Violence against Women Act and Its Impact on the U.S. Supreme Court and International Law: A Story of Vindication, Loss, and a New Human Rights Paradigm, The

Cheryl Hanna

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The Violence Against Women Act and its Impact on the U.S. Supreme Court and International Law: A Story of Vindication, Loss, and a New Human Rights Paradigm

Cheryl Hanna*

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I. INTRODUCTION – JANE CAMPBELL MORIARTY**

Good morning and on behalf of Dean Ken Gormley and the faculty, I would like to welcome you to Duquesne University School of Law. We are so pleased you are able to join us for this conference commemorating the twentieth anniversary of the Violence Against Women Act.1 This conference is one of many events being held

* Vice President and Professor of Law, Vermont Law School. This essay consists of two addresses delivered at a Continuing Legal Education program held at the Duquesne University School of Law on March 29, 2014. The program, entitled, The Violence Against Women Act and Its Impact on the U.S. Supreme Court and International Law, marked the twentieth anniversary of the Act. Dean Jane Campbell Moriarty of Duquesne University School of Law introduced Professor Hanna as the keynote speaker.

** Carol Los Mansmann Chair of Faculty Scholarship, Associate Dean for Faculty Scholarship, and Professor of Law, Duquesne University School of Law.

across the state at every law school in Pennsylvania in conjunction with the Pennsylvania Coalition Against Domestic Violence.

The data about violence against women is disturbing and indeed, shocking. Every two minutes in America, someone is sexually assaulted.\(^2\) Department of Justice statistics indicate that in 2012, more than 345,000 people suffered a rape or sexual assault, while over 1.3 million were the victims of domestic violence.\(^3\) In Pennsylvania alone in 2013, approximately fifty women were killed by their intimate partners.\(^4\) The effects of violence on women and families are often insurmountable: many suffer lifelong damage in the form of chronic pain, depression, anxiety, drug and alcohol abuse; the rate of drug and alcohol abuse is many, many times the number of those who have not been abused.\(^5\) And the U.S. is not the most dangerous place for women; in other parts of the world, the numbers are far higher and the access to justice is far less. Yet many people are working at home and abroad to reduce the rate of violence against women, including Cheryl Hanna, our keynote speaker, who I am so pleased to introduce.

Cheryl Hanna is the Vice President of Enrollment Management, External Relations, and Communication and Professor of Law at Vermont Law School. She received her undergraduate degree from Kalamazoo and her J.D. from Harvard. She is the author of several articles relating to violence against women and girls and is the author of a widely used casebook entitled *Domestic Violence and the Law.*\(^6\)

I have been reading Professor Hanna’s work since 1998 when I came across an article called *The Paradox of Hope: Crime and Punishment of Domestic Violence.*\(^7\) It was my favorite article at the time. It was the first article I selected for a book I had just

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begun editing called *Women and the Law,*\(^8\) and it set the standard for all the other articles I included in the next decade. It's a fabulous piece of work by a wonderful scholar. Professor Hanna is speaking about violence against women and its impact on the U.S. Supreme Court and international law. It is a story of vindication, loss, and the human rights paradigm. Please join me in welcoming our keynote speaker, Vice President and Professor of Law, Cheryl Hanna.

II. **KEYNOTE SPEECH – CHERYL HANNA, PROFESSOR OF LAW, VICE PRESIDENT, VERMONT LAW SCHOOL**

A. **Introduction**

Thank you very much for having me. I'm delighted to be here. I am so appreciative of Jane for having me here. I can't believe it's been twenty years since the Violence Against Women Act passed, and I'm very grateful and humble to have been able to spend so much of my career working on issues of gendered violence. Despite all the work that's left undone, I think we should take a moment to pause and really be grateful for all the progress that's been made.

What I'd love to do is share with you a little bit of the history of litigation around domestic violence, particularly at the United States Supreme Court and in the international law to get up to the 50,000-foot view of what's happening and where I think we have yet to go. My work, as well as my work in gender and domestic violence, is as a constitutional scholar, so I am going to try to bring those two perspectives together.

I thought it would be good to start by reflecting back on the Violence Against Women Act, which, of course, passed in 1994. And I came across this quote from Senator Joe Biden, now Vice President Biden, who said:

Through this process I have become convinced that violence against women reflects as much a failure of our nation's collective moral imagination as it does the failure of our nation's laws and regulations. We are helpless to change the course of

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this violence unless and until we achieve a national consensus that deserves our public outrage.\footnote{9}

So we can ask ourselves as we go forward, how can we achieve that goal? How do we create the kind of regulatory scheme and laws, as well as the public outrage, against violence against women and girls?

Since the Violence Against Women Act passed—and even before the act passed, but certainly since—at least before the Supreme Court (so again, at that 50,000-foot level), we have seen a significant number of cases involving violence against women: either cases that directly implicate questions of the Violence Against Women Act or related statutes, or cases involving violence against women more generally. If you look at the Supreme Court's docket, perhaps with the exception of federal preemption, there has probably been no greater growth area in the Court than cases involving gendered violence. This term alone, the Court has three cases before it involving the Violence Against Women Act or domestic violence. One, United States v. Castleman,\footnote{10} just came down on Wednesday; the Supreme Court ruled that a state conviction for "misdemeanor domestic assault" qualifies as a "misdemeanor crime of domestic violence" under federal law, thereby prohibiting the defendant from having a gun.

When we think about domestic violence, we think, "Well, this is really an issue that's happening in the local and state level. These are small cases." But the issue is not about small cases. It's about big cases. We've seen these cases since the Violence Against Women Act began to trickle up to the Court. The question I want to contemplate is a particular one, however. And that question is, to what extent should the State—the government, "We the People"—bear responsibility for and the burden of alleviating violence against women and girls? That's a very important and particular question, because historically when we think about violence against women and girls, we often think of it as a private family matter that should be resolved between the parties. It's historically been thought of as something that happens within the privacy


\footnote{10} 134 S. Ct. 1405 (2014).
of home or in the privacy of the family. The fundamental question that we have to wrestle with, both from the perspective of law and policy but also from a broader perspective of human rights, is: "What is the role of the state?" When I look back over the last twenty years, I want to ask that question with two different ideas: one, an idea of vindication, and one, an idea of loss.

B. Vindication

Vindication. What does it mean to be vindicated? To be vindicated means not to be blamed; to not bear responsibility that was not yours in the first place. Vindication means that you are not the one who is at fault. When we think about violence against women as not just an intimate family problem or something that's personally related, but when we think of it as part of the status of women and girls in the United States, I always like to go back to the Declaration of Sentiments and the first Women's Rights Convention at Seneca Falls in 1848.

For those who may or may not know, the Declaration of Sentiments was one of the first declarations about what women's rights—and human rights—in the world and the United States ought to be. This is Elizabeth Cady Stanton and Lucretia Mott. One of the sentiments expressed at the Seneca Falls was to have women vindicated.

It says he has made her morally an irresponsible being; that she can commit any crime with impunity provided that it be done in the presence of her husband. In the covenant of marriage, she is compelled to promise obedience to her husband, with him becoming for all intents and purposes her master, and the law giving him the power to deprive her of liberty and to administer chastisement.  

When we think all the way back, when we think to violence against women emanating from the relationship of husband and wife—and the justification for non-state intervention was that men had to control their wives and that she could be chastised because of her behavior. She was blamed. The first women's rights convention demanded she be vindicated.

11. Elizabeth Cady Stanton, Women's Rights Activist, Presentation to the Seneca Falls Convention: Declaration of Sentiments and Resolutions (July 19, 1848).
12. Id.
C. Loss

That’s vindication. Let me talk about loss. Loss is the experience of having something taken from you or something destroyed. I don’t use the term “loss” as in winning and losing, like in a court case. “Loss”: something that is actually taken from you, something about your personage that is no longer your own. Whenever I think about loss and the law, I have to think about Myra Bradwell, who was the first woman who was actually admitted into the practice of law in the United States. Myra Bradwell’s husband was an attorney, and she studied for the bar under him. At that time, you didn’t have to go to law school. You could read for the bar, and she had spent many years helping her husband. She wanted to take the Illinois Bar exam, but the State of Illinois said that only men could be lawyers. Ultimately, her case went all the way up to the United States Supreme Court, and the Court upheld the Illinois ban, although eventually Illinois did allow her to become a lawyer. But when her case went to the Supreme Court, it refused to vindicate her, but instead imposed a loss. In a concurring opinion by Justice Bradley, he wrote, “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for the many occupations of civil life. The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother. This is the law of the Creator.”

So again, when we think about vindication and loss in the context of gender violence and then gender discrimination, we have to think about not just that Myra Bradwell lost her case, but that she lost the right to full citizenship. She lost the right to pursue one’s own occupation, to pursue one’s own passion. I also am always struck about the tenacity of somebody to bring their case all the way to the United States Supreme Court and then lose—and I think that all women, particularly those who are attorneys, should reach back and thank Myra Bradwell for sticking to it and ultimately becoming the first woman to pave the way for the rest of us.

Let me tell you a couple of stories of both loss and vindication at the United States Supreme Court, and then some ultimate stories of vindication in the human rights context. In order to tell you

these stories, I need to start a little bit before the Violence Against Women Act was passed.

D. Joshua DeShaney: Loss

This is a story about Joshua DeShaney, a four-year old boy. Joshua’s parents were divorced, and custody was awarded to his father in Winnebago, Wisconsin. There had been numerous allegations and documentation of child abuse of Joshua by his father. Joshua had been hospitalized. For a very short period of time he was in state custody, but he was returned to his father under state supervision. So his father was under state supervision, but Joshua was living with his father. And I could go through all the facts that would lead you to say you couldn’t possibly believe that the State of Wisconsin and that County of Winnebago did nothing to protect Joshua, but let me just say that they did nothing to protect Joshua, even after having serious, serious evidence of ongoing child abuse.

One day, Joshua’s father beat Joshua so badly that Joshua ended up severely disabled and was confined for the rest of his life in an institution for those with profound disability. Joshua’s mother brought a lawsuit against Winnebago County, and she said, “You had an affirmative duty to protect Joshua, particularly because you knew his father was abusing him and you did nothing. You kept sending him back. You didn’t follow up. You didn’t do anything to remove him from the home. You essentially turned a blind eye. And because you knew, and because he was already in the system, you should have protected him.” The legal theory in that case, for the lawyers in the room, was that the state had deprived Joshua of his liberty interest in bodily integrity, in violation of his rights under the substantive component of the Fourteenth Amendment’s Due Process Clause, by failing to intervene to protect him against his father’s violence.

The Court, in a 6-3 decision, rejected that argument holding that it would have been one thing if Joshua was actually in a state facility. That would have created a special relationship if he was actually under state control. But the state otherwise has no affirmative duty to provide members of the general public with adequate protection from harm imposed by others. In other words, Joshua had no right—none of us has any right—to have the state

protect us from the violence of private actors. If the State of Wisconsin wants to impose a secondary law that holds itself liable, it is certainly free to do that. But from the concept of rights and liberties that emanate from the Constitution, Joshua has no right to be protected by his state.

Now, Justice Blackmun is most famous for two things: one is authoring Roe v. Wade,15 and a second is his dissent in DeShaney. Bill Clinton, by the way, read it at his funeral, so I thought I would share it with you as well. Justice Blackmun wrote:

Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on, and yet did essentially nothing except, as the Court revealingly observes, "dutifully recorded these incidents in [their] files." It is a sad commentary upon American life, and constitutional principles—so full of late of patriotic fervor and proud proclamations about "liberty and justice for all," that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded.16

We have very different, contrasting views about what the affirmative state duty is. By a margin of just two votes, the Supreme Court's jurisprudence set off on the path away from affirmative state duties, away from the obligations of the state, and toward the continued privatization of violence.

That's not to say that the entire Supreme Court history on violence against women has been one of loss. And so let me talk briefly about vindication. I couldn't help but do this because I'm in Pennsylvania and, you know, there are many special things about Pennsylvania. This is the birthplace of Planned Parenthood v. Casey,17 and it is also the first state that had a statewide domestic violence coalition. I don't know if you know that, but Pennsylvania was the first state that had a statewide coalition, which, I think, actually plays very importantly into this decision.

16. Id. at 213 (Blackmun, J., dissenting) (internal citation omitted).
E. Planned Parenthood v. Casey: Vindication

I like to collect cartoons about the Supreme Court. This one says, “Senate Judiciary Committee hearing”; and that’s Senator Dianne Feinstein. This is during Judge Alito’s confirmation hearings and she says, “Judge Alito, I need to ask you some questions about your views on women’s rights.” And Justice Alito responds, “Do you have your husband’s permission to do that?” Now, why is that funny? Or not funny, but why do we laugh? Because Pennsylvania had passed a law regulating abortion in 1992, so this case went up to the Court in 1992, just a few years before the Violence Against Women Act passed. This was part of the reaction to Roe v. Wade and an attempt on the part of the states to limit abortion rights. And so one of the provisions in Pennsylvania’s law was that in order for married women to have an abortion, they had to notify their husbands, which essentially acted as a permission. One of the things I think is interesting about Pennsylvania and its history is that one of the arguments against that provision was created by the Pennsylvania Coalition Against Domestic Violence, and the argument they submitted in an amicus brief was that the notification requirement would harm women who are in abusive relationships because of the risks involved in notifying their husbands.

This is the first time, by the way, that I can document that the Supreme Court actually acknowledged not only the existence of domestic violence, but also its impact on broader public policy. So it was very significant. Now, of course, because it was Pennsylvania, that case came out of the Third Circuit Court of Appeals, where Judge Alito was serving at the time, and he upheld the notification provision despite the arguments to the contrary. That’s just a little Supreme Court “back history.”

In the plurality opinion, the Court acknowledged there are millions of women in this country who are victims of physical and psychological abuse at the hands of their husbands. Should these women become pregnant, they may have very good reasons for not wishing to inform their husbands of their decision to obtain an abortion. That’s now the law. The Supreme Court has said that because that provision can affect significant numbers of women who are victims of gendered violence, you cannot require the notification provision. This opinion is notable because it suggests that she is not to be blamed and that the state bears some responsibility when it crafts laws and policies, to take into account the reality of gender violence. Yet, Planned Parenthood v. Casey is one of the
few instances of true vindication, I believe, in Supreme Court jurisprudence.

F. Christy Brzonkala: Loss

So let me tell you a few more stories of loss, including a story about one of the provisions in the Violence Against Women Act when it was originally passed. The Violence Against Women Act, as you know, does many, many things. It is primarily a funding statute. It provides money for organizations and states to engage in different kinds of strategies to curb violence against women, including many grants for coordinated community responses. It does provide for some other kinds of federal regulation. In the original bill was what was called a “civil rights remedy,” similar to civil rights remedies that are commonplace in the context of discrimination on the basis of race. This was about a civil rights remedy on the basis of gender. What it said is that, if I am victimized by somebody who is motivated by gender bias, I can take my case directly to federal court, and I can do so because we know that the states have turned a blind eye to crimes like domestic violence and sexual assault. The states have allowed violence against women to occur, and so you can think about this as parallel to civil rights in the racial context. Because the states have done nothing, the federal government is now going to step in and ensure that victims have a legal remedy for the violence. They can sue their assailants in federal court.

Christy Brzonkala was a student at Virginia Polytechnic Institute, a state university. In her freshman year, she was sexually assaulted and raped by two students who were varsity football players. She reported the rapes and the university held disciplinary proceedings. The students admitted to having sexually assaulted her. One was temporarily suspended but then the university reversed that punishment. Nothing happened to the other student, and Christy eventually dropped out of school, and sued her assailants and the school under the Violence Against Women Act. The United States joined her in the lawsuit against the state, so it became a federal case.18

The United States Supreme Court struck down the civil rights provision of the Violence Against Women Act on two theories. First was that Congress lacked the authority to enact the provi-

sion under the Commerce Clause because there was not regulate activity that sustainably affected interstate commerce. The Court reasoned that if you make this a federal crime, everything becomes a federal crime. The Court essentially said, “Don’t make a federal issue out of violence against women.” When I teach this case, my students don’t even realize that it has anything to do with violence against women. They think it all has to do with congressional power and when the federal government can regulate noneconomic behavior. I find this notable because the issue of violence is deeply obscured by the Court’s discussion of federalism. The inability of Christy to seek vindication against her assailants is loss.

The second theory was that Section 5 of the Fourteenth Amendment authorizes Congress to enforce legislation to guarantee that no State shall deprive any person life, liberty, property, or equal protection of the law. But the Court again said that the federal government cannot regulate private actors. It can only regulate states. Because it was two private individuals who raped Christy Brzonkala, there’s no duty; there’s no way the state can get involved here, because this is about two people and not about any affirmative government duty. This is loss. Not just a loss in court, but the loss of Christy Brzonkala’s ability to have her own integrity, to pursue her profession and her passions. There’s no way for her to remedy the wrong that is done to her. The Court won’t do anything. The school won’t do anything, and she has no ability to go to the federal government for her remedy. She has no way to enforce her integrity, her personhood. This case was in 2000 and it was a big defeat. This is the biggest blow to the Violence Against Women Act because absent that federal remedy women often have nowhere else to go.

G. Castlerock v. Gonzales: Loss

That leads us to Castle Rock v. Gonzales. Jessica Gonzales, now Jessica Lenahan, was married to a man named Simon Gonzales, who had serious mental health issues and serious issues around being psychologically abusive to her and their three girls. As part of her splitting up with Simon, Jessica got a restraining order, which many of us are familiar with, and Colorado requires the state to enforce restraining orders. It says you must arrest.

The order allows Simon to have some very limited visitation with the three girls at very defined times. The girls are outside playing one afternoon. They don’t come in. Jessica realizes that Simon has kidnapped them. He actually kidnapped a friend, too, and then let the friend go. That’s always a part of the story that people don’t hear about.

Jessica Gonzales begins calling the Castle Rock Police station, saying, “My husband has taken the girls. You need to go get him. I have a restraining order. This is not part of the visitation. I’m very concerned.” She called seven times to the police station and visited twice, each time saying, “I’m concerned for their safety.” She had heard from Simon. He had taken them to an amusement park. She said, “Go get them.” And the Castle Rock Police’s response, by and large, was, “Look, they’re with their father, what could be safer?”—despite the restraining order. And they said, “Look, he’ll bring them back. Don’t worry. This is a private family dispute, not one which, as the state, we’re going to be involved in.”

Around three o’clock in the morning, Simon Gonzales showed up at the Castle Rock Police Department and began opening fire with the gun he had bought earlier that day. The police returned fire, and Simon Gonzales was killed. When they looked in the truck, the three girls were dead inside. Originally, the police had said that the girls were killed by their father earlier that evening, although that evidence is inconclusive, and we don’t know whether, when the police returned fire, they were the ones who killed the girls.

Jessica Gonzales sued the Castle Rock Police Department, and she did so under two theories. One was the theory from Joshua DeShaney’s case, which is, “I have a right to be free from violence, and you had a duty to protect me under my liberty interest.” But creative lawyers knew that that was not likely to fly because of DeShaney, so they came up with a much more novel theory. That novel theory was that she had a property interest in that restraining order. If the state was going to take that away, if the police weren’t going to enforce it, they had to tell her that so she could have made other arrangements in her life. Because she relied on that property interest, if they were not going to do what they said they were going to do, she needed to be told that.

The Supreme Court ultimately disagreed with her. It said that, essentially, a restraining order was just a piece of paper. Even though the word “must” was on the restraining order, the Court said that there’s no constitutional right to be protected from pri-
vate violence and no constitutional right to have the state order enforced.

Advocates working in the field of domestic violence know that the restraining order is often the first step toward a woman’s safety. If there’s no ability to have it enforced, it then really does just become a piece of paper, and we are all left to our own devices to protect ourselves. That is where this case could have ended. It could have ended in loss, if not for so many wonderful advocates, including a woman named Carrie Bettinger-Lopez, who is a faculty member now at the University of Miami. She and her law students got together and they said, “There must be a way to remedy this. This is so bad. This is so wrong. There must be a way to vindicate the loss.” And so they brought the case to the Inter-American Commission on Human Rights.

H. International Human Rights Cases: Vindication

But before I get to that, let me talk about a couple of cases that happened in the interim. As Jessica Gonzales’s case is now being reframed by lawyers and law students as an international human rights case, other cases around the world are tracking a similar path. There were two cases that happened between Jessica Gonzales’s case at the Supreme Court and the ultimate decision in that case that I just want to briefly share with you. One is called the Cotton Field Case and one is Opuz v. Turkey.

Let me start with the Cotton Field Case. In Juárez, Mexico, for over fifteen years, significant numbers of women and girls had either disappeared or been murdered—literally hundreds of them. Juárez, Mexico is just over the Texas border, and the State of Mexico did nothing to stop it. Hundreds of women and girls. Finally, advocates brought a case to the Inter-American Court of Human Rights. Mexico, as well as many North and South American countries, are signatories to an international treaty that provides that states have an affirmative duty to provide for the life of their citizens and an affirmative duty to end gender-based discrimination.

In that case, the Inter-American Court of Human Rights said that Mexico was in violation of its treaty obligations. It was in violation of international human rights law for failure to investigate, for failure to intervene, and for failure to have policies that were geared toward protecting women and girls. This was critical because international human rights tribunals were starting to say, “The state has to do something. It just can’t simply turn a blind eye when you have so many women and girls being victimized by gender-motivated violence.”

At just about at the same time, interestingly enough, there was a case involving Turkey at the European Court of Human Rights. The United States is not a signatory to the European Declaration of Human Rights, which is a compact among the European nations proclaiming their own human rights obligations. The case involved Nadia Opuz. She was in a very abusive relationship. Her husband not only beat her and her children, but also her mother. And she had gone to the police many times seeking remedy. Sometimes they tried to prosecute him, but sometimes Nadia did not go forward with the case.

Sometimes she would seek state help; sometimes she wouldn’t. Eventually, he killed her mother, for which he was sentenced to two years, when Nadia was attempting to leave him. He beat Nadia extremely badly. So victims’ rights advocates brought her case to the European Court of Human Rights, saying that Turkey also had an affirmative duty to protect her. What Turkey said, which I thought was very interesting, was that, “Well, she didn’t want our help sometimes. So, if she doesn’t want our help, there is nothing we can do about that.” To which the Court responded, “The reason she doesn’t want your help is because your justice system is so screwed up. It doesn’t respond to the victims of gender violence.” The husband only got two years. The legal system is set up to condone, and in some ways even to invite, violence against women and girls. Therefore, you, the State, have failed in your affirmative duty to protect this woman and her family. And therefore, you, State, are responsible for this.

I. Jessica (Gonzales) Lenaham: Vindication

Those two cases came out at the same time Jessica Gonzales, by then remarried and using the name of Jessica Lenaham, brought

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her case against Castle Rock to the Inter-American Human Rights Commission. It was a long, long road. Jessica never even got to testify because everything was decided on motions in the American system. So the first time she actually gets to tell her story is to the Commission. The United States is not a signatory to many human rights documents, but it is a signatory to the American Declaration[^24] and while the Commission doesn’t really have enforcement power, it does have the power of persuasion. The Commission concludes that even though the state recognizes the necessity to protect Jessica, and her daughters Leslie, Katheryn, and Rebecca Gonzales from domestic violence, it failed to meet this duty with due diligence. The state apparatus was not duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and effectively implementing the restraining order issued. This failure to protect constituted a form of discrimination in violation of Article Two of the Declaration. And that discrimination was gender discrimination. It’s a failure to protect Jessica and her children. It’s not about a private family matter or Simon having mental illness that should be treated privately. This was really about fundamental, structural gender discrimination that was embodied in the state’s failure to act with due diligence and to do the right thing on behalf of the victims.

J. Beyond Vindication and Loss to a New Human Rights Paradigm

When we think about human rights, we often think about it being a problem in other countries, that human rights are somewhere across our borders, and that in the United States, we don’t have human rights problems. This is the first time an international court has in essence said, “You know what, United States Supreme Court? You know what, United States government? You are now in violation of the human rights of your own citizen because you have failed to protect them from gendered violence.” The Inter-American Commission ultimately suggested that we reimagine the future of VAWA within the context of broader hu-

[^24]: American Declaration on the Rights and Duties of Man, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (Apr. 1948), http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm. Although the declaration is not a legally binding treaty, the jurisprudence of both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights holds it to be a source of binding international obligations for the OAS’s member states.
man rights principles. Indeed, the Special Rapporteur on Violence Against Women of the United Nations, concluded, at the close of a recent visit to the United States, that:

Although Violence Against Women Act’s intentions are laudable there is little in terms of actual legally binding federal provisions which provide substantive protection or prevention for acts of domestic violence against women. The challenge has been further exacerbated by jurisprudence emanating from the [United States] Supreme Court. The effect of such cases as DeShaney, Morrison and Castle Rock is that even where local and state police are grossly negligent in their duties to protect women’s right to physical security, and even where they fail to respond to an urgent call for assistance from victims of domestic violence, there is no constitutional or statutory remedy at the federal level.25

This should give us pause. Twenty years after the Violence Against Women Act, we still have failed to provide victims federal remedy for gendered violence. We have failed to insist that we impose upon ourselves, as a nation, the duty to protect women and girls from gendered violence. So with every challenge, there is now an opportunity to continue to do so. The next task is to come up with creative, thoughtful ways in which we can institutionalize the idea of affirmative state duties, both at the local level and at the federal level, beyond what the Supreme Court has limited our ability to do.

For those who work in this field, it’s hard work. There are attorneys who take domestic violence cases and the people who work in shelters, and the people who are on the front lines every day. It’s difficult work. You don’t get the recognition that is well-deserved. So now when people ask what kind of work I do, what does my scholarship involve, I’ve stopped saying I do women’s rights or violence against women, and I just say, “I’m a human rights worker. I work in human rights in the United States.” That connects each person who’s working on issues of gendered violence to a much broader international community of people.

This community is connected much more deeply to the human rights movement than anything else.

We now have a significant number of international cases that reframe domestic violence as a human rights issue. This opens up tremendous opportunity for creative lawyering, for creative solutions. Go back to that initial goal that Senator Biden, now Vice President Biden announced at the passage of VAWA. He called on our sense of moral outrage. And that moral outrage ought to be directed at our own unwillingness to share responsibility, to vindicate. It should be our moral responsibility to vindicate.