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Cardozo AELJ Author Interview Series: Lauren Chamberlin

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Cardozo AELJ **Author** Interview Series

Lauren Chamberlin

Senior Notes Editor, *Cardozo Arts & Entertainment Law Journal*

Interviewed by Dylan Blanchard, Staff Editor, Vol. 41

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Reconsidering a Private Right of Action Under VAWA: How the Media Portrays Violence Against Women and Its Effect on Commerce Clause Jurisprudence

CARDOZO AELJ
Arts & Entertainment Law Journal

The Cardozo AELJ Author Interview Series seeks to give our readers further insight into the Articles and Notes published in the Cardozo Arts & Entertainment Law Journal. In this interview, Lauren Chamberlin discusses her Note, [Reconsidering a Private Right of Action Under VAWA: How the Media Portrays Violence Against Women and Its Effect on Commerce Clause Jurisprudence](#), which was published in Volume 41, Issue 1.

Lauren Chamberlin is a third-year law student at Cardozo School of Law and the Senior Notes Editor of Volume 41 of the *Cardozo Arts & Entertainment Law Journal*. Lauren received her bachelor's degree in Political Science from George Washington University, and then worked for two years as a paralegal at a law firm. After law school, Lauren will be returning to Latham & Watkins LLP, where she was a Summer Associate. In her free time, Lauren enjoys reading (things other than law school textbooks), going to concerts, and trying new restaurants in the city.

Our interview with Lauren was conducted by Dylan Blanchard. Dylan Blanchard is a second-year law student at the Benjamin N. Cardozo School of Law and a Staff Editor at the *Cardozo Arts & Entertainment Law Journal*. Dylan is also the current Vice President of Cardozo's Startup Society, Events Director for Women in Tech Law, and a participant in the Tech Startup Clinic. Dylan is interested in working

with emerging companies, particularly on tech transactions and relating to privacy law.

DB: Can you share the impetus behind your topic (i.e. you worked on this issue in a past job, you were inspired in class, etc.)?

LC: I remember reading *United States v. Morrison* during Constitutional Law and being really upset by the decision. Constitutional Law has been one of my favorite classes during law school, mostly because I love how it provides tools to argue for change that you want to see in the world (which I guess is true for most of law school!). After reading the case, and others like it under the Commerce Clause, I spent a lot of time thinking about the Supreme Court's Commerce Clause jurisprudence. Then, I happened to be listening to Glennon Doyle's "We Can Do Hard Things" podcast and her sister, an attorney who co-hosts the podcast with her, mentioned that using terms associated with the home—like "domestic violence"—may have some effect on whether gender-based violence is regulable by Congress. I was really moved by that, and I knew that I wanted to evaluate how the media treats gender-based violence compared to other issues to see if there could be something to that argument.

DB: Why did you choose to focus your argument on the ability for Congress to act in enacting the Violence Against Women Act ("VAWA") under the Commerce Clause powers rather than the Fourteenth Amendment (as you briefly mention in the introduction)?

LC: I wanted to focus on the Commerce Clause for the purposes of this Note because, as we have seen in the wake of *Dobbs v. Jackson Women's Health Organization*, it seems that this Supreme Court is increasingly hostile to Equal Protection Rights and substantive due process under the Fourteenth Amendment. Because of that, I wanted to make an argument that doesn't rest on the Fourteenth Amendment. That said, I fully recognize that passing the private right of action under the Fourteenth Amendment may even be preferable to the Commerce Clause in that it would recognize the relevance of the issue to the women's equal rights movement. In addition to that, I also just needed to limit the scope of my Note, because the argument that the regulation of gender-based violence by Congress should be permissible under the Fourteenth Amendment deserves its own Note (and, in fact, there are many).

DB: Much of your Note includes commentary on the media's handling of violence against women and how it changed the public discourse on the *Morrison* case specifically. You also speak about the impact of the Me Too movement. Given the change in the media platforms and general

landscape since *Morrison*, can you explain how the media portrayal would be handled differently today?

LC: It's hard to predict, but in general, the Me Too Movement has allowed for more information about gender-based violence to be available to the media, and therefore, the public. This is because the rise of the Me Too Movement has exposed how widespread the problem is, as well as the lengths that abusers will go to in order to quash stories of gender-based violence. Since the Me Too Movement, journalists have focused more on the stories of survivors who have come forward, rather than the strict adherence to corroboration before releasing a story on the issue. This has shown the prevalence of gender-based violence in a way that was not available when *Morrison* was going through the courts. Because of that, I would hope that today the use of words like "claimed" and "alleged" to describe what happened to plaintiffs like Christy Brzonkala would be avoided. I would also expect there to be more reporting on the actual facts of the case and the effects any court's decision could have on the issue of gender-based violence, rather than focusing on the ramifications of the case for federalism.

Additionally, because of the press's increased attention to the issue in the wake of the Me Too Movement, if Congress were to reenact the private right of action under VAWA, it could include an even more robust record of how gender-based violence affects the economy. For a great podcast discussing this, listen to the *Sexual Justice* episode of Professor Shaw's Podcast Strict Scrutiny, with guest Alexandra Brodsky, discussing her book *Sexual Justice: Supporting Victims, Ensuring Due Process, and Resisting the Conservative Backlash*.

DB: What do you think is the most surprising element of your argument that you hope readers will take away from your note?

LC: I don't know if it's surprising, but I think the most important part of my Note for readers to take away is how widespread the problem of gender-based violence remains, and how few remedies there are at either the state or federal level. In her recent book, *Believe: Our Thirty-Year Journey to End Gender Based Violence*, Anita Hill relays studies that find one in four women in the United States experience intimate partner violence; one in three women say they've been harassed at work but don't report this because they are worried about retaliation; seventy-three percent of LGBTQ+ college students experience sexual harassment and abuse; and, in 2020 alone, at least twenty-six trans people were killed in circumstances that appear related to their gender identity. As Anita Hill points out, gender-based violence has reached a public crisis level. Despite this data, and data relating it to substantial effects in the economy, the Supreme Court has held that it cannot be remedied by Congress at the federal level through the

private right of action in VAWA, and state remedies are often lacking or poorly enforced.

DB: You talk a bit about the lack of state remedies available to victims, in tandem with the inability for victims to have a private right of action under VAWA. What do you recommend advocates do on either the federal, state, or local level to address this issue in a meaningful way?

LC: The most important thing for advocates to do at the state and local level is to make sure the public is aware of these remedies when they do exist, so that they can be used to help survivors of gender-based violence. Additionally, those who are working toward legislation at the state and local level should work to make sure to push for the qualities that made the private right of action under VAWA so meaningful. For instance, the VAWA private right of action allowed survivors of gender-based violence to describe their injuries more accurately by making circumstantial evidence of discrimination relevant, authorizing fee shifting for successful plaintiffs, offering procedural and strategic advantages for plaintiffs, and allowing for a broad range of remedies like emotional distress, punitive damages, and injunctive relief, among others.

At the federal level, I think the most important thing to do is to advocate for the re-passage of the private right of action under VAWA. Today, there is a plethora of evidence of gender-based violence available in the wake of the Me Too Movement, highlighting its substantial effect on interstate commerce after the moment of impact. Much of the effect of violence against women is not felt until after such violence occurs. Without discussion of this, it is easier for the courts to view it as a “personal problem” that does not have a substantial effect on the economy. Brzonkala’s story highlights this and shows the need for a federal remedy, because she dropped out of school when she found out that one of her abusers would be returning to school after unsuccessfully turning to the school’s disciplinary system for recourse.

DB: One of your arguments for the media is to use less “sensationalist language” in an effort to “the media can better convey how widespread this problem is”—can you elaborate on this concept and explain further how it would better serve the mission of providing victims a legal right of action?

LC: As I compared the treatment of *Morrison* in the media with the treatment of *Gonzales v. Raich*, a different Commerce Clause case that had to do with medical marijuana, I found that there was a tendency by the media to talk more about the underlying facts of the case in *Raich* than in *Morrison*. *Raich* was framed as a case that was a defeat for users of medical marijuana,

whereas *Morrison* was framed as a case about the Supreme Court's new values of federalism. In fact, the same federalism issues were at play in *Raich*. Additionally, when the media did discuss the underlying facts of *Morrison*, it tended to use sensationalist terms without discussing the effects that it would have on the future of laws meant to provide remedies for survivors of gender-based violence. When framed this way, it is easier to focus on the constitutional issue at stake rather than gender-based violence. Brzonkala's experience of gender-based violence that led to the case in the first place was lost in the reporting.

If the media were to discuss the underlying facts of *Morrison* and the effects of the case for survivors of gender-based violence when the case was going through the courts, it could have helped to show how widespread the problem was and the effects that it had on the economy, exposing why the Supreme Court's decision in *Morrison* was wrong. My hope is that with the rise of the Me Too Movement, future reporting will focus on these underlying issues, causing a shift in attitude about gender-based violence and making it regulable under the Commerce Clause.