order to save time.
- Ensure that all faculty members are thoroughly familiar with the parts of the module they will present or the discussions they will lead.

Sample Agenda

Two-Hour Program

Here is the sample agenda for this two-hour module. The format includes lecture portions and interactive exercises. There are also some short discussion questions included in the PowerPoint presentations.

Amount of Time	Activity
15 minutes	Lecture (Slides 1-24)
10 minutes	“Jastorff Pleads Not Guilty” Exercise (large group discussion) (Slide 25)
10 minutes	Lecture (Slides 26-36)
25 minutes	<i>Violence Against Women—Accountable Language Exercise</i> (individual exercise and large group discussion) (Slide 37)
5 minutes	Lecture (Slides 38-41)
30 minutes	Case Law Exercise (individual exercise and large group discussion) (Slide 42)
20 minutes	Lecture (Slides 43-64)
5 minutes	Closing and evaluation

Faculty

Presenter/Moderator: This module is designed to be presented by one presenter/moderator, who delivers the lecture portion of the module, introduces the exercise(s), and moderates the group discussions. The presenter/moderator must be a skilled, experienced judge or judicial educator, who is knowledgeable about the issues discussed.

Small Group Facilitators: If the group is too large to conduct the exercises as a general group discussion, you may want to divide the participants into smaller groups. You can either select your small group facilitators ahead of time or choose them at the program.

With Pre-Selected Small Group Facilitators:

- If you pre-select the small group facilitators, meet with them before the program to review the module content, the exercises and discussion questions.
 - Ask them to appoint the person to their immediate left to be the Reporter who takes notes and gives the Report Back for the group. This saves time.
 - Review the key elements of leading a small group discussion, such as being sure that everyone speaks and no one person dominates.

Without Pre-Selected Small Group Facilitators:

- The person at each table whose last name begins with the letter closest to the letter “A” will serve as the facilitator.
- Assign the reporter role to whoever is sitting to the left of the facilitator.

Adapting the Module to Your State

- We do not anticipate that you will need to adapt this module for your state law. The one exception is if your jurisdiction has case law on the issue of word bans (see Slides 43-56). If you do have relevant case law on the word ban issue, insert the case law into the slides at the relevant place.

Participant Materials

Give participants the following items for use during the program:

- Faculty Biographies
- Agenda

- PowerPoint Slides, printed three to a page with room for note-taking
- The following exercise handouts:
 - Appendix B: *Jastorff Pleads Not Guilty to More than 30 Counts of Rape*
 - Appendix D: *Violence Against Women* Accountable Language Exercise
 - Appendix E: Case Law Exercise—Participant Handout
- We also recommend that you provide participants with the following resource materials:
 - Appendix I: Judicial Language Project, New England Law | Boston – Greenberg Letter
 - Appendix J: Judicial Language Project, New England Law | Boston – Murphy Letter
 - Appendix K: Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*
 - Appendix L: Casey Gwinn, *The Birthday Boy*
- Your evaluation instrument

Preparing Participant Materials

The Appendices for this module, including the participants’ handouts, resource materials and background information for the facilitator, are included at the end of this Faculty Manual. All of the materials, including the PowerPoint presentation with commentary, are also available on the National Judicial Education Program (NJEP)’s website, <http://www.njep.org>. To access materials for this module as well as any of NJEP’s self-contained modules, click on “Curricula on Cases Involving Adult Victims of Sexual Assault.” Then click on “Raped or ‘Seduced’?: How Language Helps Shape the Way We Respond to Sexual Violence,” to access the full module.

To print handouts from the NJEP website:

- Click on the link to the handout you want to print. Clicking the link will download the handout to your computer as a PDF

- Open the downloaded PDF files
- Print and copy the handouts

To print PowerPoint slides as handouts for note taking¹:

- Navigate to the Print Menu
- From the Print Menu select the “Print What” pull-down menu and choose “Handouts”
- From the “Color/Grayscale” menu select “Pure Black and White”
- From the “Slides per page” pull down menu select “3” (to print 3 slides/page with room for note taking)

The PowerPoint Presentation

The lecture portion of this curriculum is contained in a PowerPoint presentation, with suggested commentary for the faculty included in the notes section of the slides. Sources are included on the slides. The PowerPoint presentation is provided on the National Judicial Education Program’s website, www.njep.org. To access the PowerPoint for this module click on Resources and Materials. In the Search the List box enter the exact name of this module: Raped or “Seduced”? How Language Helps Shape Our Response to Sexual Violence.

To present the PowerPoint, navigate to the View menu or tab and click “View Slideshow.” The slide will fill the screen.

- To move to the next slide click your left mouse button, press “Enter” on the keyboard or use the forward arrow key on your keyboard
- To return to a previous slide, press “Backspace” on your keyboard or use the back arrow on your keyboard
- For more options use the right mouse button or for Mac users press the apple/control key and click your mouse button
- To exit the Slideshow mode press Escape (Esc) on the top left corner of your keyboard

¹ These instructions are applicable to PC computers only.

How to Print PowerPoint Slides with Suggested Commentary for the Presenter:

- To print the slides with suggested commentary for guidance during the presentation follow these steps:
- Navigate to the Print Menu
- From the Print Menu navigate to the “Print What” pull-down menu and select “Notes Pages”
- Select the “Color/Grayscale” pull-down menu and choose “Pure Black and White”

Exercises

This module includes the following three interactive exercises, with accompanying directions and discussion questions:

- *Jastorff Pleads Not Guilty* Exercise
- *Violence Against Women Accountable* Language Exercise
- Case Law Exercise

Jastorff Pleads Not Guilty (Appendix B and Slide 25): This short exercise allows judges to start identifying examples where authors use the language of consensual sex to describe assaultive acts. This article was chosen because the examples are obvious and the perpetrator pled guilty to the crime, so there is no question about Jastorff’s guilt.

Setting: This exercise is designed for a general group discussion. It is probably not necessary to divide participants into small groups for this short exercise.

Instructions:

1. Ask participants to identify examples where the author uses the language of consensual sex to describe assaultive acts
2. Participants should identify the following examples:
 - a. “fostering sexual relationships”
 - b. “maintaining sexual relationships”
 - c. “perform oral sex”
 - d. “visit one of the girls”
 - e. “engaged in sexual activity”
3. Give participants the facts of the case, which are summarized in the Notes section of Slide 25.

Recommended Amount of Time: 10 minutes.

Violence Against Women Accountable Language Exercise (Appendix D and Slide 37):

This exercise gives participants the opportunity to identify examples of “linguistic avoidance,” instances where language is used to create an “invisible perpetrator,” which obscures the perpetrator’s agency and responsibility for criminal acts.

Setting: This exercise can be conducted in a large group because participants are asked to read the article and rewrite one paragraph. The facilitator can then lead a large group discussion. However, if there are more than 30-40 participants, the facilitator may want to consider dividing the group into small groups.

Instructions: The Notes section for Slide 37 includes the background information about this exercise. Participants should be instructed to:

1. Read the article
2. Circle words that refer to people and discuss what they notice about those words (men and boys are not mentioned at all)
3. Rewrite one paragraph, using accountable language
4. As time permits, have a few participants read one or two sentences they rewrote
5. As time permits, have participants discuss any difficulty they had in rewriting the text

Recommended Amount of Time: At least 25 minutes. You need to allow the participants time to read the article, rewrite one paragraph and then discuss the results.

Case Law Exercise (Appendices E and F and Slide 42): This exercise gives the judges an opportunity to apply the material covered in the lecture portion of this program. They are provided with excerpts from various sexual assault cases, they are asked to identify problematic language, and then they are instructed to rewrite and discuss selected excerpts.

Setting: This exercise can be conducted as a large group discussion or in small groups. If you are using small groups, you may want to divide the room and assign different case law excerpts to different groups.

Instructions:

1. Print out **Appendix F: Case Law Exercise Facilitator’s Guide** for use by the facilitator. (These instructions are also included on **Appendix F**.)
2. Provide participants with **Appendix E: Case Law Exercise—Participant Handout**.
3. Decide which examples you would like to discuss and have participants read those examples. We recommend that you select at least one of the longer excerpts and some of the shorter ones.
4. Have participants circle language that:
 - a. Uses the language of consensual sex to describe assaultive acts;
 - b. Uses victim blaming language; and/or

- c. Fails to hold the perpetrator accountable -- “the invisible perpetrator.”
5. Have participants circle examples of appropriate or accountable language used.
6. Select example(s) (based on the amount of time available) and have participants rewrite the excerpt using appropriate language.
7. Select example(s) to discuss as a group. Have participants identify relevant language.
8. As time permits, have participants read short segments of the excerpts they rewrote.

Note: Key language is accented with bold italics in Appendix F.

It is important to explain to participants that they are not expected to change witnesses’ language or statutory language. In some of these examples, the court may be quoting what a witness said. If the language is in direct quotes, you do not need to discuss it. Some of these excerpts contain examples of both good and bad language. It is important to identify both types of examples. Participants may identify additional examples that are not marked below. The Facilitator Notes are just provided to help spark discussion.

Recommended Amount of Time: At least 30 minutes.

Evaluation

Evaluation is a critical component of any judicial education program. Because jurisdictions have their own standard evaluation instruments and procedures, we have not included a suggested evaluation form here.

Technical Support

The National Judicial Education Program (NJEP) is available to provide technical assistance to judicial educators and judges who are planning programs using these materials. Please contact us if you need technical assistance or have any questions about using this module.

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Appendix A

Roman Polanski Case Summary

On March 10, 1977, Roman Polanski, age 43, drugged a 13-year-old girl with Quaaludes and alcohol and sexually assaulted her vaginally, anally and orally. Testifying before a grand jury on March 24, 1977, the victim described how Polanski took her to isolated places on two occasions, ostensibly so he could photograph her for *Vogue Magazine*.¹ During the second photography session he took her to actor Jack Nicholson’s home on Mulholland Drive, refused her repeated demands that he drive her home, and raped and sodomized her against her will.² The victim testified that she could barely walk due to her drugged state, she felt dizzy, and her vision was blurred.³ Polanski put his mouth on her vagina and forced his penis into her vagina and anus.⁴ She repeatedly told Polanski “no,” “keep away,” and “stop.”⁵ When asked why she did not resist Polanski with more force, the victim told Deputy District Attorney Roger Gunson, “Because I was afraid of him.”⁶

Polanski was indicted on six felony charges including rape by use of drugs, perversion, sodomy, lewd and lascivious act upon a child under 14, and furnishing a controlled substance to a minor. Lawrence Silver, the attorney representing the victim’s family, wrote a letter to presiding Judge Rittenband of the Superior Court of Los Angeles describing the trauma suffered by the victim and urging Judge Rittenband to accept a plea offered by the district attorney. Silver wrote, “Whatever harm has come to her as a victim would be exacerbated in the extreme if this case went to trial.... This is not the place for a recovering young girl.”⁷

On August 8, 1977 Polanski pled guilty to one count of unlawful sexual intercourse, a felony carrying a maximum sentence of 20 years, and the remaining five charges were dropped. In the plea hearing he admitted that he “had sexual intercourse” with the child victim, and he admitted that he knew at the time that she was 13 years old.⁸

¹ Reporter’s Transcript of Grand Jury Proceeding, *State v. Polanski* (Mar. 24, 1977) (No. A-334139) available at <http://www.thesmokinggun.com/file/roman-polanski-fugitive-director> (last visited July 3, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Lawrence Silver, Loeb and Loeb, to Judge Laurence J. Rittenband, Superior Court of Los Angeles, Aug. 8, 1977 available at <http://www.thesmokinggun.com/file/roman-polanski-plea-transcript?page=16> (last visited July 1, 2011).

⁸ Plea Hearing Transcript, *State v. Polanski* (Aug. 8, 1977) (No. A-334139) available at <http://www.thesmokinggun.com/file/roman-polanski-plea-transcript?page=0> (last visited July 1, 2011).

[Deputy District Attorney] Gunson⁹: On March 10th, 1977, the day you had sexual intercourse with the complaining witness, how old did you believe her to be?

Polanski: She was 13.

Gunson: Did you understand that she was 13 on March 10th, 1977, when you had sexual intercourse with her?

Polanski: Yes.¹⁰

Polanski stated that he understood that upon conviction his sentence could range from probation to 20 years in prison and that his conviction might lead to his deportation.¹¹ He stated that no one had made any promises of a lesser sentence, probation, or immunity in conjunction with the guilty plea.¹² He also stated that he understood that, upon conviction of a felony sex offense involving a child under the age of 14 years, he would be subject to court-ordered Mentally Disordered Sex Offender (MDSO) proceedings, and that he would be sentenced upon completion of a psychiatric evaluation at Chino State Prison.¹³ Polanski was released after 42 days, and he expected that he would receive probation upon completion of the psychiatric evaluation. However, when he learned he was likely facing imprisonment and deportation, he fled to France in February 1978 just before he was to be sentenced. France denied extradition requests from the United States.

In 2005 Federal authorities obtained an international arrest warrant.¹⁴ Polanski’s attorneys filed a request to dismiss the rape conviction in 2008; this request was denied in 2009.¹⁵ Polanski avoided arrest until September 26, 2009, when he was detained in Switzerland while traveling to the Zurich Film Festival to receive a Lifetime Achievement Award.¹⁶ Swiss authorities considered Polanski a flight risk and detained him for approximately two months while Swiss courts reviewed the request for extradition to the United States.¹⁷

On November 25, 2009, the Federal Criminal Court of Switzerland freed Polanski on bail and placed him under house arrest at his Alpine chalet.¹⁸ On December 7, 2009 Polanski unsuccessfully filed a request with the Superior Court of California to be sentenced in

⁹ *Id.*

¹⁰ Plea Hearing Transcript at 14, *State v. Polanski* (Aug. 8, 1977) (No. A-334139) available at <http://www.thesmokinggun.com/file/roman-polanski-plea-transcript?page=0> (last visited July 1, 2011).

¹¹ Plea Hearing Transcript at 11, *State v. Polanski* (Aug. 8, 1977) (No. A-334139) available at <http://www.thesmokinggun.com/file/roman-polanski-plea-transcript?page=0> (last visited July 1, 2011).

¹² *Id.* at 14, 15.

¹³ *Id.* at 11, 17.

¹⁴ Roman Polanski Timeline, KTLA NEWS, <http://www.ktla.com/news/landing/ktla-polanski-timeline,0,5192601.story> (last visited July 1, 2011).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Timeline: Roman Polanski Arrest, <http://news.bbc.co.uk/2/hi/entertainment/8317920.stm> (last visited July 1, 2011).

¹⁸ *Id.*

absentia.¹⁹ On July 12, 2010, Swiss authorities announced that they would not extradite him to the United States and Polanski was released from house arrest.²⁰

Media coverage of Polanski’s 2009 arrest was extensive. Much of the media coverage featured headlines and stories sympathetic to Polanski, including The Washington Post: *The Outrageous Arrest of Roman Polanski*;²¹ The Huffington Post: *Polanski’s Arrest: Shame on the Swiss*;²² The Times of London: *Roman Polanski a Hero Unfairly Persecuted by America, Say French Media*;²³ and Spiegel Online: *Victim or Perpetrator?: The Tragic Case of Roman Polanski*.²⁴ Whoopi Goldberg, on the morning television talk show *The View*, stated in Polanski’s defense, “I know it wasn’t rape-rape. It was something else but I don’t believe it was rape-rape.”²⁵ Other headlines focused on Polanski’s criminal acts, including Salon.com: *Reminder: Roman Polanski Raped a Child*,²⁶ The Washington Post: *Justice for Mr. Polanski: Sexual Assault on a 13-Year-Old Girl Isn’t ‘A Little Mistake’*,²⁷ and CBS News: *Roman Polanski, Child Rapist, Editing New Movie Under House Arrest, Says Friend*.²⁸

¹⁹ *Id.*

²⁰ *Id.*

²¹ Anne Applebaum, *The Outrageous Arrest of Roman Polanski*, WASH. POST (Sept. 27, 2009), http://voices.washingtonpost.com/postpartisan/2009/09/the_outrageous_arrest_of_roman.html.

²² Joan Z. Shore, *Polanski’s Arrest: Shame on the Swiss*, HUFFINGTON POST (Sept 27, 2009), http://www.huffingtonpost.com/joan-z-shore/polanskis-arrest-shame-on_b_301134.html.

²³ Adam Sage and Chris Ayres, *Roman Polanski a Hero Unfairly Persecuted by America, Say French Media*, TIMES, (Sept. 28, 2009), <http://www.timesonline.co.uk/tol/news/world/europe/article6851562.ece>.

²⁴ *Victim or Perpetrator?: The Tragic Case of Roman Polanski* SPIEGEL ONLINE, (Oct. 7, 2009), <http://www.spiegel.de/international/world/0,1518,653586,00.html>.

²⁵ *Polanski Was Not Guilty of ‘Rape-Rape’, Says Whoopi Goldberg*, GUARDIAN (Sept. 29, 2009), <http://www.guardian.co.uk/film/2009/sep/29/roman-polanski-whoopi-goldberg>.

²⁶ Kate Harding, *Reminder: Roman Polanski Raped a Child*, SALON.COM (Sept. 28, 2009), http://www.salon.com/life/broadsheet/feature/2009/09/28/polanski_arrest.

²⁷ Editorial, *Justice for Mr. Polanski: Sexual Assault on a 13-Year-Old Girl Isn’t ‘A Little Mistake’*, WASH. POST, Oct. 1, 2009, at A18.

²⁸ *Roman Polanski, Child Rapist, Editing New Movie Under House Arrest, Says Friend*, CBS NEWS (Dec. 21, 2009), http://www.cbsnews.com/8301-504083_162-6004631-504083.html.

Appendix B – Reprinted with Permission
Exercise: Jastorff Pleads Not Guilty

Jastorff Pleads Not Guilty to More than 30 Counts of Rape

by Jenna Mann, December 28, 2010 6:16 PM

KDLT South Dakota News – NBC Affiliate

http://www.kdlt.com/index.php?option=com_content&task=view&id=6866&Itemid=57

The Sioux Falls middle school teacher accused of fostering sexual relationships with two 13-year-old girls was back in court today. 26-year-old Nicolas Jastorff entered his plea on more than three dozen counts of rape.

Jastorff, a former special education teacher at Patrick Henry Middle School, faced judges in two counties and pleaded not guilty to all 39 counts against him."

Jastorff was first arraigned in Minnehaha County Tuesday morning on 25 counts of fourth degree rape. He is also charged with two counts of solicitation of a minor and two counts of sexual contact with a minor. Later, Jastorff appeared in Lincoln County on an additional ten counts of fourth degree rape.

Jastorff is accused of maintaining sexual relationships with two 13-year-old girls who attended Patrick Henry. According to police affidavits, he would perform sex acts on the two victims in a classroom at the middle school. The documents show he would visit one of the girls at her home during the summer, and the same victim would go to his home in Harrisburg, where the two engaged in sexual activity.

During his arraignment in Minnehaha County, Jastorff's lawyer asked the judge to lower bond from \$1 million to \$50,000, on the condition he would remain under house arrest at his parents' residence in Spearfish and would check in daily with the Spearfish Police Department. The judge denied the request, but did lower bond to \$500,000 cash only.

Jastorff's lawyer did not request bond be lowered in Lincoln County because he said it was *not* possible for Jastorff to make bail in Minnehaha County.

In Minnehaha County, a trial has been scheduled for March 7. The judge has scheduled a jury trial to begin in Lincoln County the next month, on April 7.

35 of the charges against Jastorff are Class 3 felonies. Each is punishable by up to 15 years in prison and/or a \$30,000 fine.

Appendix C

Celebrity “Confessions” of Child Sexual Abuse

After Ashley Judd, Kara DioGuardi and Scott Brown came forward to speak about being the victims of childhood sexual abuse, news articles and headlines frequently described the survivors as “confessing” or “admitting” the abuse.

- Ashley Judd: Actress and daughter of Naomi Judd, a country music singer. On April 5, 2011, Judd released her memoir *All That is Bitter and Sweet* in which she discusses her recovery from the trauma of being sexually abused as a child.
- Kara DioGuardi: American singer-songwriter and former judge on *American Idol*. In her memoir, *A Helluva High Note* (published April 26, 2011), she disclosed that she was sexually abused as a child and raped by a record producer as a young adult.
- Senator Scott Brown: The Republican Senator from Massachusetts disclosed that he was sexually abused as a child by a camp counselor and physically abused by his stepfather. He described his abuse in his book, *Against All Odds*, published February 21, 2011.

Appendix D- Reprinted with Permission Jackson Katz Exercise

VIOLENCE AGAINST WOMEN

Violence against women continues to be a major problem in U.S. society in the 21st century. Our rates of rape, sexual abuse, spouse abuse, and sexual harassment are the highest in the industrialized world.

Each year, according to national crime statistics, more than one-half million women are raped. Half are raped before the age of 18. Contrary to one of the old myths about rape, most of these victims are assaulted by someone they know, including family members and friends. Rapists come from every socio-economic class and racial background. Most have a "normal" appearance; you can't tell if a person is a rapist by how they look.

Annually, millions of girls are sexually abused. Much of this abuse happens to adolescents. But sometimes girls as young as two or three are abused by members of their own family, or other adults in care-giving roles. The high incidence of child sexual abuse is one of the great tragedies of modern American society.

On average, three women every day are murdered as a result of domestic violence. According to the Surgeon General, battering is the leading cause of injury to women in the U.S. More women are injured by partners or spouses than by automobile accidents, athletic injuries, or household mishaps. Sometimes these injuries result in emergency room visits. Domestic abuse is one of the leading causes of emergency room visits by women. It occurs in every socioeconomic class and racial group. Batterers can be middle-aged, twenty-something, or high school students. They can be stockbrokers or truck drivers. Family violence doesn't discriminate by age or profession.

Millions of girls and women suffer sexual harassment in school, in the workplace, and on the street. One national study found that 83% of the girls responding reported being harassed at school. Women and girls of all racial and ethnic backgrounds are harassed by peers, teachers, and employers.

There are no easy solutions to the problem of violence against women. Over the past two decades, services for rape survivors and victims of domestic violence have improved, although funding for these services is often precarious and frequently inadequate to the scope of the problem. There has also been an increase in the number of programs for sex offenders and batterers, although activists in the battered women's movement still maintain that sentences are typically lenient and abusers are rarely held accountable, either by the law or by their school or employer.

While the problem is deep and widespread, better services for victims, more effective treatment of offenders, and an increased focus on prevention through education and community awareness campaigns offers the hope that one day violence against women will not be such a common event, but rather a rare and aberrational occurrence.

Appendix E

Case Law Exercise—Participant Handout

Case Law Example 1:

“The couple's relationship had been tumultuous. Veronica described various incidents involving defendant. In December 1997, defendant had raped Veronica at gunpoint. The rape occurred when Veronica went to Norwalk, where defendant was residing, to pick up their daughter. Veronica did not report this incident to the police While in the bedroom, defendant told Veronica that he did not want to hurt her but that he wanted to be with her and told her not to make any noise. She lay there while defendant proceeded to take off her clothes and have sexual intercourse with her. Veronica did not want to have sex with defendant and testified that she had cried throughout the experience. On cross-examination, Veronica testified that she told defendant, ‘no.’ On redirect examination, Veronica said she told defendant, ‘Please, no,’ while she cried. She was afraid of defendant hurting her and felt that she had no alternative to having sex. For the same reason, she did not try to push defendant off of her or scream. In addition, she could not force him off of her because he was stronger than she. After defendant had sex with Veronica, she said she was still in pain, and defendant got some more water and codeine.”

People v. Lopez, No. E044445, 2009 WL 904052 (Cal. Ct. App. Apr. 3, 2009) (not selected for official publication) (defendant convicted of attempted murder, torture, making criminal threats, domestic violence, forcible rape and child endangerment for prolonged, brutal attack on his former girlfriend, part of which occurred in front of their child).

Case Law Example 2:

“After Vanessa removed her pants and panties, defendant directed her to lie down on the bed. She laid down on her stomach. Vanessa complied with defendant’s demands because she believed the gun was loaded and was afraid he would shoot her. Defendant directed Vanessa to turn over, and she did so. Defendant was still holding the gun. Defendant then inserted his penis in her vagina. At the time, the gun was at the side of the bed but within defendant’s reach. Defendant had tears in his eyes and said, ‘This is all I ever wanted was to have sex with you. This is all I ever wanted.’”

People v. Johnson, No. C047560, 2005 WL 3476530 (Cal. Ct. App. Dec. 20, 2005) (not selected for official publication) (defendant found guilty of spousal rape, assault, and criminal threats after he raped the victim, his wife of 20 years, at gunpoint).

Case Law Example 3:

“When she attempted to leave, the defendant grabbed her by the throat, threw her onto the bed, and jumped on top of her. While on top of her, he continued to hold her throat with one hand and used the other hand to pull a box cutter from inside his shirt. He waved the box cutter at the victim, making small cuts on her elbow as she tried to block her face. During this struggle, the defendant ripped off the victim's sweater and bra. The victim eventually knocked away the box cutter and was able to wrestle out from under the defendant and run to the door. She was only able to get the door open a few inches before the defendant caught her and dragged her by her hair into the bathroom. In the bathroom, he bound her hands with a shoelace, pushed her to her knees, and instructed her to perform oral sex on him. The victim complied with his command to perform oral sex. Occupants in the neighboring room could hear much of the struggle and the victim's pleading with the defendant. These guests called the front desk twice to ask them to handle the situation. After finishing the oral sex, the defendant lifted the victim by her hair and directed her to the bed so he could have sex with her. He bent her over the bed, pulled down her pants, and attempted, unsuccessfully, to penetrate her. At this point, the police arrived and knocked on the door, announcing their presence. The defendant, in response, jumped on the victim's back, forced her face into the bed, wrapped his arm around her throat, and pulled on her mouth with his fingers.”

Commonwealth v. Gouveia, 906 N.E. 2d 367 (Mass. App. Ct. 2009) (defendant convicted of aggravated rape, assault and battery by means of a dangerous weapon, and assault and battery for attack on victim, a homeless prostitute).

Case Law Example 4:

“No reasonable insured could expect there to be coverage under a liability insurance policy for such a despicable act as rape, sexual battery, or ‘date rape.’”

Brock v. Caronna, 8 So.3d 22 (5th Cir. 2009) (facing a civil suit for child rape, defendant unsuccessfully filed a third party demand against his homeowners insurance for indemnification under his policy).

Case Law Example 5:

“H.L. testified that on another occasion, she was outside playing when Birkbeck called her into the house and showed her a pornographic magazine. He then exposed his penis and began masturbating. Birkbeck asked H.L. to ‘do it for him,’ and when she refused, he grabbed her hand and placed it on his penis. He then forced his penis into her mouth, but the incident ended when H.L. bit him. Another time, according to H.L., Birkbeck kissed her body and inserted his tongue into her vagina. H.L. described another incident in which Birkbeck put makeup and perfume on her, then bent her over and inserted his penis into her anus. H.L. asked him to stop because it was very painful. Birkbeck then inserted something – either his fingers or a dildo – into H.L.’s vagina. When H.L. began crying, Birkbeck called her a crybaby and shoved her against a dresser. Finally, H.L. testified that one day when she was alone in the car with Birkbeck, he pulled down a dirt road and inserted his finger into her vagina. H.L. testified Birkbeck kissed her and put his finger in her vagina other times as well, but she could not remember how many Birkbeck argues that he should have been permitted to show that H.L.’s psychological problems, which [expert witness and psychologist] Medlin testified stemmed from sexual abuse, were caused by the [subsequent] date rape, not by Birkbeck. But Birkbeck did not seek to introduce evidence of the date rape for this reason; rather, he argued to the trial court that H.L. had made a previous false allegation.”

Birkbeck v. State, 665 S.E.2d 354 (Ga. Ct. App. 2008) (defendant found guilty of sexual battery and child molestation of his stepdaughter, H.L., for abuse that began when the victim was eight years old but was not reported until she was in college).

Case Law Example 6:

“Defendant refused to get off of her and he began to choke her. In an attempt to break free, N.C. burned defendant’s shoulder with a cigarette and bit him on his arm. N.C. managed to escape from defendant for a brief moment by kicking him in the face, but defendant quickly regained control by jumping on top of her. Defendant then grabbed N.C. by the hair and dragged her behind a bush. Once behind the bush, defendant began to remove N.C.’s clothing. N.C. initially tried to stop defendant from removing her clothes, but testified that ‘I thought I was going to die if I didn’t let him. So I laid there.’ After removing N.C.’s pants, defendant forcefully picked her up and turned her onto her stomach, ‘body slamm[ing]’ her onto the ground in the process. Defendant then proceeded to have sex with N.C., penetrating her from behind.”

State v. Amick, 675 S.E.2d 155 (N.C. Ct. 2009) (defendant convicted of second degree rape and assault by strangulation for rape of former girlfriend).

Case Law Example 7:

“M.H. pleaded with Farnan to ‘[p]lease don’t do this.’ However, Farnan pushed her into his room and threw her onto his bed with her face pressed into the mattress; she began to have trouble breathing. She attempted to fight and scream for help whenever she was able to, and asked Farnan not to hurt her bad leg. At this point, Farnan was lying on top of her. M.H. testified that she asked Farnan ‘[w]hat do you want,’ to which he responded in her ear ‘[y]ou’ in a ‘guttural sexy voice.’... [Farnan] told Detective Olson that he thought it would be ‘okay’ to fondle M.H. because she had allowed him to fondle her and rub her thigh when she showed him the screws in her knee a few nights prior to the incident. M.H. however testified that she merely let Farnan touch her knee to show him the screws, but that she adamantly refused to show him any more of her leg and refused his offer to give her a back rub.”

State v. Farnan, 91 Wash. App. 1055 (1998) (defendant convicted of second degree rape for the attack on his landlord; the victim, age 66, had difficulty walking due to several knee and hip surgeries prior to the assault, one of which involved the placement of 14 screws in her knee).

Case Law Example 8:

“After testifying about several specific instances when Devey touched her vagina with his fingers and mouth, the child also testified that similar encounters had occurred ‘quite often’ and ‘quite frequently.’ Later in her testimony the child recounted several specific instances when Devey had both vaginal and anal intercourse with her Additionally, the child testified that Devey showed her pornography.”

State v. Devey, 138 P.3d 90 (Utah Ct. App. 2006) (defendant convicted for sexually abusing his biological daughter over a period of four years).

Case Law Example 9:

“On cross-examination, B.W. testified that she was wearing denim shorts on the day of the attack because she was scheduled to do factory work. She clarified that she had a side view of defendant's face when he dragged her to the lot and had a clear view when he was in front of her. He continuously beat her, and she went unconscious when he was having sex with her. She did not ‘remember what entry it was’ or ‘what part he inserted in.’ She testified, ‘When I got to the hospital, that's when they revealed it to me.’ She could not remember what she told the medical personnel at the hospital.”

People v. Hogan, 904 N.E.2d 1036 (Ill. App. Ct. 2009) (defendant convicted of aggravated kidnapping and aggravated criminal sexual assault; reversed and remanded on procedural error).

Case Law Example 10:

“Bunny testified that around 10:00 o'clock p.m., there was a knock on the door. She opened the door and the defendant, David Wonser, walked into the living room. He forced Bunny down the narrow hallway to the back bedroom, threw her on the bed, removed her jeans and panties, and forcibly had sexual intercourse with her.”

State v. Wonser, 537 P.2d 197 (Kan. 1975) (defendant was convicted of the crime of indecent liberties with a child after forcibly raping a 14-year-old girl while she was babysitting at a neighbor's house a few blocks from her home).

Appendix F

Case Law Exercise—Facilitator’s Guide

Instructions for this exercise:

1. Provide participants with **Appendix E: Case Law Exercise—Participant Handout**.
2. Decide which examples you would like to discuss and have participants read those examples.
3. Have participants circle language that:
 - a. Uses the language of consensual sex to describe assaultive acts;
 - b. Uses victim blaming language; and/or
 - c. Fails to hold the perpetrator accountable -- “the invisible perpetrator.”
4. Have participants circle examples of accountable language used.
5. Select examples (based on the amount of time available) and have participants rewrite the selected case excerpts using appropriate language.
6. Select examples to discuss as a group. Have participants identify relevant language.
7. As time permits, have participants read short segments of the excerpts they rewrote.

Note: Key language is accented with bold italics.

It is important to explain to participants that they are not expected to change witnesses’ language or statutory language. In some of these examples, the court may be quoting what a witness said. If the language is in direct quotes, you do not need to discuss it. Some of these excerpts contain examples of both good and bad language. It is important to identify both types of examples. Participants may identify additional examples that are not marked below. The Facilitator Notes are just provided to help spark discussion.

Case Law Example 1:

“The couple's *relationship had been tumultuous*. *Veronica* described various incidents involving defendant. In December 1997, defendant had raped Veronica at gunpoint. The rape occurred when Veronica went to Norwalk, where defendant was residing, to pick up their daughter. Veronica did not report this incident to the police While in the bedroom, defendant told Veronica that he did not want to hurt her but that he wanted to be with her and told her not to make any noise. She lay there while defendant proceeded to *take off her clothes and have sexual intercourse with her*. Veronica *did not want to have sex* with defendant and testified that she had cried throughout the experience. On cross-examination, Veronica testified that she told defendant, ‘no.’ On redirect examination, Veronica said she told defendant, ‘Please, no,’ while she cried. She was afraid of defendant hurting her and felt that *she had no alternative to having sex*. For the same reason, she did not try to push defendant off of her or scream. In addition, she could not force him off of her because he was stronger than she. *After defendant had sex with Veronica*, she said she was still in pain, and defendant got some more water and codeine.”

People v. Lopez, No. E044445, 2009 WL 904052 (Cal. Ct. App. Apr. 3, 2009) (defendant convicted of attempted murder, torture, making criminal threats, domestic violence, forcible rape and child endangerment for prolonged, brutal attack on his former girlfriend, part of which occurred in front of their child).

Facilitator Notes:

- **“Relationship had been tumultuous.”** Term “tumultuous” sanitizes and minimizes the violence.
 - **Veronica.** Use of victim’s name is not recommended, to protect sexual assault victim’s privacy.
 - The term **“relationship.”** The relationship was not tumultuous; the defendant was violent. Using the term “relationship” minimizes the violence, implies mutuality and diverts blame from the defendant.
 - Defendant proceeded **“to have sexual intercourse with her”**; victim did not want to **“have sex”**; she had **“no alternative to having sex”**; after defendant **“had sex”** with her. All of these phrases use the language of consensual sex to describe assaultive acts.
-

Case Law Example 2:

“After *Vanessa removed her pants and panties, defendant directed her to lie down on the bed*. She laid down on her stomach. *Vanessa complied with defendant’s demands because she believed the gun was loaded and was afraid he would shoot her*. Defendant directed Vanessa to turn over, and she did so. Defendant was still holding the gun. Defendant then *inserted his penis in her vagina*. At the time the gun was at the side of the bed but within defendant’s reach. *Defendant had tears in his eyes* and said, ‘This is all I ever wanted was to have sex with you. This is all I ever wanted.’”

People v. Johnson, No. C047560, 2005 WL 3476530 (Cal. Ct. App. Dec. 20, 2005) (defendant found guilty of spousal rape, assault, and criminal threats after he raped the victim, his wife of 20 years, at gunpoint).

Facilitator Notes:

- *Vanessa*. Use of victim’s name is not recommended, to protect sexual assault victim’s privacy.
 - *“Panties.”* Sexualized term.
 - *“Inserted his penis in her vagina.”* Does not use the language of consensual sex.
 - *“Defendant had tears in his eyes and said,”* Why is this language included here? Is it used to hide the perpetrator’s responsibility or engender sympathy for him?
-

Case Law Example 3:

“When she attempted to leave, the defendant ***grabbed her by the throat, threw her onto the bed, and jumped on top of her***. While on top of her, he continued to hold her throat with one hand and used the other hand to pull a box cutter from inside his shirt. He waved the box cutter at the victim, ***making small cuts on her elbow as she tried to block her face***. During this struggle, ***the defendant ripped off the victim's sweater and bra***. The victim eventually knocked away the box cutter and was able to ***wrestle*** out from under the defendant and run to the door. She was only able to get the door open a few inches before the defendant caught her and dragged her by her hair into the bathroom. In the bathroom, he bound her hands with a shoelace, pushed her to her knees, and ***instructed her to perform oral sex on him***. The victim ***complied with his command to perform oral sex***. Occupants in the neighboring room could hear much of the struggle and the victim's pleading with the defendant. These guests called the front desk twice to ask them to handle the situation. After finishing the oral sex, the defendant lifted the victim by her hair and directed her to the bed ***so he could have sex with her***. He bent her over the bed, pulled down her pants, and ***attempted, unsuccessfully, to penetrate her***. At this point, the police arrived and knocked on the door, announcing their presence. The defendant, in response, jumped on the victim's back, forced her face into the bed, ***wrapped his arm around her throat***, and pulled on her mouth with his fingers.”

Commonwealth v. Gouveia, 906 N.E. 2d 367 (Mass. App. Ct. 2009) (defendant convicted of aggravated rape, assault and battery by means of a dangerous weapon, and assault and battery for attack on victim, a homeless prostitute).

Facilitator Notes:

- “***Grabbed her by the throat,***” “***jumped on top of her,***” “***dragged her by her hair,***” “***ripped off,***” etc. Good use of descriptive language to describe force used.
 - “***Attempted, unsuccessfully to penetrate her.***” Does not use language of consensual sex.
 - “***Instructed her to perform oral sex.***” Sanitizes violence involved. Uses language of consensual sex to describe assaultive acts.
 - “***So he could have sex with her.***” Uses language of consensual sex to describe assaultive acts.
-

Case Law Example 4:

“No reasonable insured could expect there to be coverage under a liability insurance policy for such a despicable act as rape, sexual battery, or ‘*date rape*.’”

Brock v. Caronna, 8 So.3d 22 (5th Cir. 2009) (facing a civil suit for child rape, defendant unsuccessfully filed a third party demand against his homeowners insurance for indemnification under his policy).

Facilitator Notes:

- “*Date rape*.” Uses language that contributes to inaccurate cultural narratives about sexual assault. Minimizes the seriousness of nonstranger rape.
-

Case Law Example 5:

“H.L. testified that on another occasion, she was outside playing when Birkbeck called her into the house and showed her a pornographic magazine. He then ***exposed his penis and began masturbating***. Birkbeck asked H.L. to ‘do it for him,’ and when she refused, he ***grabbed her hand and placed it on his penis***. He then ***forced his penis into her mouth***, but the incident ended when H.L. bit him. Another time, according to H.L., Birkbeck ***kissed her body and inserted his tongue into her vagina***. H.L. described another incident in which Birkbeck put makeup and perfume on her, then bent her over and ***inserted his penis into her anus***. H.L. asked him to stop because it was very painful. Birkbeck then ***inserted something – either his fingers or a dildo – into H.L.’s vagina***. When H.L. began crying, Birkbeck called her a crybaby and ***shoved her against a dresser***. Finally, H.L. testified that one day when she was alone in the car with Birkbeck, he pulled down a dirt road and ***inserted his finger into her vagina***. H.L. testified ***Birkbeck kissed her and put his finger in her vagina*** other times as well, but she could not remember how many Birkbeck argues that he should have been permitted to show that H.L.’s psychological problems, which [expert witness and psychologist] Medlin testified stemmed from sexual abuse, were ***caused by the [subsequent] date rape***, not by Birkbeck. But Birkbeck did not seek to introduce evidence of the ***date rape*** for this reason; rather, he argued to the trial court that H.L. had made a previous false allegation.”

Birkbeck v. State, 665 S.E.2d 354 (Ga. Ct. App. 2008) (defendant found guilty of sexual battery and child molestation of his stepdaughter, H.L., for abuse that began when the victim was eight years old, but was not reported until she was in college).

Facilitator Notes:

- ***“Forced his penis into her mouth,” “inserted his penis into her anus,” “inserted his finger into her vagina.”*** Does not use the language of consensual sex.
 - ***“Grabbed her hand and placed it on his penis.”*** Shows force involved.
 - ***“Date rape.”*** Minimizes the seriousness of nonstranger rape.
-

Case Law Example 6:

“Defendant refused to get off of her and ***he began to choke her***. In an attempt to break free, N.C. burned defendant’s shoulder with a cigarette and bit him on his arm. ***N.C. managed to escape from defendant for a brief moment by kicking him in the face***, but defendant quickly regained control by jumping on top of her. Defendant then ***grabbed N.C. by the hair and dragged her behind a bush***. Once behind the bush, defendant began to remove N.C.’s clothing. N.C. initially tried to stop defendant from removing her clothes, but testified that ‘I thought I was going to die if I didn’t let him. So I laid there.’ After removing N.C.’s pants, ***defendant forcefully picked her up*** and turned her onto her stomach, ‘body slamm[ing]’ her onto the ground in the process. ***Defendant then proceeded to have sex with N.C., penetrating her from behind.***”

State v. Amick, 675 S.E.2d 155 (N.C. Ct. App. 2009) (defendant convicted of second degree rape and assault by strangulation for rape of former girlfriend).

Facilitator Notes:

- ***“Choke her.”*** Should use the term strangle, not choke, to convey the seriousness and dangerousness.
 - ***“Grabbed her...and dragged her,” “forcefully picked her up.”*** Conveys the level of force used.
 - ***Defendant then proceeded to have sex with N.C.*** Uses the language of consensual sex to describe assaultive acts.
-

Case Law Example 7:

“M.H. pleaded with Farnan to ‘[p]lease don’t do this.’ However, *Farnan pushed her into his room and threw her onto his bed with her face pressed into the mattress*; she began to have trouble breathing. She *attempted to fight and scream for help whenever she was able to*, and asked Farnan not to hurt her bad leg. At this point, Farnan was lying on top of her. M.H. testified that she asked Farnan ‘[w]hat do you want,’ to which he responded in her ear ‘[y]ou’ in a ‘*guttural sexy voice*.’ . . . [Farnan] told Detective Olson that he thought it would be ‘*okay*’ to *fondle* M.H. because *she had allowed him to fondle her and rub her thigh* when she showed him the screws in her knee a few nights prior to the incident. M.H. however testified that she merely let Farnan touch her knee to show him the screws, but that she adamantly refused to show him any more of her leg and refused his offer to give her a back rub.”

State v. Farnan, 91 Wash. App. 1055 (1998) (defendant convicted of second degree rape for the attack on his landlord; the victim, age 66, had difficulty walking due to several knee and hip surgeries prior to the assault, one of which involved the placement of 14 screws in her knee).

Facilitator Notes:

- “*Farnan pushed her into his room and threw her onto his bed with her face pressed into the mattress.*” Language conveys the level of force used.
 - “*Guttural sexy voice,*” “*fondle.*” Uses sexualized language to describe words and acts. Appear to be quotes from the victim, but it is unclear why this language was included in the opinion.
 - ““*Okay*’ to *fondle,*” “*fondle her and rub her thigh.*” Not clear whether this is a direct quote from the defendant. If not, uses the language of consensual sex.
-

Case Example 8:

“After testifying about several specific instances when Devey *touched her vagina with his fingers and mouth*, the child also testified that similar encounters had occurred ‘quite often’ and ‘quite frequently.’ Later in her testimony the child recounted several specific instances when Devey *had both vaginal and anal intercourse with her* Additionally, the child testified that Devey showed her pornography.”

State v. Devey, 138 P.3d 90 (Utah Ct. App. 2006) (defendant convicted for sexually abusing his biological daughter over a period of four years).

Facilitator Notes:

- **“Touched her vagina with his fingers and mouth.”** Does not use the language of consensual sex.
 - **“Had both vaginal and anal intercourse with her.”** Uses the language of consensual sex to describe assaultive acts.
-

Case Law Example 9:

“On cross-examination, B.W. testified that she was *wearing denim shorts* on the day of the attack because she was scheduled to do factory work. She clarified that she had a side view of defendant's face when he dragged her to the lot and had a clear view when he was in front of her. He continuously beat her, and *she went unconscious when he was having sex with her*. She did not ‘remember what entry it was’ or ‘what part he inserted in.’ She testified, ‘When I got to the hospital, that's when they revealed it to me.’ She could not remember what she told the medical personnel at the hospital.”

People v. Hogan, 904 N.E.2d 1036 (Ill. App. Ct. 2009) (defendant convicted of aggravated kidnapping and aggravated criminal sexual assault; reversed and remanded on suppression issue).

Facilitator Notes:

- “*Wearing denim shorts*. Description of dress irrelevant to assault; contributes to inaccurate cultural narratives about sexual assault.
 - “*She went unconscious when he was having sex with her.*” Uses the language of consensual sex to describe assaultive acts.
-

Case Law Example 10:

“**Bunny** testified that around 10:00 o’clock p.m., there was a knock on the door. She opened the door and the defendant, David Wonser, walked into the living room. He **forced Bunny down the narrow hallway** to the back bedroom, **threw her on the bed, removed her jeans and panties**, and **forcibly had sexual intercourse with her.**”

State v. Wonser, 537 P.2d 197 (Kan. 1975) (defendant was convicted of the crime of indecent liberties with a child after forcibly raping a 14-year-old girl while she was babysitting at a neighbor’s house a few blocks from her home).

Facilitator Notes:

- **Bunny.** Use of victim’s name is not recommended, to protect sexual assault victim’s privacy.
 - **“Panties.”** Sexualized term.
 - **“Forcibly had sexual intercourse with her.”** Although the judge uses the word “forcibly,” it is followed by the use of the language of consensual sex to describe assaultive acts.
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Appendix G

The Nebraska Case: *Bowen v. Cheuvront* Case Summary

On October 30, 2004, 21-year-old college student Tory Bowen left a downtown bar in Lincoln, Nebraska, with Pamir Safi, a 33-year-old Army reservist she met that night. Bowen claimed she did not leave willingly and that she had no memory of the rest of the night. She believed she was incapacitated with a rape facilitation drug. The next thing she remembered after leaving the bar was regaining consciousness the next morning, naked, with Safi raping her.

Safi was charged with first-degree sexual assault, and the case went to trial. Following a motion in limine by defense counsel, Judge Jeffrey Cheuvront entered an order to exclude the use of the following words: “rape,” “victim,” “assailant,” “sexual assault kit,” and “sexual assault nurse examiner.” Judge Cheuvront held that these words might be unfairly prejudicial to the defendant, and banned their use in court under Nebraska Revised Statute § 27-403, which allows evidence to be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The Judge also held that the use of the word “rape” would allow the witness to testify to a legal conclusion.

Bowen was encouraged to use words like “sex” or “intercourse,” despite the prosecution’s attempt to get those words banned as well. Bowen said being forced to use the word “sex” to describe her experience was like being assaulted all over again. The first case ended in a mistrial because the jury could not reach a unanimous verdict. The case received a great deal of national media attention and protesters picketed the courthouse. The second trial ended with Judge Cheuvront declaring a mistrial because protesters had interfered with jury selection. Prosecutors declined to pursue a third trial with the word bans in place, so they dismissed the charges against Safi.

Bowen filed a lawsuit in federal court, challenging Judge Cheuvront’s actions on the grounds that the word bans violated her constitutional rights. A federal district court judge dismissed the lawsuit, ruling that Bowen failed to prove that the federal court should intervene in an ongoing state court prosecution. The 8th U.S. Circuit Court of Appeals upheld the dismissal, finding that the federal court did not have jurisdiction. The U.S. Supreme Court declined to hear the case.

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Appendix H

The Nevada Project: Judge Chuck Weller’s Media Guide

The Judge’s Personal Tragedy: On June 12, 2006, a litigant shot Reno, Nevada Family Court Judge Chuck Weller in the chest. The assailant, who had a divorce pending in Judge Weller’s courtroom, shot the judge from 170 yards away, through the window in the judge’s chamber, using a sniper rifle. Fortunately, the judge survived. An hour earlier, the man had stabbed his wife to death while their 8-year-old child watched television in another room.¹ Judge Weller was extremely frustrated by how the media covered the murder and his shooting. At the time the Judge was taking courses for a Master’s degree at the National Judicial College. In his Master’s thesis entitled, *Needed: A Guide for Media Coverage of Domestic Violence*, Judge Weller wrote:

From my perspective as a judge who deals daily with family abuse, it was a tragic and too familiar story of planned domestic violence. Unfortunately, the story was the subject of typical domestic violence reporting. The societal problem of domestic violence was rarely mentioned in the coverage. The perpetrator was portrayed as a good guy who ‘snapped.’ The killer’s justification that his violence was caused by the deceased wife’s and my conduct was reported. His previous history of controlling behavior targeted at his now murdered wife remains largely unreported today. Headlines like ‘On Trial: Family Court’ tended to excuse the murderer and blame the ‘system’ for his crimes.²

The Judge’s Response: In response to the perpetrator’s violence and the subsequent media coverage, Judge Weller took several actions. He wrote his Master’s thesis on the topic of media coverage of domestic violence, documenting the need for more accurate coverage and a media guide. Judge Weller then wrote a media guide, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*.³ In his *Guide*, Judge Weller addressed such topics as: *How to Recognize a Domestic Violence Story*, *Questions to Consider When Covering a Domestic Violence Story*, and *More Ideas for Stories on Domestic Violence*. In addition, he provided Nevada-specific facts about the costs of domestic violence, statistics, the law, and domestic violence resources. The *Guide* is written in accessible language and is endorsed by many statewide organizations. It is available online at:

http://www.nnadv.org/pdfs/Press_Room/Covering_Domestic_Violence-Media_Guide.pdf.

¹ Judge Chuck Weller, *Needed: A Guide for Media Coverage of Domestic Violence* (2009) (unpublished M.J.S. thesis, University of Nevada, Reno) (on file with the University of Nevada, Reno Library).

²*Id.* at 1-2.

³ Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*, NEV. NETWORK AGAINST DOMESTIC VIOLENCE, http://www.nnadv.org/pdfs/Press_Room/Covering_Domestic_Violence-Media_Guide.pdf.

**Appendix I – Reprinted with Permission
Judicial Language Project, Greenberg Letter**

September 23, 2010

Chief Justice Carol W. Hunstein
Supreme Court of Georgia
244 Washington Street
Room 572, State Office Annex
Building Atlanta, GA 30334

Chief Judge M. Yvette Miller
Court of Appeals of the State of
Georgia 47 Trinity Avenue, Suite 501
Atlanta, GA 30334

Dear Honorable Justices,

We are writing to you on behalf of "The Judicial Language Project," a first of its kind program based at New England Law Boston which uses sociolinguistic research to critique the language used by courts to describe violence against women and children. By identifying both problematic and appropriate words and phrases, we hope to influence the impact of judicial language on law and society.

We have identified in decisions of Georgia appellate courts, the pervasive use of the word "perform" in describing the actions of child victims of sexual abuse. As set forth in more detail below, research shows that this language is harmful to society and particularly to children who have suffered, or are at risk for suffering, sexual abuse.

A review of Georgia appellate decisions in sex crimes cases involving child victims since 1979 indicates the following:

- In 50 cases, the court used the word "perform" to describe the actions of the child victim when a criminal act had occurred against the child.
- In 38 of those 50 cases, the court included the phrase "perform oral sex" or "perform oral sodomy" or some variation thereof.
- In 12 of those 50 cases, the court included the phrase "perform sex acts" or "perform sexual acts" or some variation thereof.

One recent example of the Georgia courts' use of this type of harmful language can be seen in *Moe v. State*, which involved the drugging and repeated raping of a 13-year-old girl over a period of two days. The Court of Appeals wrote that a witness "...saw the victim performing oral sex on Moe." *Moe v. State*, 297 Ga.App. 270, 271 (2009).

The word "perform" is defined as "to adhere to the terms of; [to] fulfill, [as in to] perform a contract; to carry out, to do, [or] to do in a formal manner or according to prescribed ritual."¹ When used to describe the actions of a child, this commonly understood term suggests that the child was morally responsible for his or her own victimization.²

¹<http://www.merriam-webster.com/dictionary/perform>.

² Janet Bavelas & Linda Coates, *Is it Sex or Assault? Erotic Versus Violent Language in Sexual Assault Trial*

Use of the word "perform" alongside the phrase "oral sex" exacerbates the problem because sexual terminology connotes mutuality, pleasure and consent.³ When a term can be understood to mean consensual or pleasurable activity, a crucial distinction in the law between sexual pleasure and sexual violence has been obscured.⁴

Language in judicial opinions influences the way readers interpret and react to the information conveyed.⁵ Thus, it is important for courts to use terminology that accurately describes the nature of the event and the legal responsibilities of the parties involved.⁶ Words also reflect connotations and social myths that readers may passively attribute to certain ideas and behaviors, without conscious awareness.⁷ Thus, terms that suggest pleasurable conduct should be avoided when courts are writing about criminal violence.⁸ Language that normalizes sexual violence by bringing the behavior discursively into the range of everyday human activities necessarily inhibits the reader's understanding that a person experienced fear, disgust, objectification, and pain.⁹

In criminal cases involving child victims, it is particularly important to assign complete responsibility to the offender because the child lacks capacity to consent. Thus, rather than "the child performed oral sex", a court could say "the defendant forced/pushed/inserted his penis into the child's mouth." This accurate, if disturbingly blunt, use of language makes it clear to the reader that the victim was a recipient of someone else's harmful criminal acts.

Thank you for your time and attention to this matter.

Sincerely,

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Associate Dean and Professor of Law
Co-Director: Judicial Language Project/Sexual Violence
Legal News
New England Law I Boston

Wendy J. Murphy, J.D.
Adjunct Professor of Law and Co-Director: Judicial
Language Project/Sexual Violence Legal News
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Ann W. Burgess, RN, DNSc.
Professor of Psychiatric Nursing
Boston College

Judgments, JOURNAL OF SOCIAL DISTRESS AND THE HOMELESS 30 — 32 (2001).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 38 — 39; Collings, S. J., & Bodill, B. M. (2003). Methodological issues in research on child sexual abuse attributions. *South African Journal of Psychology*, 33(3), 170-175.

⁶ *Id.*; Cromer, L.D. & Goldsmith, R.E. (*in press*). Stereotyped beliefs, myths, and individual differences that influence believing child sexual abuse disclosures. *Journal of Child Sexual Abuse, Special Issue: Forensic Issues and Disclosures*

⁷ Nina Philadelphoff-Puren, *The Right Language for Rape*, EBSCO Publishing (2003).

⁸ Bavelas & Coates, *Supra* at 1, 38 — 39.

⁹ *Id.*

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Association

Karen L. Baker, LMSW

Director
National Sexual Violence Resource Center

Appendix J—Reprinted With Permission
Judicial Language Project, Murphy Letter

April 7, 2011

Dear colleagues,

This past summer The Judicial Language Project at New England Law 1 Boston sent a letter to the Georgia appellate courts regarding their use of the phrase "performing oral sex" in decisions involving child sexual abuse. As all of you know, Justice Hunstein, Chief Justice of the Georgia Supreme Court, sent us a response in which she thanked us for our critique and promised to be more mindful of the identified problem in the future.

Since that time we have been monitoring Georgia appellate opinions and we are pleased to inform you that courts have, indeed, consistently used more appropriate language in all narratives related to child sex abuse.

One recent example appears in *Mitchell v. State*, 2011 Ga.App. LEXIS 104. Throughout this opinion, the court uses the word "sodomy" rather than "oral sex" to describe the aggravated sexual assault of three child victims.

Another example can be seen in *Loyd v. State*, 705 S.E.2d 616 (Ga. 2011) where the court wrote: "the defendant attempted to anally rape victim, orally sodomized him, and put his penis in victim's mouth".

As a signatory to the Judicial Language Project's letter, we wanted to say thank you for your collaboration and to inform you that our work is making a meaningful difference.

We will continue to update you as to any and all responses and developments from Georgia and other jurisdictions where we have conveyed our concerns about problematic language.

Yours truly,

/s/ Wendy J. Murphy

Co-Director, The Judicial Language Project

Appendix K—Reprinted with Permission

Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*, Nev. Network Against Domestic Violence,
[http://nnadv.org/pdfs/Press_Room/Covering DomesticViolence-MediaGuide.pdf](http://nnadv.org/pdfs/Press_Room/CoveringDomesticViolence-MediaGuide.pdf)

**COVERING DOMESTIC VIOLENCE: A GUIDE FOR
INFORMED MEDIA REPORTING IN NEVADA**

by
Family Court Judge Chuck Weller

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This Guide is endorsed by:

Committee to Aid Abused Women
Nevada Broadcasters Association
Nevada Council for the Prevention of
Domestic Violence
Nevada Network Against Domestic
Violence
Nevada Press Association
Safe Nest

This Guide is available online at:

<http://ag.state.nv.us/dv/dvpc/dvpc.htm>
web.mac.com/nevadapress
www.nevadabroadcasters.org
www.nnadv.org
www.safenest.org

The author permits -- and encourages -- reporters and editors to make verbatim use of the materials contained within this media guide.

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I. HOW TO RECOGNIZE A DOMESTIC VIOLENCE STORY

It is a domestic violence story if there is now, or was in the past, an intimate or family relationship between the perpetrator and the victim of violence.

II. QUESTIONS TO CONSIDER WHEN COVERING A DOMESTIC VIOLENCE STORY

1) **Have there been prior incidents?**

Acts of violence are often portrayed as an isolated incidents when, in reality, they are part of a pattern of conduct. Particularly if family members express surprise at the attack, it is easy to slip into a suggestion that the person just "snapped" or had an uncharacteristic lapse of control. A more accurate and complete story will result if prior conduct is also reported. Look for a history of controlling behavior. Review court records for prior criminal, divorce, child custody, parental rights and Temporary Protection Order (TPO) cases. Check law enforcement records for prior arrests and police response to allegations of domestic violence involving the same persons or address.

2) **Who can speak for the victim?**

An abuser's justification for violence commonly involves blaming the victim or the "system." The victim and the "system" may not be free to dispute the abuser's allegations because of fear, or because of physical or legal constraints. Presentation solely of the abuser's point of view implies that the abuser's violence was justified or motivated by the behavior of someone else.

3) **Why did this happen?**

Warning signs of domestic violence are understood. Victims can be protected. Abuse is a learned behavior. Any implication that the crime was inexplicable is likely incorrect. Contact an expert to give you insight.

4) **What's the true portrait?**

It is incorrect to imply that "normal" or successful people aren't typical perpetrators of domestic violence. In fact, domestic abusers often present two images: skillful in social and business settings but controlling and obsessive in intimate relationships.

5) **What language should describe domestic violence?**

It is good practice to use the term "domestic violence" in describing the crime. Give the public a vocabulary with which to identify a social issue. The United States and most of its communities have been engaged in a massive effort for more than three decades to provide resources to address the societal problem of domestic violence. Acknowledge the existence of that effort and the availability of those resources by correctly labeling the conduct you are reporting.

- 6) **Are authoritative points of view available?**
Seek a statement from, or consult with, a local domestic violence advocate or a recognized domestic violence expert.
- 7) **How much do friends and neighbors really know?**
Use statements from associates of the abuser with caution. Domestic violence is often unknown to friends and neighbors until it becomes murder. Balance statements that express surprise at the abuser's conduct with any record of past controlling behavior and information about domestic violence.
- 8) **Were they separating? Was she pregnant?**
Domestic violence often is worst when the victim tries to separate or during pregnancy because the abuser's control of the victim's behavior is threatened.
- 9) **Where can more contextual information be obtained?**
Information from this media guide may be used to add context and depth to a story about domestic violence.
- 10) **What is the impact beyond this victim?**
Experts can help describe the impact of the domestic violence on children, families, employers, the community and the larger society.
- 11) **How can victims get help?**
Include local contact information for domestic violence services. Many victims are unaware of the available support and, except through your reporting, may be unable to safely access this information.
- 12) **How can abusers get help?**
One way to help prevent future domestic violence is by providing information to allow present and potential abusers to identify themselves, to understand that change is possible and to seek help to change their behaviors.
- 13) **Can a story make things worse?**
Reporters should be aware that abusers use news reports to threaten their victims with similar fates or to reinforce the belief that, like the victim in the reporter's story, the victim will be humiliated and not believed. Reporters can reduce the likelihood of this perversion of their reporting by following these suggestions.

III. MORE IDEAS FOR STORIES ON DOMESTIC VIOLENCE

1) WHAT IS DOMESTIC VIOLENCE?

The meaning of "domestic violence" can be a source of confusion for the media and the public because important groups use different definitions for the term. Among others, common definitions include the following:

- a) The laws of many states use the term domestic violence to embrace any act of actual or threatened violence between individuals within a family or household.
- b) Some scholars, mainstream women's groups, and domestic violence educators use the term "domestic violence" almost exclusively to refer to acts occurring as part of a pattern of control. For example, the U.S. Department of Justice, Office of Violence Against Women, defines domestic violence as "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone."

Domestic violence, as a course of conduct, is also described as "battering." This violence requires the greatest use of medical, shelter and law enforcement services and is the most lethal, overall, in domestic situations. Studies show that 85 percent of victims are women.

- c) Some scholars and mainstream men's groups refer to single instances, or isolated acts as domestic violence. They describe one-time assaults, committed at times of high stress, which are not part of a pattern of conduct intended to create or maintain power and control.

Studies suggest that while this may be the most common variety of violence between family members it typically results in less injuries and less severe injuries than domestic violence that is part of a pattern of control. These studies suggest that men and women are victims more or less equally of this kind of violence.

Reporters should be alert that confusion and controversy often result when any definition of "domestic violence" is advanced as the "only" definition. For example, women's and men's groups frequently offer seemingly contradictory statistics on the gender of domestic violence victims. The resolution of apparently conflicting views is, sometimes, that groups are using the same term to refer to different types of violence that occur within domestic settings. The media can attempt to avoid misunderstanding by providing explanation where appropriate.

2) WHY DO VICTIMS STAY WITH ABUSERS?

Victims of domestic violence are often compelled to remain with or return to their abuser. The reason for staying or returning may include physical safety, love, economic dependence, the well-being of children, cultural belief, or a hope that the violence won't happen again. Leaving an abuser can be dangerous because violence often gets worse when the abuser's power and control are threatened by separation. Although it might appear irrational to someone who has never shared the victim's experience, the phenomenon of a victim staying with or returning to an abuser is common. Victims should be educated about domestic violence and encouraged to engage in safety planning, but should not be blamed.

3) WHAT HELP IS AVAILABLE FOR VICTIMS OF DOMESTIC VIOLENCE?

A list of domestic violence programs in Nevada, together with information on shelters, crisis call lines and other available services is available at:

<http://sos.state.nv.us/information/cap/agencies.asp>;

<http://www.ag.state.nv.us/dv/nv/programs.htm>;

<http://www.nnadv.org/members.html>.

4) SIX THINGS TO SAY TO A VICTIM OF DOMESTIC VIOLENCE

- a) I am afraid for your safety.
- b) I am afraid for the safety of your children. I am
- c) afraid it will only get worse.
- d) You are not alone: I am here to help you -or- I can help you find someone who can help.
- e) You don't deserve to be abused. No one deserves to be abused. It is not your fault.
- f)

5) THE EFFECT OF DOMESTIC VIOLENCE ON CHILDREN

The emotional stress of exposure to domestic violence can harm the development of the brain and impair cognitive and sensory growth in infants and toddlers. Children exposed to domestic violence have more health problems, poorer school performance and more behavioral disturbances than children not exposed to domestic violence. Babies have a harder time developing a bond with mothers who are abused than with mothers who are not abused.

For further information visit the Family Violence Prevention Fund at:

http://endabuse.org/userfiles/file/Children_and_Families/Children.pdf or the local resources identified in this media guide.

6) SAFETY PLANNING FOR DOMESTIC VIOLENCE VICTIMS

Victims can increase their own safety and prepare in advance for the possibility of further violence. Planning might include teaching children to call emergency numbers, removing guns

from the home, keeping some money and an extra set of car keys with a friend, and dozens of other strategies that have been successfully used by other victims.

For further information about safety planning visit the National Domestic Violence Hotline at: <http://www.ndvh.org/get-help/safety-planning/> or the local resources identified in this media guide.

7) THE WARNING SIGNS OF DOMESTIC VIOLENCE

Physical Domination

Actual or threatened strangulation, hitting, kicking, biting, restraint, destruction of property, injuring pets, reckless driving, display of weapons.

Financial Domination

Withholding of money for discretionary spending, preventing the victim from working or causing termination of employment.

Emotional Domination

Threats of suicide, removal of children, or deportation, other threatening behavior, destruction of self-esteem, name-calling, yelling, rule making, unreasonable jealousy, accusations of infidelity, humiliation.

Social Domination and Isolation

Limiting or eliminating the victim's relationships with friends or family and employment, interrogating children, stalking, cyber stalking, opening the victim's mail, monitoring the victim's phone calls, activities, associations, appearance.

Sexual Domination

Forcing or withholding sex, affairs, sexual exploitation.

Litigation Domination

Harassing, retaliatory, delaying, economically coercive legal tactics.

Animal Cruelty

Separation

Separation of the victim from the abuser threatens to break the abuser's control of the victim. Abusers often react to this threat by strongly re-asserting control. Periods of actual or impending separation are recognized as the most dangerous for victims of domestic violence.

For further information visit the Centers for Disease Control at: http://www.cdc.gov/healthmarketing/entertainment_education/tips/domviol.htm or the local resources identified in this media guide.

8) WHY ARE SOME PEOPLE ABUSERS?

Abusers come from all economic, educational, ethnic, and religious backgrounds. Many domestic violence abusers are not a one-time assailants acting out-of-character in a stressful circumstance. Abusers are not acting in self-defense. Some abusers use a pattern of coercive techniques to control their victims. These abusers believe they are entitled to control their victims. Abusers often show a pleasant and charming personality to their acquaintances and the public and a controlling, threatening personality to their victim. Many abusers learned their controlling behavior as children by observing the abusive conduct of their parents or other adults.

9) ARE YOU AN ABUSER?

- a) Do you call your partner or your children names or swear to get them to do things the way you want them done?
- b) Have you ever threatened, pushed, slapped, hit or choked your partner?
- c) Have you ever thrown, broken or damaged something during a disagreement?
- d) Have you ever tried to make a partner leave or stop a partner from leaving during a disagreement?
- e) Have you ever stopped your partner from reporting your behavior to the police?
- f) Do you decide which friends and family your partner can associate with?
- g) Are you controlling or unreasonably jealous? Does your partner think that you are?
- h) Is your partner afraid of you?
- i) When you do something that hurts your partner, do you expect your partner to accept your apology without any change in your behavior?
- j) Are your children afraid of you?
- k) Have you ever been accused of mistreating your children?
- l) Do you think you are abusive?
- m) Do you blame your behavior on your partner? On stress, alcohol or drugs?
- n) Are you concerned that your behavior is damaging to your partner, your children or your relationships?
- o) Have you tried to change your behavior and failed?

10) HOW CAN ABUSERS BE HELPED?

People are not born as abusers. Abuse is a learned behavior. There is reason to hope that abusers can learn acceptable ways of dealing with conflict within relationships. Unfortunately, most standard interventions for behavior modification don't work well with domestic violence perpetrators. Individual counseling and anger management classes are not usually effective. Substance abuse programs, while helpful with substance abuse, are not typically directed at issues of abuse. Couples' counseling and family therapy can actually be dangerous for the victims of abuse.

Batterers' Intervention Programs are the preferred manner of addressing the problems of the abuser. These programs focus on behavioral change and the safety of victims. Success requires a strong motivation to change and not everyone succeeds. Batterer's programs do, however, offer a

path to ending the violence. Most people who attend Batterers' Intervention Programs are required to participate by a court, but individuals can enroll voluntarily.

A list of programs that are certified, reviewed and monitored according to law by the Nevada Committee on Domestic Violence is available at:

<http://ag.state.nv.us/dv/dvunit/Certified%20Treatment%20Providers.pdf>.

11) ANIMAL CRUELTY AND DOMESTIC VIOLENCE

Some abusers harm or threaten to harm pets as a technique to control intimate partners and children. Animal abuse sends the message: "You may be next." Knowing that a pet may be injured also makes it harder for someone who cares about the animal to leave. Individuals with no empathy for the suffering of animals or the distress of their owner are capable of domestic violence.

Animal abuse is a criminal offense and a sign of serious psychopathology. People responsible for animal cruelty commit other criminal offenses at a rate greater than 300% higher than those who are not involved in animal abuse.

For additional information visit the American Humane Association at:

<http://www.americanhumane.org/about-us/newsroom/fact-sheets/animal-abuse-domestic-violence.html>.

12) DOMESTIC VIOLENCE AND GUNS

Domestic violence involving a gun is 12 times more likely to result in a death than family violence in which no gun is involved. Two-thirds of domestic violence homicides are carried out with firearms.

Federal and state laws prohibit a perpetrator of domestic violence from possessing a firearm.

For further information on firearms and domestic violence visit:

<http://aja.ncsc.dni.us/courtrv/cr39-2/CR39-2MitchellCarbon.pdf>.

13) DOMESTIC VIOLENCE STORIES OF LOCAL INTEREST

NEVADA GIRL SCOUTS CAN EARN DOMESTIC VIOLENCE PATCH

The Girl Scouts of the Sierra Nevada offer a "Peace Begins at Home Patch" to encourage girls to learn about domestic violence and the characteristics of healthy and unhealthy relationships. The 70-year-old Sierra Nevada Council serves over 8,400 girls from ages 5 to 17 in thirteen Northern Nevada counties and ten Eastern California counties. Girls must complete a number of activities to earn the patch. The program description, available on-line and from local scout leaders, identifies fifteen acceptable activities that include: Asking a troop leader to invite a

speaker from a local domestic violence program, finding out how to get help for a victim of domestic violence, reading a book or watching a movie about domestic violence, designing a poster, and performing a service project to benefit a local domestic violence shelter. The patch has been available since October 2008.

For more information visit:

<http://www.gssn.org/girls/Peace%20Begins%20at%20Home/CouncilPatchCurriculum-FINAL.pdf>.

DOMESTIC VIOLENCE TRAINING FOR NEVADA JUDGES

Did you know that all judges in Nevada are required to take special domestic violence training? The Nevada Supreme Court has twice, first in 1993 and again in 2006, ordered all judges in the state to attend full-day seminars on domestic violence. The Supreme Court required mandatory education based upon its findings that:

- a) Domestic violence is a pervasive problem in American society and has escalated to a national crisis;
- b) Spousal abuse is the single greatest cause of non-accidental injury to women and is a strong indicator that physical or sexual abuse of children also is occurring in the family;
- c) Children witnessing the violent abuse of a parent suffer profound emotional harm, even if the children are not targets of the violence;
- d) Domestic violence affects the entire community and all segments of the community must confront this violence, including, but not limited to, law enforcement, social services, the medical profession, public and private attorneys, the courts, and the media;
- e) Domestic violence is the cause of a substantial portion of criminal and domestic relations case filings, and is by far the greatest cause of violence occurring in and around American courtrooms.

NEVADA'S CONFIDENTIAL ADDRESS PROGRAM

In 1997 Nevada became the second state in the nation to adopt a Confidential Address Program (CAP) for the protection of victims of domestic violence. CAP allows participants to use a fictitious mailing address assigned by the Secretary of State. Mail received at that address is forwarded by the Secretary of State to the participant. This allows domestic abuse victims to maintain confidentiality of their physical address in government and business records. The program greatly reduces the risk of being tracked through such records. More than 700 Nevadans participate in the program. Today, 30 states have CAP laws.

For further information about CAP visit: <http://sos.state.nv.us/information/cap/> or telephone, toll free: 888-432-6189.

NEVADA'S RATE OF WOMEN MURDERED BY MEN

Every year during October, which is Domestic Violence Awareness Month, the Violence Policy Center releases its publication *When Men Murder Women: An Analysis of Federal Bureau of Investigation Homicide Data*. The most recent available information is for calendar year 2007.

Nevada has ranked as one of the 10 states in the nation with the highest rate of female homicide by men during each of the last 10 years.

Year	National Rank	# of Women Murdered	Murders per 100,000 population
1998	#8	18	2.10
1999	#1	30	3.38
2000	#9	17	1.73
2001	#3	27	2.93
2002	#4	27	2.54
2003	#2	29	2.64
2004	#5	25	2.21
2005	#1	30	2.53
2006	#1	40	3.27
2007	#5	28	2.23

In 2007, 96 percent of the Nevada's female murder victims were murdered by men they knew. Seventy-seven percent of the murdered were the wives or intimate partners of the killers.

For further information visit: <http://www.vpc.org/studies/wmmw2009.pdf>

14) COSTS TO SOCIETY OF DOMESTIC VIOLENCE

Domestic violence imposes a staggering cost on society, including:

- a) One-third of all police time is spent responding to domestic violence disturbance calls.
- b) More than 7.9 million paid workdays are lost each year because of domestic violence.
- c) Almost three-fourths of employed female victims are harassed at work by their abuser.

For further information visit the Family Violence Prevention Fund:

http://endabuse.org/userfiles/file/Children_and_Families/Workplace.pdf

15) DOMESTIC VIOLENCE AND SPECIFIC POPULATIONS

Dating Years

The highest rate of domestic violence is experienced by females between the ages of 16 and 24. *U.S. Department of Justice, Violence by Intimates, NCJ-167237, March 1998.*

Girls abused in dating relationships are 4 to 6 times more likely than non-abused girls to get pregnant and 8 to 9 times more likely to attempt suicide. *Bureau of Justice Statistics, Violence against Women: Estimates from the Redesigned Survey, August 1995.*

For further information, visit the U.S. Department of Justice at:

http://www.ovw.usdoj.gov/teen_dating_violence.htm.

Elderly

An estimated one million persons 65-or-older are abused each year. For further information visit the American Association for Retired Persons (AARP) at:

http://bulletin.aarp.org/yourworld/law/articles/state-by-state_elder.html?CFC_cK=1207327217393.

Tribal

Violence against Native Women is not traditional but it occurs at a rate higher than those of all other groups. The Sacred Circle, National Resource Center to End Violence Against Native Women, provides assistance, training, and information on tribal violence. The Sacred Circle can be contacted at www.sacred-circle.com or toll free at 1-877-733-7624

Military

Domestic violence in the military is complicated by the fact that victims are often reluctant to seek help because of a concern with their spouse's career. For information, visit

<http://usmilitary.about.com/od/divdomviolence/l/aadomviol1.htm>

Lesbian, Gay, Bisexual, Transgender and HIV-affected Communities

Domestic violence occurs in same-sex relationships at about the same rate as in heterosexual relationships. Control tactics not usually seen in heterosexual relationships, like intentional exposure to HIV or public revelation of sexual orientation, are used by same-sex abusers. The National Coalition of Anti-Violence Programs, a coalition of lesbian, gay, bi-sexual and transgender organizations, is an excellent source of information about the barriers and special issues involved in domestic violence in these communities. www.ncavp.org

Immigrants

Immigrant victims of domestic violence often have additional problems caused by social isolation, language barriers, immigration laws and poverty. For information, visit the National Network to End Violence against Immigrant Women at:

<http://www.immigrantwomennetwork.org/AboutUs.htm>

16) DOMESTIC VIOLENCE STATISTICS

Nevada

- a) In Nevada, domestic violence incidents reported to law enforcement increased from 11,160 in 1994 to 26,162 in 2008. http://nvrepository.state.nv.us/dv_reports.shtml
- b) In Nevada, during FY 2007-2008 35,982 people received services from domestic violence programs. 1,389 adults and 1,559 children spent 59,434 nights in beds provided by domestic violence programs.
http://www.nnadv.org/pdfs/Press_Room/Information_for_the_Press/Domestic%20Violence%20The%20Facts_FY%200708.pdf

National

- a) Seventy-five percent of all family violence occurs in or near the victim's residence and an additional 15 percent occurs at the home of a friend, relative or neighbor. *Source: U.S. Department of Justice, Family Violence Statistics, June 2005.*
<http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.
- b) Forty-one percent of all family violence is not reported to police. *U.S. Department of Justice, Family Violence Statistics, June 2005.*
<http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.
- c) One-third of all family violence is reported to police by someone other than the victim. *Source: U.S. Department of Justice, Family Violence Statistics, June 2005.*
<http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.
- d) Twenty-three percent of all murders in the United States are murders of family members. *Source: U.S. Department of Justice, Family Violence Statistics, June 2005.*
<http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.
- e) More than two-thirds of spouse and ex-spouse murder victims are killed by guns. *Source: U.S. Department of Justice, Homicide trends in the U.S., June, 2006.*
www.ojp.usdoj.gov/bjs/homicide/intimates.htm.

17) DOMESTIC VIOLENCE AND NEVADA LAW

Criminal Penalties for Domestic Violence

The law deals harshly with people charged with crimes of domestic violence. The police are required to make an arrest if there is slight evidence to believe a person was the primary physical aggressor involved in a domestic battery during the last 24 hours. (NRS 171.137).

The law requires the aggressor be held in jail for at least 12 hours. There are statutory guidelines setting the amount of bail necessary for release from jail in amounts higher than usually charged for other batteries. (NRS 178.484).

The law requires the prosecutor to prosecute and prohibits any plea-bargaining of a provable domestic violence battery case. Sentences for misdemeanor conviction require a minimum of two days and a maximum of six months in county jail for a first conviction and from 10 days to six months for a second conviction. A third conviction within seven years, or any conviction involving a deadly weapon or serious harm to the victim, is a felony that requires a minimum sentence of one year in state prison. Community service and fines are also required. A convicted abuser is required by law to pay for and undergo state approved counseling of not less than one and one-half hours per week for six months to a year. The law does not permit the judge to grant probation. (NRS 200.485).

Liability to the Victim of Domestic Violence for Money Damages

An injured victim can seek a judgment for money against a domestic abuser. In Nevada, criminal conviction is conclusive evidence of civil liability. After conviction of a domestic

violence crime, the only question to be answered in a lawsuit by the victim against an abuser may be the amount the abuser must pay. (NRS 41.133).

Protection Orders against Domestic Violence

Nevada law permits an otherwise powerless victim of abuse to use the tremendous power of the court for protection. A Temporary Protection Order (TPO) can require an abuser to leave his home, even if he owns it. It can require an abuser to stay away from the home, job and other places the victim and the victim's children regularly go. It can grant sole custody of children and of pets. It can make the abuser pay the victim's rent or mortgage and compel the payment of child support. It can require an abuser to surrender firearms to law enforcement. Protection orders are aggressively enforced. Any abuser who violates a TPO may go to jail. Parents or guardians may obtain orders on behalf of children. (NRS 33.017 et seq.).

The process of obtaining a TPO is user-friendly and designed for people without lawyers. For further information contact your local district court or justice court.

Child Custody

Judges are required by statute to consider domestic violence as a factor when determining child custody. Proof that an abuser committed an act of domestic violence against a child, a parent of a child, or any person living with a child, requires a court to presume that the abuser should not have sole or joint custody of that child. This presumption can be overcome with compelling evidence. (NRS 125C.230).

Sometimes the Law Doesn't Work as it Should

Sometimes the legal system breaks down. TPO's sometimes aren't served because of a lack of address or for other reasons. Sometimes they aren't enforced. Sometimes domestic violence isn't taken into consideration in granting custody. Sometimes the victim can't find a lawyer to handle a civil case for damages. Investigative reporting can identify and explain such failures and may promote improvement.

18) DOMESTIC VIOLENCE AND FEDERAL LAW

The Violence Against Women Act (VAWA) makes it a federal crime in some circumstances to cross, or cause any person to cross, a State or tribal boundary if domestic violence or violation of a TPO results. The Violent Crime against Women Act amended VAWA to include cyber- stalking as a federal crime. The penalty for violation of these federal statutes ranges from five years to life imprisonment depending upon the extent of injury to the victim.

The Gun Control Act prohibits firearm possession in some circumstances by a person who is convicted of domestic violence or subject to a TPO. It is also a crime to transfer a firearm to such a person. Penalties of up to 10 years imprisonment are possible.

Questions about the application of Federal laws may be directed to the US Attorney, District of Nevada, 333 Las Vegas Blvd. South, Las Vegas, NV 89101 or to Public Affairs Specialist Natalie Collins at (702) 388-6508.

IV. NEVADA DOMESTIC VIOLENCE RESOURCES

1) PUBLICATIONS

"Nevada Domestic Violence Resource Manual for Law Enforcement, Prosecutors, the Judiciary, Attorneys, Advocates," the Urban Group LLC (2000)., 370 pages. Available on-line at: <http://npac.state.nv.us/Publications/DomesticViolenceResourceManual.pdf>.

"Domestic Violence Prosecution Best Practices Guidelines," as adopted by the State of Nevada Council for Prosecuting Attorneys pursuant to NRS 241A.070 on May 4, 2006. Available on line at: http://www.nvpac.state.nv.us/Domestic_Violence/DV_Best_Practice_Guidelines.pdf

2) POLICY ORGANIZATIONS

The Family Violence Department of the National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, NV 89507. Telephone: (775)784-6012, Fax: (775)784-6628, <http://www.ncjfcj.org/contnt/view/20/94/>

One of the nation's foremost authorities on domestic violence is headquartered in Reno, Nevada. The Family Violence Department (FVD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) works to improve the way criminal, civil, and social justice systems respond to family violence by providing cutting-edge training, technical assistance, and policy development.

Nevada Committee on Domestic Violence, www.cdv.state.nv.us

The Committee adopts regulations for the evaluation, certification and monitoring of programs for the treatment of persons who commit domestic violence.

Nevada Council for the Prevention of Domestic Violence, 5420 Kietzke Lane, Suite 202, Reno, NV 89511, Telephone: (775) 850-4119, Fax: (775) 688-1822, <http://ag.state.nv.us/dv/dvpc/dvpc.htm>

The Council is chaired by the Nevada Attorney General and has members representing law enforcement, the judiciary, prosecution, victim services, health care, education, and domestic violence survivors.

The Council efforts include (a) increasing awareness of the existence and unacceptability of domestic violence; (b) making recommendations for any necessary legislation relating to domestic violence; and (c) providing financial support to programs for the prevention of domestic violence.

Nevada Domestic Violence Ombudsman, <http://ag.state.nv.us/dv/dvunit/ombud.htm>

The Domestic Violence Ombudsman (a) produces quarterly reports for the legislature; (b) provides information and assistance to victims, the criminal justice system and the general public

and responds to complaints and concerns; and (c) administers the court assessment account for programs related to domestic violence.

Nevada Network Against Domestic Violence, (775) 828-1115, <http://www.nnadv.org/>

The Nevada Network Against Domestic Violence (NNADV) is a statewide organization that helps Nevada's communities respond effectively to the needs of victims of domestic violence. NNADV provides a resource library, advocacy training, and technical assistance to Nevada's domestic violence programs. NNADV also coordinates networking meetings, assists in the provision of community and professional education, and is active in educating legislators on issues of concern to Nevada families.

Southern Nevada Domestic Violence Task Force, PO Box 758, Las Vegas, NV 891125-0758, (702) 225-4113, <http://sndvtf.org/>

The task force (a) provides a working forum for interdepartmental information sharing and interaction of agencies dealing with domestic violence victims and perpetrators; (b) identifies and analyzes the components of current responses to domestic violence and makes recommendations; and (c) serves as a conduit to local news media for information compiled by task force members to facilitate change by sponsoring education and media campaigns on domestic violence issues.

3) DOMESTIC VIOLENCE SERVICES

For Victims: <http://sos.state.nv.us/information/cap/agencies.asp>

Nevada Domestic Violence Hotline: (800) 500-1556

For Abusers: <http://ag.state.nv.us/dv/dvunit/Certified%20Treatment%20Providers.pdf>

Appendix L – Reprinted with Permission

Casey Gwinn, *The Birthday Boy*, Sign On San Diego, Aug 5, 2011,
<http://www.signonsandiego.com/news/2011/aug/05/the-birthday-boy/>.



The birthday boy

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By Casey Gwinn

midnight, Aug. 5, 2011

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San Diego man pleads

It was his birthday. He was 11 years old and all his friends were coming to the roller-skating rink for the party. He was excited and happy. His mom had worked so hard to plan the party and make sure relatives and friends would be there. At 5:30 p.m., it was anticipation and laughter and excitement. By 6:30 p.m., the air was filled with music and action and stolen glances between the boys and girls skating. But at 7:15, the exciting day took an unimaginable turn. Dad arrived and started arguing with mom. And then dad pulled a gun and shot mom in front of the birthday boy and his 3-year-old sister. As dad stood over her, he said, "I told you so." Pandemonium was everywhere. Children were running, people were screaming. Then, dad shot three of mom's family members. The terrified little boy begged for his life as his dad pointed the gun at him. Dad spared his life by turning the gun and killing himself.

There was screaming, terror and weeping. People raced out of the rink with their skates still on. There was blood everywhere. Death was the epilogue of the private birthday party. Police arrived. Ambulances arrived. The birthday boy will never forget it, never get over it, and never live a day without thinking about it.

This horror occurred on July 23 in Grand Prairie, Texas. Within hours it would make the local news and the national news. And the familiar phrases would appear – Fox News called it a "domestic dispute" and WFLI 18 called it a "domestic disturbance." As if on cue when a domestic violence homicide occurs, the media quickly pulls out of their lexicon the clear evidence of their own ignorance about domestic violence. The Associated Press would call it a "spat" between family members. The owner of the roller skating rink said "there was nothing anyone could do

Raped or “Seduced”?
How Language Helps Shape Our Response to Sexual Violence
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The birthday boy | SignOnSanDiego.com

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not guilty in domestic
violence death

to prevent this,” reopened for business the next day and called the shooting “random.” Police said the birthday boy and his sister were “not hurt” in the attack. Later, “authorities” were quoted as saying the children were “unharmmed.”

As I write just days after the killings, no one has called them predictable. No one has called them preventable. No one has called them a mass murder, though the FBI defines mass murder as four murders or more with no “cooling-off period” between the deaths. No one has put it in the context of the four women that are killed every day in this country by their abusive partners. The national news story is fading away in a flurry of stories about the debt ceiling. No one is talking about the protection order that mom had against dad. No one is talking about the lifelong journey of trauma and pain facing those children. In fact, one attendee at the party summed it up for most of America – “This too shall pass.”

But don’t be deceived. It will not “pass” for the sweet little boy or his 3-year-old sister. They will live with it for the rest of their lives. That “domestic disturbance” will no longer disturb most of the public, but a whole bunch of children will be disturbed for the rest of their lives.

In the tragic aftermath of the mass domestic violence murders, I would suggest that everyone reading this can still honor the young, innocent birthday boy with a gift. Let me offer a few suggestions:

- Members of the media: Pledge to never again use the phrases “domestic dispute,” “spat” or “domestic disturbance” when talking about a domestic violence mass murder.
- Police authorities: Never again say that the children were “unharmmed” or “not hurt” after witnessing the murder of their parents.
- Caring San Diegans: Ask every elected official to make family violence prevention a higher priority. And donate money to a local shelter or other agency working with children exposed to domestic violence. It is estimated there are 3 million to 10 million children witnessing violence in their homes every year.

The birthday boy deserves our time and attention. Will you do something today in honor of his birthday?

Gwinn, a former San Diego city attorney, is president and chief financial officer of the Family Justice Center Alliance.

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Appendix M

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Letter from Judith G. Greenberg, Co-Director, The Judicial Language Project, New England Law, to Chief Justice Carol W. Hunstein, Supreme Court of Ga., and Chief Judge M. Yvette Miller, Court of Appeals of the State of Ga. (Sept. 23, 2010) (on file with NJEP).

Permission granted by Wendy Murphy via email on April 19, 2011.

Casey Gwinn, *The Birthday Boy*, Sign On San Diego, Aug 5, 2011, <http://www.signonsandiego.com/news/2011/aug/05/the-birthday-boy/>.

Permission granted by Casey Gwinn via email on August 9, 2011.

Jackson Katz, *Language Matters #1: Violence Against Women* (1997).

Permission granted by Jackson Katz via email on April 19, 2011.

Jenna Mann, *Jastorff Pleads Not Guilty to More than 30 Counts of Rape*, KDLT News, Dec. 28, 2010,

http://www.kdlt.com/index.php?option=com_content&task=view&id=6866&Itemid=57
(last visited June 8, 2011).

Permission granted by Paul Heinert, News Director, KDLT Television via Email on June 8, 2011.

Letter from Wendy J. Murphy, Co-Director, The Judicial Language Project, New England Law (Apr. 7, 2011) (on file with NJEP).

Permission granted by Wendy Murphy via email on April 19, 2011.

Judge Chuck Weller, *Covering Domestic Violence: A Guide for Informed Media Reporting in Nevada*, NEV. NETWORK AGAINST DOMESTIC VIOLENCE, http://www.nnadv.org/pdfs/Press_Room/Covering_Domestic_Violence-Media_Guide.pdf.

Permission granted by Judge Chuck Weller via email on August 11, 2011.