

Praxis International—Rural Technical Assistance on Violence Against Women presents,

**VAWA Confidentiality and Protections for Immigrant
Victims of Domestic Violence**

Leslye Orloff, National Immigrant Women's Advocacy Project (NIWAP)

Wednesday, June 27, 2018

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Webinar tips

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- Send an individual message to TA2TA host(s) or Liz Carlson within Q&A box.

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Leslie Orloff
Director, National Immigrant Women's Advocacy Project, American University Washington College of Law

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Learning Objectives

By the end of this webinar you will be better able to:

- Screen and help eligible victims of domestic and sexual violence file for VAWA, T and U visa and SIJS immigration relief
- Help victims receive protection under VAWA confidentiality laws
- Understand the role victim advocates can play helping victims filing VAWA, T and U visa cases

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Understanding the Forms of Immigration Relief Available to Immigrant Domestic and Sexual Violence Survivors

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How does filing for immigration relief help immigrant domestic and sexual violence victims?

Use Q&A box on webinar screen to respond

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Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Improves survivors options for stability & economic security
- Keeps communities safe

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PROTECTIONS FOR IMMIGRANT VICTIMS

T VISA
For victims of human trafficking

VAWA
For victims of domestic violence, child abuse, or neglect

U VISA
For victims of crimes who have suffered or who are likely to suffer substantial harm

ASYLUM
For victims of persecution or a well-founded fear of persecution

SIJS
For victims of child abuse or neglect

CONTINUED PRESENCE
For victims of domestic violence, child abuse, or neglect who are unable to leave the United States

BLUE CAMPAIGN
For more support call 1-800-375-7889 or visit www.niwap.org

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DHS Immigration Options for Victims of Crime Brochure

- Languages Offered
 - Spanish
 - Mandarin
 - English
 - Korean
 - Russian

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When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7% (2013) – 39% (2017)

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Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number
- Better access to housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship



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Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
 - How victim can safely carry DHS document copies



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Value of Filing Early

- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Benefits for victims of early filing
 - Protection from deportation
 - Safer for victim to cooperate in criminal case
 - Earlier access to work authorization
 - State benefits in some states
 - Better position in family law case
 - Can use the Requests for Further Evidence process to supplement application



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Case Strategies That Promote Victim Participation in Civil and Criminal Cases

- Changes in case strategy- when possible an immigration case should be filed before:
 - CPO, family or criminal court case
 - Victim travels to new location
 - Victim experiencing immigration related threats
- Role of VAWA confidentiality laws

Victim Advocates' Role in Helping Victims of Domestic and Sexual Violence File VAWA and U Visa Immigration Cases



Raise Your Hand...

If your agency has a working relationship with attorneys who have expertise serving immigrant survivors in VAWA and U visa cases

WHAT TYPES OF AGENCIES DO THE LAWYERS WITH THIS EXPERTISE WORK FOR IN YOUR COMMUNITY?

- A. Immigration or faith based non-profits specializing in cases of immigrant victims
- B. Family lawyers
- C. Legal services lawyers
- D. All of the above
- E. None of the above



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In what ways have you assisted survivors and attorneys to collect evidence to strengthen their immigration application?

Respond in Q&A box



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What Victim Advocates Can Do

- Screening and identifying survivors
- Helping survivors obtain identity documents
- Assist survivors with writing a declaration
- Providing a letter of support/ expert affidavit of services provided
- Collaborating with certifiers to obtain U visa certification
- Flagging for immigration inadmissibility
- Collecting other evidence



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Raise your hand and tell us...

If you work in an area where lawyers with expertise on VAWA and U Visa cases are not available



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Helping Victims File VAWA and U Visa Cases

- Best Practices – Victim Advocate & Lawyer collaboration
- When lawyers with expertise working with immigrant victims are not available
 - Long waiting list
 - Not available (Rural)
- Victim advocates can assist victims with VAWA and U visa immigration cases
 - With tools and help from attorney or TA provider



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Screening for Possible "Red Flags"



- Criminal convictions
- Previous deportation/removal from the U.S.
- Failure to voluntarily depart
- Departure since original entry
- "Alien" smuggling
- Marriage fraud
- Prostitution
- Drug or human trafficking
- Falsely claiming citizenship
- False testimony for immigration purposes
- Entry as an international exchange visitor



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Unlawful Practice of Law

- The unauthorized practice of immigration law occurs when those who are not attorneys or accredited representatives:
 - Provide legal assistance to applicants or petitioners in immigration matters
 - Charge more than a nominal fee
 - Hold themselves out to be qualified in legal matters
- *Notarios* are not attorneys in the US
- Who can represent immigrants in removal proceedings
<https://www.justice.gov/sites/default/files/eoir/legacy/2009/10/06/WhoCanRepresentAliensFactSheet10022009.pdf>
- 8 C.F.R. §292.1 defines who may represent immigrants before DHS



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VAWA self-petitioning



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General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage



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VAWA Self-Petitioning Available

- If case filed within 2 years of marriage termination
- Bigamy exception
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)

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Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:**
 - VAWA self-petitioners' children receive immigration benefits – no separate petition needed
- **Public Benefits:** As qualified immigrants (≈ 3 months), may qualify for additional state funded benefits – See Public Benefits Map
- **Employment Authorization:**
 - Citizen abuser (≈ 6 months);
 - Lawful permanent resident abuser (currently ≈ 8-12 months)
- **VAWA Confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful Permanent Residency:**
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator (≈ 5+ years-depends on when a visa is available)

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

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Why “Criminal Activity” and Not Limited to “Crimes”?

U visa protection available even when:

- Investigation does not result in prosecution
- Survivor/Victim helpful in investigation does not testify at trial
- Abuser eludes arrest
- Criminal case dismissed
- Survivor/Victim comes forward makes report and police or prosecutors decide not to prosecute
- Prosecution but no conviction
- Survivor/Victim of listed criminal activity but another crime prosecuted
- Prosecution cannot take place (diplomats, no extradition)

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Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in foreign labor Contracting
- False imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

*Includes any similar activity where the elements of the crime are substantially similar

**Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

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Who can certify?

- Police officer
 - Local and State police
 - Federal
 - University
- Prosecutor (State and Federal)
- Judge
- Immigration Officer
- Adult and Child Protective Services
- EEOC, DOL and state labor agencies
- Other authority with responsibility for investigation or prosecution of criminal activity

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Other Federal, State or Local Agencies

- Agencies with civil, criminal, or administrative investigative jurisdiction in their areas of expertise
- Including but not limited to:
 - Child Protection Services Worker
 - Adult Protective Services Worker
 - EEOC
 - Department of Labor
 - AFT, FBI



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What the U Visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
 - Include any findings regarding injuries
- Helpfulness of the victim
 - Current,
 - Past, OR
 - Willingness to be helpful
- Any family members implicated in the crime



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U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually – Currently there is a waitlist of 110,000 visas
- Work authorization Via Deferred Action Status (≈ 36-48 months)
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- Lawful permanent residency 3 years after receiving U visa if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - humanitarian need, family unity or public interest
- U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character



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Helping Victims Prove

- Battering, sexual assault or extreme cruelty
 - VAWA/U
- Good faith marriage
 - VAWA
- Spouse or parent/child relationship
 - VAWA
 - U when children/spouse of victim also applying
- Their story of experiencing domestic or sexual violence for their affidavit



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How do you prove battering, sexual assault or extreme cruelty?

Respond in Q&A box



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Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Employment related abuse
- Sexual Abuse
- Coercion & threats
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Minimizing, denying, blaming
- Harming pets
- Coercive control



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What could be evidence of a good faith marriage?

Respond in Q&A box

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Good Faith Marriage

- Children
- Love Letters
- Photos from family vacations
- Evidence documenting that they lived together

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WHICH OF THE FOLLOWING HELPS PROVE A SPOUSAL OR PARENT CHILD RELATIONSHIP?

- A. Child's birth certificate
- B. Child's health care, school, baptismal records
- C. Victim's affidavit
- D. Marriage License
- E. All of the above

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Trauma Informed Approach to Story Writing

Story Writing Intervention

- Process by which advocate/attorney supports and helps survivors write their own story
- By capturing trauma history through narrative, survivors are helped to heal from trauma
- What research tells us about importance of writing the trauma narrative

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Story Writing Intervention Method

- 1. Invite the survivor to write/tell her story**
 - Support, witness, listen without judgment, allow space
 - Goal: story comes out unedited/uninterrupted
- 2. Follow up with interview**
 - Structured Interview Questionnaire for Immigration (SIQI)
 - Take notes for follow up during story telling interview
- 3. Edit together**
 - Story + structured interview responses into affidavit
- 4. Survivor reads back the final story**

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Trauma Informed Legal Advocacy

- Use an approach that helps clients heal
- At the same time strengthens the legal case
- Building a relationship of trust
- Transparency – Explain your role, why you ask certain questions, why you need certain information

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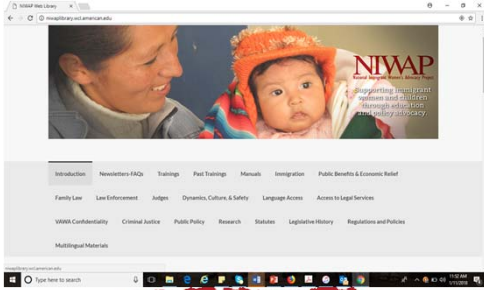
Tools to Help You

- Trauma informed interview tool
- Evidence checklists
- Manual chapters on VAWA and U visa
- Webinars and online learning
 - On VAWA and U visas
 - Video on helping survivors who go into crisis reliving trauma while writing their story for their immigration case
- NIWAP's TA (202) 274-4457 or info@niwap.org



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NIWAP web library (niwaplibrary.wcl.american.edu)



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VAWA Confidentiality



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Raise Your Hand if...

Any of your domestic violence or sexual assault victim clients have been the subject of an immigration enforcement actions?



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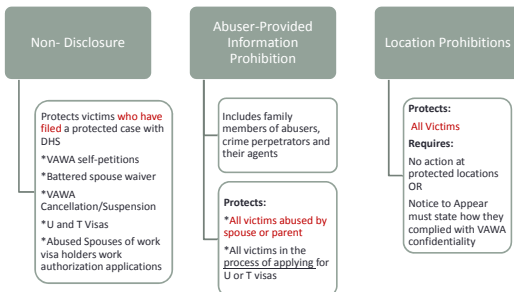
VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses



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VAWA Confidentiality Prongs (2)



Violation = \$5,000 fine and/or disciplinary action



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Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants



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Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
 - The existence of the case
 - Actions taken in the case
 - Information contained in the case file
- Disclosure prohibited to all persons, not just the perpetrator
 - Limits family and criminal court discovery
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed



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DHS VAWA Confidentiality Computer System

- Directs use of "red flag" "384" computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims



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Relying on Information Provided by: Abuser, Perpetrator, Trafficker

- The government cannot gather and/or use information provided solely by:
 - an abuser;
 - trafficker;
 - crime perpetrator or
 - People closely associated with the perpetrator (e.g. family members) (ICE 2007)
- To take an adverse action against a victim includes
 - Arrests for civil immigration violations
 - Placing the an immigrant in removal proceedings or detention
 - Seeking or using information provided by the perpetrator in the victim’s immigration case



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DHS cannot rely on information *solely* provided by the perpetrator

- Information provided **solely** by prohibited sources **must** be independently corroborated by DHS
 - Adverse information about the victim from a prohibited source should be treated as “**inherently suspect**” (DHS Directive 11/1/2013)
 - “If the officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U” VAWA confidentiality applies (ICE 2007)



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Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



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January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

- Criminal convictions, gangs, national security, public safety, orders of removal
- Will not target witnesses or people accompanying to court
- Enforcement in family law and other non-criminal
 - Should generally be avoided AND
 - Requires Field Office Director/Special Agent in Charge Approval

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VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

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Prevention & Safety = Filing Immigration Case Early

- Give victims a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- File skeletal immigration applications early
 - Use trauma informed interviewing tool and prepare for the requests for further evidence process
- File immigration case before
 - Protection order, divorce, or custody case
 - Victim travels to a new location

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Promoting DV/SA Immigrant Victim Cooperation in Criminal and Use of Civil Justice Systems

- Teach clients to
 - Memorize “A” numbers of their VAWA, T, and U visa cases
 - Tell DHS about victimization
- Police/prosecutors that the lead on communicate with DHS
- Prepare for victims appearing in civil and criminal court cases

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What to Take to Court When Accompanying an Immigrant DV/SA Victim

- A# or Letter from advocate/attorney stating that victim is filing a VAWA, T or U visa case
- Police Reports
- Copy of the U/T certification
- VAWA confidentiality policies
 - ICE, DHS
- Evidence of abuse include copies of protection orders, photos, criminal court subpoenas

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Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
 - Schools
 - Medical treatment and health care facilities
 - Places of worship
 - Religious or civil ceremonies: e.g. weddings, funerals
 - During a public demonstration: e.g., march, rally, parade

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VAWA Confidentiality Resources

- Webinars
- Training materials
- Manual chapters guiding step-by-step victim advocacy
- Legislative History
- DHS implementing policies
- Brochures
- Technical assistance

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National Immigrant Women's Advocacy Project Resources

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Recap NIWAP Resources

- NIWAP Web library
- Technical Assistance
- Directory
- Trainings and Webinars
- Materials
 - Bench cards
 - Toolkits
 - DHS outreach materials



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Interested in Joining the Community of Practice or Roundtable?

- Application available at:
www.niwap.org/go/COPapplication
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://www.niwap.org/go/LEArroundtables/>

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- Web Library: www.niwaplibrary.wcl.american.edu

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