

## *Empowering Women Using Community Based Advocacy*

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**Abstract:** Minority groups in New Orleans have been disproportionately charged with an archaic law banning Solicitation of Crimes Against Nature (SCAN). This law, meant to ban performing anal and oral sex for money, is not differentiated from prostitution charges despite carrying a much harsher penalty and requiring individuals convicted to register as a sex offender. Women With a Vision, a New Orleans non-profit began working to assist individuals convicted of violating this law. As local, black, LGBT, women with similar backgrounds, they were able to effectively communicate with the victims. In 2011, the organization filed a federal civil rights lawsuit on behalf of nine anonymous plaintiffs against the state of Louisiana. Though the group excelled at connecting with the victims, many women involved were worried as they began the legal process that a group of black women from New Orleans would not be able to take on the state of Louisiana to defend the rights of other marginalized groups.

### **Introduction**

I know some folks think it's great that you can go online today and see where these monsters live, block by block - But I look forward to the day when you can go online and see that they all live in one place - In Angola - Far away from our kids (Former Louisiana Governor Bobby Jindal, talking about the state sex offender registry) (Morris 2008).

In 2008, a New Orleans grassroots organization, Women With A Vision (WWAV), discovered why so many names were on the sex offender registry that Governor Jindal promoted. Just less than half of the names on the registry were there because of an archaic state law that punishes individuals for engaging in consensual anal or oral sexual acts in exchange for money. Individuals in Louisiana, and particularly Orleans Parish, were charged with Solicitation of Crimes Against Nature (SCAN) for engaging in anal or oral sex for monetary exchange, and consequently were forced to register as sex offenders. This law has disproportionately targeted women, minorities, people in poverty, and members of the LGBT community. It has placed a modern day "scarlet letter" on some of Louisiana's, and specifically New Orleans', most at-risk populations.

While this problem remained invisible to many, WWAV, an organization working to empower women in their communities, started a fight to right the many wrongs that had been done by the government. WWAV leaders worried that a group of black, LGBT, women from New Orleans would not be able to properly defend the many people who needed their help. Though they had a strong presence in their community as an organization dedicated to women and as a resource for women, they had never before taken on a legal battle. Because they were dedicated to ending

the injustice towards marginalized individuals in their community, they created a coalition that included legal professionals to work towards ending the Crimes Against Nature charges based on unconstitutional discrimination and fought the very people trying to silence them (Piano 2011).

In 2007, an individual came to WWAV seeking resources to help pay the fees associated with a Solicitation of Crimes Against Nature conviction. WWAV began to help this woman, and as she explained her situation, it became apparent that SCAN convictions were related to more systemic problems that plagued minority groups. These problems, included, but certainly are not limited to, poverty, lack of education, access to healthcare, as well as institutionalized racism and gender discrimination. WWAV began to identify victims of the SCAN law in order to connect them with services, resources, and a community of individuals who were supportive and understood their struggles (WWAV 2017). Like many projects they had undertaken before, WWAV were simply trying to protect the people in their communities. Under Director Deon Haywood's direction, they focused on restoring the humanity of the individuals affected by this law through connecting those affected to resources for food and medication, finding housing, and providing emotional and communal support. However, despite WWAV's commitment to assisting individuals affected by the law, they did not initially set out to challenge the system. During this time, Haywood says that:

We were good at reaching our community and engaging women. Maybe it's because we look like them. Maybe because there's a feeling of non-judgment when we engage women - whatever it is, it works for us (Piano 2011).

As WWAV brought these women together, the broader implications of the law began coming out, and it became increasingly clear this law was unfairly targeting minority populations. As Haywood began unraveling the stories of those with a SCAN conviction and connecting with more and more individuals, Haywood realized that the law was inherently discriminatory and violated constitutional rights. Though she recognized these disparities, she seemed to have concerns about the power of a black, queer identifying, woman from a poor neighborhood in New Orleans, against the very institutions that were trying to silence her. Even more than worrying about her own power, she feared that she would not be able to protect the individuals she and her organization were trying to help.

### **Solicitation of Crimes Against Nature (SCAN)**

In the early 19th century, Louisiana outlawed prostitution, and particularly "Crimes Against Nature" (WWAV 2017). The Louisiana Revised Statute defines these as: "unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal, except that anal sexual intercourse between two human beings shall not be deemed as a crime against nature when done under any of the circumstances described in R.S. 14:41 [rape], 14:42 [aggravated rape], 14:42.1 [forcible rape] or 14:43 [simple rape]. Emission is not necessary; and, when committed by a human being with another, the use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime" or, "solicitation by a human being of another with the intent to engage in any unnatural carnal copulation" (LA Rev Stat § 14:89). Many police and legal prosecutors interpreted this as anal and oral sex, though it does not have to be limited to those acts. Crimes Against Nature laws were originally meant to ban homosexual relationships, but more recently the charges have been applied to other types of sex as well.

SCAN is often differentiated from prostitution charges at the discretion of the arresting police officer or in court, and the two charges carry very different penalties. Prostitution is punishable by up to six months in jail, a fine up to \$500, or both for a first offense. Those convicted of SCAN may face felony charges, be charged up to \$2,000, and can face up to 15 years in prison. When they are first convicted of SCAN, the convicted has their name, and the fact that they were convicted of SCAN, published in the newspaper. Individuals convicted of SCAN must carry a state ID with the words “SEX OFFENDER” in bright orange capital letters. They are required to pay \$60 a year and failure to pay the annual registration fee may result in up to 6 months in prison, a fine of up to \$500, or both.

Because of the sex offender status, they are required to mail postcards to neighbors every time they move, notifying them of the registrant’s name, description, address, and the fact that they have a SCAN conviction. As with other convicted sex offenders, they are searchable on sex offender databases. They must register as a sex offender for 15 years after their first conviction, and may have to register for longer if there is more than one arrest (WWAV 2017).

Individuals who are registered SCAN offenders typically have not committed any violent crimes. The charge itself, though it carries violent implications, typically is a result of consensual acts deemed worthy of a SCAN conviction by the arresting officer. They have not engaged sexually with children, and typically if they were engaging in sexual acts for money, the act was consensual. Furthermore, there may not have even been any sexual acts at all, but if an officer finds evidence that they think suggests that a “Crime Against Nature” was about to be committed, they can arrest the individual (Piano 2013). This has included anything as small as carrying a condom, or having too much cash in one’s purse (Piano 2011).

This discriminatory and arbitrarily applied law is especially troubling when combined with the fact that in 2011, the United States Department of Justice Civil Rights Division found that:

NOPD has failed to take sufficient steps to detect, prevent, or address bias-based profiling and other forms of discriminatory policing on the basis of race, ethnicity, or LGBT status, despite widespread concern and troubling racial disparities in arrest rates and other data. We further find that the Department fails to adequately investigate violence against women (United States Department of Justice Civil Rights Division 2011).

A pro bono defense attorney employed by individuals charged with SCAN and who worked with WWAV said that NOPD “would send out ‘blow job patrols’ and there were a couple of cops whose only job was to solicit blow jobs, and the problem with vice cops is that they become crooked themselves, and then take advantage of the people who they’re arresting and soliciting from, and it’s a very, very dirty thing” (Dewey and St. Germain 2015, 218).

In August 2010 about half of the registered sex offenders on the Orleans Parish Sex Offender Registry were women with a SCAN conviction (Dewey and St. Germain 2015). In the years leading up to and after 2010 this number moved between 350-490 individuals. While African American women are 30% of the population of Orleans parish, they comprised 80% registered sex offender list. Of all registered female sex offenders in Orleans Parish, 97.91% were registered only as a result of a SCAN conviction (Dewey and St. Germain 2015). In 2010, 538 people were registered, and only 53 of them were men. *The New York Times* estimates that in 2016, about 0.6% of the adult population identified as transgender (Hoffman 2016). On the 2010 SCAN registry there were only 53 men registered as sex offenders, and 18, or 33%, were transgender individuals who were legally men but identified as women (Dewey and St. Germain 2015)

### **Women With A Vision**

WWAV was founded in 1989 by a group of African American women in New Orleans who wanted to educate black communities about the spread of HIV/AIDS. They were concerned that people of color and poverty-stricken areas of the city received inadequate information about the disease and took it upon themselves to spread accurate information (WWAV 2017). The founding women created programs to address the socioeconomic conditions that made some populations more susceptible to HIV/ AIDS, and as time went on they increasingly expanded their programs. WWAV never just had an office with services, in fact for a long time it had no office, but instead went door to door, looking for people who needed their services and connecting with them on a personal level. They were authentic grassroots organizers. Because the women were part of the communities that they worked in, they were welcomed and able to forge connections that led to their success, ultimately allowing them to succeed in ways that no outside organization had. Though they worked with at-risk populations, they treated them like equals and provided necessary resources without alienating individuals.

WWAV's goal is for all women to be empowered to make decisions about their own bodies and lives. Their mission statement is:

Through relentless advocacy, health education, supportive services, or community-based participatory research, we stand alongside marginalized women, their families, and their communities, and walk with them to address the social conditions that hinder their health and well-being (WWAV 2017).

This mission has blossomed into a number of initiatives over time, but their commitment to minorities and women in New Orleans has stayed the same.

The organization grew to fit the needs of its community. WWAV created programs with female youth, provided a safe space for women to meet, distributed condoms and information packets, and held meetings within communities. They are recognized as a voice for underrepresented people in New Orleans and became a widely recognized advocacy group for marginalized populations. WWAV's intention was never to turn into a large organization; in the beginning, they were just trying to solve immediate problems. Homeless women didn't have tampons? WWAV handed them out. Young women were having unprotected sex? WWAV would host a small workshop in the community and distribute condoms.

Deon Haywood has been with WWAV since its conception. She is the daughter of one of the original founders, Catherine Haywood, and became Executive Director post-Katrina. Before becoming executive director, she had worked for years as a community advocate, and as a champion for the rights of women, LGBT youth, and poor people of color. She is committed to serving the women in her community and connecting them with resources that can empower them. A black, LGBT woman and New Orleans native, she is in a position to reach a number of people who feel disenfranchised from the system. She has said that her goal is "to help women find their voice and advocate for themselves" (WWAV 2017).

### **NO Justice Campaign**

In 2008 WWAV officially began the NO Justice Campaign. After a few more individuals came forward with the stories of their convictions and searching for help and resources, Haywood began an official campaign to work with victims of the law. WWAV was concerned about the fact that not only were they defending a particularly marginalized group, they themselves were

comprised of a segment of the population that government did not tend to hear: black women. Despite the government unwillingness to listen, Haywood strongly believes in the power of the leaders in their organization. She said that:

Even in our earlier days, it was important for us to be people whom women felt they could talk to. Being Black women who grew up in environments like theirs, we were a part of these communities. And this allowed our interactions between us and women from similar kinds of environments to not cause any suspicion or fear (Piano 2011).

WWAV gained the trust of a community that was largely ignored. Their organization was “told that we couldn’t win – that a small, black-led organization in the South couldn’t win a victory on this scale, but we pressed on. We came together, using a grassroots framework to engage community to affect change” (Piano 2011). Eventually, lawyers from the outside were brought in, but because the organization was trusted in the community and WWAV had the trust of the women they worked with, individuals were willing to share their stories in a more public way. WWAV was able to be the bridge that connected the community with the lawyers and defense team.

WWAV had some concerns that a campaign against a statewide law would fall short for the victims who were trying to achieve justice, but this did not deter the group from tackling the issue from a number of angles. Though neither Haywood or many WWAV workers had ever experienced life as a sex worker, they too had been through hardships that were exacerbated by institutional racism and sexism. She encouraged the survivors to be strong. She often recounted a story that changed the way that she worked for the protection of sex workers. She explains that:

When I started doing this work at 19, I remember meeting a girl who was the same age as me. And I was like, ‘you know you don’t have to do this...’ and she was like, ‘Fuck you. You don’t know nothing about me. Do you have children?’ and I was like ‘Yes!’ And she was like, ‘Have your children ever been hungry? Have your children ever gone without?’ And guess what? They didn’t know what it was like to go without. They may not have had a whole lot, but they were never hungry and they always had a place to sleep and there was never a threat of us not having a place to stay. This woman, who was the same age as me, lived in a one-room apartment with her kids. She was like, ‘I have a job. But it’s not enough. So I do what I have to do.’ That forever changed my life. We may have had similar experiences but we’re living them differently. You know what she taught me? To know my place...We are not all in the same boat. And if we keep playing like we are, we’re not really going to make the kind of change we’d like to see (Chateauvert 2013).

There is no doubt that Haywood and the other women in WWAV had experienced hardships, but, most had never exchanged sex for money. Even though there were some common experiences between the organization and the individuals that they wanted to protect, to pretend that they had identical experiences disadvantages both groups. WWAV workers could connect with the victims of SCAN on levels that very few could, but even they had never been mislabeled as sex offenders. Despite the fact that the organization’s members had never experienced this particular trauma, WWAV had intimate ties to the community affected by SCAN, and they were able to integrate the outside legal team into the defense for the victims of the law.

The sex workers who face this law are considered high risk, often working on the street, or meeting clients in bars. Of those engaged in sex work in the United States, only 15-20% are

soliciting on the streets, the remaining 80-85% work in brothels, massage parlors, are escorts, or call girls (Lucas 1995). Women working on the street, which tends to disproportionately be women of color or poor women, are more likely to face police harassment or arrest, while those who are in the more private sphere and tend to be white and not as poor do not face the same dangers. The women and individuals on the streets and in the bars in New Orleans do not make a lot of money, as Haywood says, “The women we work with, they don't call it sex work... they call it survival” (Piano 2011). WWAV worked with this population long before the SCAN charge became common knowledge. In the early 90s, WWAV workers and volunteers would walk in the neighborhoods most likely to have sex workers on the street and hand out condoms, food, or anything else to help protect the women. This long-term community organizing made it more comfortable for individuals convicted of SCAN to share their stories with WWAV when the NO Justice Campaign began.

Deon Haywood began to realize that even though the resources and supportive environment were helping the victims of the law, they were not solving the bigger problem. She assembled a team to challenge the constitutionality of SCAN and to defend nine anonymous victims of the law. Deon Haywood led the charge that combined the power of WWAV, law professor Bill Quigley who had just joined the Center for Constitutional Rights as a lawyer, and a number of local attorneys to show the unjust nature of the SCAN law (WWAV 2017).

### **Local Momentum Builds**

On February 11, 2011, the Center for Constitutional Rights (CCR), a New York based nonprofit dedicated to promoting social change by use of the law, along with Andrea J. Ritchie, and the Stuart H. Smith Law Clinic of Loyola University New Orleans College of Law filed a federal civil rights suit in New Orleans on behalf of nine anonymous plaintiffs (CCJ 2011). Haywood suggested, at the request of a few of the plaintiffs, that the individuals remain anonymous in the case. This would prevent them from being further targets for discriminatory policing, threats in their communities, or have more controversy surrounding their names because of their SCAN conviction. These anonymous “John Does” filed their case against Bobby Jindal, the governor of Louisiana at this time (*Doe v. Jindal* 2011). Though he was not directly responsible for the law, it was 200 years old after all, WWAV and the defendants believe that it was Jindal’s “constitutional duty as governor to ‘see that the laws are faithfully executed’” (*Doe v. Jindal* 2011). Additionally, they said that because Jindal “appoints the officials charged with enforcing the laws at issue, and that he has the power to remedy the harm” (*Doe v. Jindal* 2011).

A few months following the initial filing of the civil rights lawsuit, the defendant, Governor Bobby Jindal, moved to dismiss charges. Jindal said that “sovereign immunity bars all of the plaintiffs’ claims as to him” (*Doe v. Jindal* 2011). The Court found that WWAV, the plaintiffs, and their legal representation were unable to provide enough evidence to connect Jindal to the law. His legal team had worked to have his name removed from the case, and though his team was successful in ensuring that he was not held personally responsible for the law, the case was allowed to progress (CCR 2011).

While the slow legal battle was proceeding, WWAV focused on what they had always been good at: supporting the victims of the law. It was during this process that Deon Haywood reminded those affected by the law to:

Never count yourself as a victim. If you are here today, you're a survivor. In this world today, you're a survivor. If you are a formerly incarcerated person, if you're involved in

sex work, you're a drug-using person, a former drug-using person, your past doesn't define you, the here and now defines you. Not only does the here and now define you, we're powerful people, all of us (Chateauvert 2013).

It was this determination that marked the group working to end the SCAN conviction. A resolve to not count themselves out of the fight simply because of their marginalized status, and the will to keep fighting for justice for themselves and for all marginalized people is what kept the momentum going.

### **The National Stage**

In March of 2012, they crossed the first big hurdle. The SCAN sex offender registry was found unconstitutional by the Court under the Equal Protection Clause of the United States Constitution. WWAV and the victims celebrated because no longer would individuals be charged with different crimes at the discretion of the arresting police officer. If an individual was found guilty of performing oral or anal sex for money, they would face the same charges as an individual found guilty of having vaginal intercourse for money. This change removed the threat of the bright orange SEX OFFENDER label going onto anymore sex workers' state IDs.

The nine anonymous plaintiffs had their names taken off the state sexual offender list, but the remaining 531 names were still registered (Dewey and St. Germain 2013). Though SCAN charges are unconstitutional from that point going forward, the decision was not retroactive, leaving many people with the debilitating label. WWAV and Haywood did what they could for the remaining registered individuals. They continued to help with the fees to pay fines, providing support groups for individuals and helping arrange legal counseling and advice. They focused on the human side of the problem. The Court's decision, while disheartening, was not a shock to many of these individuals. These people had endured years of marginalization, and though they could celebrate the fact that no future people would have to endure their same fate, it did not make their lives any easier. Haywood spoke out publicly about this decision. She said:

This is no answer to the hundreds of people who have been marginalized by this law. This registration requirement has already been declared unconstitutional. The state – not the women and LGBT people who are struggling as a result of this law – should correct this unlawful practice. We want justice for the more than 400 people still on the sex offender registry (CCR 2012).

The coalition that WWAV had formed did not give up after the first case. On June 27, they filed *Doe v. Caldwell* on behalf of every remaining person on the registry. James Caldwell was the Louisiana state attorney general at that time. This federal lawsuit extended the ruling of *Doe v. Jindal* to every person on the sex offender registry who had a SCAN conviction (*Doe v Caldwell* 2012).

As *Doe vs. Caldwell* progressed, anonymous individuals began coming forward to tell the stories that WWAV had been listening to, publicly. Ian Doe spoke out about being kicked out of his home by his family after coming out as transgender. He then took to the street where, upon offering an undercover cop a blow job for \$50, he was arrested and charged with Solicitation of Crimes Against Nature (Piano 2013). He was unable to get a job with the stigma of being a sex offender, is denied access to many homeless youth shelters, and, in his own words:

Didn't have nobody in this world who would take me in...Because of this charge I can't get a decent job now, I can't do anything because of the charge...I have been everywhere trying to get employment...The minute they find out I am...a registered sex offender they tell me no thank you or they'll call me back or they'll get back with me and they never do (Piano 2013).

One woman spoke about how, after moving to a new house with her children, she had to send out sex offender notifications with her photo on them. She has had multiple men come to her home, while her children are home, and try to have sex with her (WWAV 2017). Each person with this conviction was haunted by the label following them around. Though the carefully crafted legal team was fighting for these people in court, it was still WWAV who was listening to the stories of each victim, and providing the emotional support and resources that the victims needed and did not feel like they could access outside of their communities.

### **Justice Prevails**

On June 10, 2013, the state of Louisiana agreed to take every individual convicted of Solicitation of Crimes Against Nature off of the state sex offender registration. No longer could the conviction be applied to people convicted of exchanging sex for compensation, and no longer would anyone convicted of the overturned law carry the sex offender label. Individuals would be able to access housing, health care, disaster housing, and other resources that had been denied when they had a sex offender status. When speaking about the Court's decision, Deon Haywood said that:

Justice has prevailed and dignity has been restored to the women and men who have been denied their basic human rights for so long. We celebrate this true collaboration of community, affected individuals, and the amazing lawyers that together made a difference (CCJ 2013).

WWAV was able to be the bridge between the marginalized groups affected by the discriminatory Solicitation of Crimes Against Nature laws and the legal mechanisms that were able to find these laws unconstitutional. Their success suggests that community organizations that are able to reach marginalized populations and connect with them before bringing concerns to a larger audience may have more merit than outsiders entering communities to enact change. WWAV was successful at overturning SCAN convictions because they made it a priority to connect with the victims of the law on a human level and treated them as human beings. Only when the recipients of their resources wanted to move forward with the lawsuit did WWAV proceed. They did not infringe on the rights of their constituents, and they did not tell them what they needed, but instead listened to their concerns and adapted their programs and work accordingly, as they had always done. WWAV used the tools at their disposal to create systemic change for marginalized populations in New Orleans.

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