

## **Amicus Curiae Briefs Civil Rights/Equal Rights**

### **Sexual Assault**

**Case:** *United States v. Lanier*

**Court:** United States Supreme Court, 1997

**Amicus Brief:** NOW Legal Defense and Education Fund

**Case:** David Lanier, a former Tennessee Court Judge, was convicted of criminally violating the constitutional rights of five women by sexually assaulting them while in service as a state judge. The Sixth Circuit, sitting en banc, reversed his conviction, stating that the defendant did not have sufficient notice that he was violating the constitutional rights of his victims as a constitutional right to be free from sexual assault had not been explicitly found in previous court decisions.

**Amicus Brief:** The brief argues that implicit in the constitutional right to bodily integrity is the right to be free from sexual assault. This implicit right has been recognized explicitly by several lower courts. The brief explains that along with the physical violation of sexual assault, its victims are left with both physical and psychological harm. Where such acts are committed under the color of state law, as they were done so here by a judge sitting in his chambers, the government's interest in protecting women from gender-based violence can be advanced only by prosecuting them as criminal constitutional violations.

**CWEALF:** CWEALF joined the brief because it believes that the right to bodily integrity clearly encompasses the right to be free from sexual assault. CWEALF believes that assaults committed by those acting under the color of state law must be treated as constitutional violations committed by state actors. Only by prosecuting locally powerful individuals in this manner will the victims be vindicated.

**Holding:** The Supreme Court vacated the Sixth Circuit's decision and remanded the case to the Sixth Circuit for that Court to determine whether fair notice had been given to the defendant that his actions violated his victim's constitutional rights. When determining the question of notice, the Court stated that the Sixth Circuit need not look only to Supreme Court decisions but could look to decisions of other circuit courts as well, including decisions based on civil claims for violations of constitutional rights by state actors. On remand, the Sixth Circuit dismissed the defendant's appeal of his conviction for he failed to surrender himself to the authorities when his release was vacated.

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**Case:** *Commonwealth v. Fischer*

**Court:** The Supreme Court of Pennsylvania, 1998

**Amicus Brief:** Pennsylvania Coalition Against Rape

**Case:** Kurt Fischer, a college freshman, was charged with raping a fellow student. The victim testified that Fischer forced oral sex on her, penetrated her with his fingers, and attempted to penetrate her anally. The victim went on to testify that only after striking him in the groin was

she able to leave. Fischer testified that the conduct was consensual and as soon as the victim told him she wanted to leave he ceased to touch her. On appeal, appellant obtained new counsel and raised the claim of ineffectiveness. He argued that trial counsel was ineffective in failing to request a jury charge on mistake of fact. Appellant claimed that counsel should have asked the Court to instruct the jurors that, “if they found appellant reasonably, though mistakenly, believed that the victim was consenting to his sexual advances, they should find him not guilty.” Appellant must establish: an underlying issue of arguable merit; the absence of a reasonable strategy on the part of counsel in acting or failing to act; and prejudice as a result of counsel’s action or inaction [*Commonwealth v. Johnson*, 527 Pa. 118, 558 A.2d 1303, 1305 (1991).] The Court held that the relief appellant sought was a significant departure from the current state of the law (no such defense exists in a sexual assault case). It further rejected defendant’s attempt to distinguish the prior Superior Court decision on the ground that this case involved an acquaintance rape as opposed to a stranger rape and that the evolution of rape law to include psychological compulsion compelled a change in law. The Court held that this could not be the basis for an ineffective assistance of counsel claim. However, the Court expressed agreement with the defendant that the defense of reasonable mistake of fact was appropriate in “date rape” cases.

**Amicus Brief:** The brief argues that there is no defense of reasonable mistake of fact as to consent in a sexual assault crime based on forcible compulsion or non-consent. Defendants are not permitted to a defense of a reasonable mistake of fact as to consent where there is no overt expression of consent or there is expressed non-consent. Finally, Fischer’s claims of ineffective counsel are without merit. Fischer is seeking to change the law through this claim of ineffective assistance of counsel, however, this is barred by the Court.

**CWEALF:** CWEALF joined this brief because it believes that the law must protect women from rape. Specifically, the law must treat rape by acquaintances with the same degree of severity as rape by strangers. CWEALF does not support weakening the rape law or allowing unreasonable defenses that favor the accused rapist.

**Holding:** Appeal dismissed as having been improvidently granted.

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**Case:** Letter to the FBI regarding the definition of rape for purposes of the Uniform Crime Report (UCR), 2001

**Amicus Brief:** Women’s Law Project

**Facts:** The UCR is an annual publication of crime statistics gathered and recorded by local law enforcement agencies and compiled by the FBI for publication. As of 2001, rape was the only Part I (serious crime) offense for which all reports of the offense were collected. All other sex crimes were classified together, with one type of offense undifferentiated from another. The definition of rape used for the purposes of the UCR was “the carnal knowledge of a female, forcibly and against her will.”

**Letter:** The letter explains how the definition of rape leaves many sex crimes unreported or under-reported to the American public and, likewise, sends a message to law enforcement

officers that these crimes are not as important or not as serious as the UCR definition of rape. Victims, who feel that the police response is inadequate and therefore become distrustful of the police, are then less likely to report sex crimes, especially those crimes that do not conform to the narrow definition of rape in the UCR. The letter then suggests that while the National Incident-Based Reporting System (NIBRS) is a much better system than the UCR, because it separates all sex crimes into those which are against the victim's will and those which are not, even this system is inadequate because it has been adopted by relatively few law enforcement agencies. The letter suggests that, instead, the UCR definition of rape needs to include all rape, regardless of whether force is used, and needs to be broadened to encompass more than penile/vaginal penetration. The letter also recommends enlarging the victim class so that both men and women can be considered victims of rape and so that a blood relationship between the victim and the rapist does not cause the rape to be categorized as incest.

**CWEALF:** CWEALF signed onto the letter because it believes that the narrow definition of rape used by the UCR contributes to the under-reporting of sex crimes which, in turn, contributes to the continued victimization of women, both by individual perpetrators of sex crimes and by society at large. CWEALF believes that by broadening the definition of rape to include the types of rape that are actually occurring, women who are the victims of sex crimes will be encouraged to report those crimes to the police.

**Outcome:** The FBI has yet to change the definition of rape for purposes of the UCR.

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**Case:** *In re Jonathan; Matthew G. v. State of Connecticut*

**Court:** Connecticut Supreme Court, 2002

**Amicus Brief:** Connecticut Sexual Assault Crisis Services

**Case:** The defendant, Matthew G. was charged with sexual assault in a juvenile delinquency petition for an incident occurring when he was thirteen years old, perpetrated against the victim, Jonathan S., when the victim was ten years old. The trial court denied the victim's mother access to the courtroom for pre-trial adjudication, though allowed the victim and his mother into the courtroom during sentencing. In doing so, however, the trial court found that the crime victim's rights statute did not apply to juvenile delinquency hearings and that permitting the victim in the courtroom was wholly within the trial judge's discretion. The victim filed a writ of error.

**Amicus Brief:** The brief argues that victims' rights should not be diminished merely because the accused is a juvenile; the perpetrator's age does not lessen the harm suffered, nor should it lessen the salve of victim's rights meant to minimize the impact of that harm. The brief cites numerous studies supporting the participation of victims within the criminal justice system, citing such participation as a way in which the psychological harm suffered by victims because of the crime can be ameliorated and a way in which future victims can be encouraged to report crimes.

**CWEALF:** CWEALF joined the brief because of its belief that recognition by the criminal justice system is one of the ways in which the trauma suffered by a victim of sexual assault can be somewhat rectified. The importance of helping victims recover from this trauma is in no way lessened because the perpetrator was a juvenile at the time of committing the offense.

**Holding:** The Court dismissed the case after finding that the victim was not injured by the trial court's actions for there was no evidence in the record that he stated any legal basis for his disagreement with the trial court on appearing at pre-trial adjudication. Furthermore, the victim effectively waived his appeal by his failure to address the issue of standing, which was raised by the State. Because there was no "case in controversy," the issue of whether the Crime Victims Bill of Rights is applicable to juvenile delinquency proceedings remained undecided.