

Perspectives

The South Dakota Network Against Family Violence and Sexual Assault

Vol. 8, No. 1 APRIL 2006 listening, understanding differences, building partnerships

APRIL IS SEXUAL ASSAULT AWARENESS MONTH

CONSENT AND THE COURT OF PUBLIC OPINION

By Anne Munch, JD and Patti Powers, JD

The surge of media attention surrounding high profile sexual assault cases in the last few years has brought the questions of what the crime of sexual assault really means to the forefront of our minds and into our conversations. Attitudes and opinions held by the public have fueled a lively debate on this topic. These ideas and beliefs held by the public reflect what the court of public opinion believes about this crime. Many of the jurors who ultimately decide these cases in a courtroom spend time debating the issues in the court of public opinion first.

Much of the debate centers on what consent really means in the context of sexual encounters. Consent is a widely employed, if not implicit, defense in non-stranger sexual assault cases that brings us into direct confrontation with society's fears, myths and misconceptions. It is interesting, albeit disheartening, to watch people grapple with the reality of how consent means something obvious in the course of daily life, but something entirely different in the context of sex. The true depth of the double standard that our culture holds stands startlingly bright in the spotlight of some of these criminal cases.

Mission Statement

The mission of the South Dakota Network Against Family Violence and Sexual Assault is to provide nonjudgmental support, education, and advocacy to individual groups, and the general public in the prevention and the elimination of domestic violence and sexual assault.

Consider the definition of consent as defined by sexual assault law in Colorado. (CRS 18-3-403) It reads in pertinent part, "Consent means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the

nature of the act. A current or previous relationship shall be sufficient to constitute consent. Submission under the influence of fear shall not constitute consent."

This definition is replete with common sense, especially when one considers it in light of our everyday experiences. We all know what it means to consent to something; we do it every day. We know that cooperation looks and feels like. Can I borrow your car? Will you loan me \$50.00? Can you give me a ride to the soccer game? We can all picture what it is like to consent to the above examples. We can also picture what it looks like to not consent, or to withdraw consent in these examples, and if coerced, threatened or forced into them, we understand the situations as non-consensual.

The challenge arises when we change the backdrop from the every day examples to one of a sexual encounter. It seems that the standard changes. Most sexual assault cases are won or lost in the court of public opinion. And public opinion suggests that, unlike virtually any other crime in our culture, victims are to blame, in whole or in part, for the crime that happens to them. They either brought it on themselves by unwise conduct that preceded the assault, or they are imperfect and not worthy of the kind of credibility required to hold the rapist accountable. This unique standard draws attention to the conduct, past or likeability of the victim, often forgoing any fair analysis, criticism or judgment of the person charged with committing the crime.

Have you ever heard or witnessed the expression of the sentiments of the court of public opinion? Consider comments made by jurors in criminal cases that resulted in acquittals such as, "she consented as soon as

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she got drunk with him” and “what did she think would happen when she went up to his room?” “How do we respond to this kind of sentiment in away that might make sense to the person uttering these comments? We ask why someone would say such things about a victim who is adamant that she did not consent to what happened to her? Perhaps it is because of what is at stake to the members of the court of public opinion. It is a risk to look beyond judging the victim to judging the actions of the rapist. Who wants to believe that this crime happens in the extremely high numbers that it does, that people who we know, like and date or marry are capable of such a horrible act? It is easier to blame what happened on a misunderstanding, alcohol, or victim conduct.

How do we articulate a response to the powerful force of public opinion? Perhaps a startling place is in naming the faulty logic and double standard when we hear it. The double standard jumps out when we consider how victims of other crimes are treated. Does a business owner consent to theft by allowing people to browse in the store? What if the shop owner displays flashy and desirable items for sale in the window? Is he not asking for the theft by advertising his goods? Does a drunk on the street who is passed out from alcohol consent to having his wallet stolen, after all, he should have know what would happen to him? Does a person consent to kidnapping if they accept a ride from someone they believe they can trust who ends up holding them against their will? Does a person consent to theft if they agree to give a friend \$50.00, but the “friend” takes “\$100.00 instead? Does a home owner consent to burglary because they left their door unlocked when they left for work that day?

To not only meet the consent defense but in a more imperative sense, to take control of it, we must investigate and express the victim’s sexual assault with these questions in mind: Why was the victim’s voice silenced? Why didn’t she say no? Why couldn’t she say no? Why wasn’t ‘no’ good enough? We must come to know the victim’s singular reality before, during and subsequent to the sexual assault. Sensory and attendant emotional

detail provides a dynamic link with juror’s own experience and tools for assessing credibility. We must also come to know the offender as the victim initially knew him as well as the stranger he became during the assault. We must be aware of the offender’s high potential for other related acts of violence which will provide a truer look at the context of this crime. Evidence of patterns or plans which otherwise appear situational can be seen more realistically as premeditated and predatory. Stalking is very frequently a component of offender planning.

When we, as prosecutors, take our case to the jury in courtrooms across our country, based upon our broadened investigation and focus on the singular reality of rape experienced by a victim, we communicate beyond our courtrooms in what has become the court of public opinion and in the context of the life experience of members of our society. Consent or agreement is something we should be free to do or not do, as we choose. We should be free to change our minds. What we do is up to us. When we bring home to the jury the reality of the crime of rape committed by an offender who knew the victim, we will eloquently emphasize the deeper reality that the victim didn’t know him. He was a stranger. Why was the victim’s voice silenced? We have answered that question—because of the person who she was changed when her life was removed from her control. We ask for accountability as does she. Our work is to give the jury in the courtroom and in the vast court of society, the truth, the reality of rape beyond stereotypes: the stereotypes of consenting victims and the stereotypes used by offenders to mask the identities.

Applying common sense to rape cases is the key to bringing justice to both victims and offenders. Victims of rape, who find the courage to go through our criminal justice system deserve our thanks and support for their willingness to endure the painful process. As we improve our ability to listen to the victims’ voices, hold their offenders accountable, and bring fairness and common sense to the court of public opinion, we will evolve as a culture, and justice will make its home in the reality of truth rather than myth.

Article reprinted with permission. Originally published in the Fall/Winter 2005 issue of “The Resource”, newsletter of the National Sexual Violence Resource Center.

SAVE THE DATES!!

*APRIL 27, 2006
A DAY WITH
DR. ALAN BERKOWITZ*



**COST:
FREE!!**

**LOCATION:
SCHOOL OF MINES AND
TECHNOLOGY CAMPUS
RAPID CITY, SD**

**TIME:
8AM TO 4PM**

Lunch and snacks will be provided for \$10/person.

Funds will go to Bystander Intervention Training. Pay at the door.

If you are a professional working with any of these topics: Depression • Dating Violence • Suicide • Rape • Sexual Harassment • Dangerous Drug and Alcohol Use, this training is for you!

Dr. Berkowitz has over 20 years experience in higher education and he developed one of the first Rape Programs for Men. He chaired the Prejudice Reduction Task Force and has been a central figure in the development of Social Norms Theory. Dr. Berkowitz has also received awards from numerous national organizations for his significant lifetime contributions.

Please join us for A Day with Dr. Alan Berkowitz!!

For additional information, please call the SD Network at 1-800-670-3989.

*VISITATION
NETWORK
CONFERENCE*

**SD CHAPTER OF
VISITATION CENTERS
HOSTS**

**2006 SUPERVISED
VISITATION
NETWORK
CONFERENCE
"WHOSE VISIT IS IT?
BALANCING THE
NEEDS OF ALL THE
PARTIES:
CHILDREN, PARENTS,
STAFF AND
REFERRING
ENTITIES"**

MAY 18-19, 2006

**POST CONFERENCE
INSTITUTE MAY 20TH**

RAPID CITY, SD

**FOR MORE
INFORMATION OR TO
REGISTER
WWW.SVNETWORK.NET**



2006 LEGISLATIVE WRAP-UP by Dianna Miller

The 2006 Legislative Session will officially end on Veto Day - March 20 but the regular run ended on March 1. The SD Network had a busy session and was successful with most of their recommended changes. We introduced four bills dealing with protection for victims and worked on a number of others. The four bills are:

SB 99 - Sexual assault task force to gather data on what is occurring in the law enforcement area, medical area, victims assistance, etc. Task force will begin on July 1, 2006 and report out by December 1, 2006. A fifteen person committee will be appointed by the President Pro-Temp of the Senate, Speaker of the House and Governor. We are in the process of making recommendations to the various entities as to the appointees. This bill was signed by the Governor. Chief sponsors were Sen Lee Schoenbeck from Watertown and Rep. Elizabeth Kraus from Rapid City.

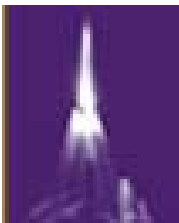
HB 1073 - Revises the reporting period for warrantless arrests to 48 hours and adds stalking and physical

violence orders to this section of the code. Bill was signed by the Governor. Chief sponsors were Rep. Tom Hennies from Rapid City and Senator J. P. Duniphan from Rapid City.

HB 1074 - Adds stalking orders to the foreign protection order statutes which means these orders are honored from jurisdiction to jurisdiction. Bill was signed by the Governor. Chief sponsors were Rep. Joni Clark Cutler from Sioux Falls and Sen. Lee Schoenbeck from Watertown.

HB 1100 - Requesting the Supreme Court to promulgate rules for standards for child custody evaluators. Bill passed the House and then was killed in the Senate because the committee felt the Supreme Court currently has this authority. We are in the process of requesting that the Supreme Court promulgate the rules in August. Letter will be sent soon. Chief sponsors were Rep. Casey Murschel from Sioux Falls and Sen. Gene Abdullah from Sioux Falls.

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NATIONAL CRIME VICTIMS' RIGHTS WEEK
"VICTIMS' RIGHTS: STRENGTH IN UNITY"
APRIL 23-29, 2006

SPONSORED BY THE OFFICE FOR VICTIMS OF CRIME
"PUTTING VICTIMS FIRST"

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A number of other bills affecting sex offenders passed including increased penalties for sex offenders, a national registry, sex offender safety zones of 500 feet, and restriction of rights of sex offenders in adoption and visitation. Other bills to prohibit the publishing in the newspaper a list of individuals who apply for a pistol permit, a task force to study education for divorcing parents and visitation/custody matters, and a notification process to non-custodial parents by Dept. of Social Services also were signed by the Governor.

Much time was spent on social and moral issues of abortion, mandating the teaching of abstinence, prohibiting the distribution of contraceptives in school, etc. The bills to mandate teaching of abstinence and prohibiting the distribution of contraceptives in school were killed in the Senate committees as they felt these issues were a local control decision. The

abortion bill HB 1215 banning all abortions in the state passed and was signed by the Governor. The abortion issue will continue to be debated as the various groups are discussing a ballot issue, court case, and the constitutionality of the issue.

Overall, the 2006 Legislature was able to increase funding to education, provide opportunities for continued economic development, protect those that cannot protect themselves, and balance the budget. We, as always, seem to get our work done not necessarily pleasing everyone but that may be the sign of good legislation. Once again, on a personal note, I want to thank all of you for your help during the session and tell you how proud I am to work for a group that truly supports victims' rights issues. You can be proud to be a part of the SD Network Against Family Violence and Sexual Assault.

**APRIL IS CHILD ABUSE
PREVENTION MONTH!!**

**Support parents and families
in preventing child abuse by
focusing on efforts that create
healthier environments for
children and foster confident
and positive parenting.**

**NATIONAL ASSOCIATION OF
SOCIAL WORKERS—
SOUTH DAKOTA PRESENTS
“UNDERSTANDING ADDICTION &
RECOVERY: KEYS TO SUCCESS FOR
HELPING PROFESSIONALS”**

MARCH 23-24, 2006

**SPEAKERS
CRAIG NAKKEN, MSW, LCSW, MFT
JANE NAKKEN, Ed.D**

**SCHROEDER AUDITORIUM
SIOUX VALLEY HOSPITAL
1305 WEST 18TH ST
SIOUX FALLS, SD**

UNEMPLOYMENT BENEFITS FOR VICTIMS OF DOMESTIC VIOLENCE

Victims of domestic violence may be eligible for unemployment benefits if they have to quit their employment due to the domestic violence situation. To be eligible, victims have to:

- ◆ Report the abusive situation to law enforcement within 48 hours of any occurrence and cooperate in full with law enforcement
- ◆ Has to have left the abusive situation and remain separate from the situation
- ◆ Made reasonable efforts to preserve the employment before quitting

If the victim is found to have good

cause for leaving the employment due to domestic abuse and returns to the abusive situation, the person is ineligible for benefits.

To apply for unemployment benefits, a person can apply on-line at www.sd.uicclaims.com 24 hours a day, seven days a week or call 1-800-309-4232 Monday through Friday from 8AM to 4:20 PM. In addition to the work separation, the person must have earned sufficient wage credits with which to qualify for unemployment benefits.

**CONGRATULATIONS
1991 TO THE SD NETWORK 2006
ON ITS 15TH
ANNIVERSARY!**



**“HONOR YOUR OFFICE LUNCHEON”
APRIL 26, 2006
FUNDRAISER FOR
BROOKINGS DOMESTIC ABUSE SHELTER**

**SPEAKER V.J. SMITH
“GOT GOALS: A PERSONAL JOURNEY”
TICKETS \$20**

CALL 605-692-7233 FOR MORE INFORMATION

NETWORK AGENCY MEMBERS

ARTEMIS HOUSE—
SPEARFISH
605-642-7825 OR
1-800-999-2348

BC STOP DOMESTIC
VIOLENCE—MARTIN
605-685-6986

BROOKINGS DOMESTIC
ABUSE SHELTER
605-692-7233

CATHOLIC FAMILY
SERVICES—SIOUX FALLS
605-988-3775

CHILDREN'S INN—
SIOUX FALLS
605-338-0116

COMMUNITIES AGAINST
VIOLENCE AND ABUSE—
LEMMON
605-374-5823

FAMILY CRISIS CENTER—
REDFIELD
605-472-3097

GOODWILL INDUSTRIES—
SIOUX FALLS
605-731-1931

GREGORY COUNTY
SHELTER—BURKE
605-775-2220 OR
1-800-658-3486

LUTHERAN SOCIAL SER-
VICES
OUTPATIENT COUNSELING
SERVICES—SIOUX FALLS
605-357-0133

MADISON HOUSE OF HOPE
605-256-6188

MISSOURI SHORES
DOMESTIC VIOLENCE
CENTER—PIERRE
605-224-0256

MISSOURI VALLEY CRISIS
CENTER—CHAMBERLAIN
605-234-5155

MITCHELL AREA SAFE-
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605-996-6622

NORTHERN HILLS CRISIS
OUTREACH—
BELLE FOURCHE AND LEAD
605-723-6996

PRESBYTERY OF
SOUTH DAKOTA
SOCIAL WITNESS AND
ACTION COMMITTEE
605-339-1912

RAPE AND DOMESTIC
ABUSE
CENTER—SIOUX FALLS
605-339-0116

SAFE HARBOR—ABERDEEN
605-226-1212 OR
1-888-290-2935

VERMILLION COALITION
AGAINST
DOMESTIC VIOLENCE
605-624-5311

THE WHOLENESS CENTER—
FLANDREAU
605-997-3535

WINNER RESOURCE CENTER
FOR FAMILIES
605-842-2736

WOMEN'S RESOURCE
CENTER—WATERTOWN
605-886-4300

WORKING AGAINST
VIOLENCE, INC—
RAPID CITY
605-341-3292

YANKTON WOMEN'S
CENTER/SHELTER
605-665-4811

YWCA FAMILY VIOLENCE
PROGRAM—HURON
605-352-4952



**FOR A LIST OF RURAL OUTREACH SATELLITE OFFICES
PLEASE ACCESS THE SD NETWORK'S WEBSITE AT
www.sdnafvsa.com**

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Sioux Falls, SD 57104



PRSR STD
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Sioux Falls, SD 57109
Permit No. 7745

1-800-430-SAFE
SD Domestic Violence Hotline

Network Information

Sioux Falls Office
605-731-0041

Rapid City Office
605-863-1164

Office fax
605-977-4742

Toll free
1-800-670-3989

Website
www.sdnavsa.com

MEMBERSHIP REPLY FORM

Please complete this form and return with your check to:
SDNAFV&SA, 300 N. Dakota Ave., Suite 112, Sioux Falls, SD 57104
Phone 605-731-0041

Individual membership: \$35
Agency membership: \$175

Name _____
Organization (if applicable) _____
Address _____
City/State/Zip _____
Daytime Phone _____ Fax _____
E-mail address _____

I do not wish to join at this time, but I would like to support
SDNAFV&SA with the enclosed donation \$ _____