



THE LAPTOP UPDATE

LEGAL ASSISTANCE PROVIDERS' TECHNICAL OUTREACH PROJECT

DEDICATED TO ENHANCING THE CAPACITY OF LAV ADVOCATES AND ATTORNEYS ADDRESSING THE CIVIL LEGAL NEEDS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, STALKING, AND DATING VIOLENCE SURVIVORS

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THE IMPACT OF THE VIOLENCE AGAINST WOMEN ACT 2005 (VAWA) ON THE HOUSING RIGHTS AND OPTIONS OF SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE†

By Naomi Stern and Terri Keeley*

The Problem and a Remedy

Domestic violence is a leading cause of homelessness nationally. Among cities surveyed in 2005, 44% identified domestic violence as a primary cause of local homelessness.¹ In varying regions, between 22% and 57% of homeless women report that domestic violence was the immediate cause of their homelessness.² Ninety-two percent (92%) of homeless women have experienced severe physical or sexual abuse at some point in their lives,³ and 63% have been

† This document was originally distributed by the Domestic Violence Program at the National Center on Homelessness & Poverty and has been reprinted with their permission.

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¹VAWA 2005, sec. 601

²Wilder Research Center, *Homeless in Minnesota 2003* 22 (Feb. 2004); Center for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* 3 (Jan. 2004); Nat'l Center on Family Homelessness & Health Care for the Homeless Clinicians' Network, *Social Supports for Homeless Mothers* 14, 26 (Oct. 2003); Inst. for Children & Poverty, *The Hidden Migration: Why New York City Shelters Are Overflowing with Families* (April 2004); Homes for the Homeless & Inst. for Children & Poverty, *Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America* 3 (1998); Virginia Coalition for the Homeless, *1995 Shelter Provider Survey* (1995) (out of print), cited in Nat'l Coalition for the Homeless, *Domestic Violence and Homelessness: NCH Fact Sheet #8* (1999).

³ A. Browne & S. Bassuk, "Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Diverse Sample," *American Journal of Orthopsychiatry*, 67(2), 261-278, April 1997; A. Browne, "Responding to the

victims of domestic violence as adults.⁴ Currently, 38% of domestic violence victims become homeless at some point in their lives.⁵

Some victims and their children lose their homes when they flee abuse. Other domestic violence survivors become homeless after being evicted, or after being denied housing as a result of the violence against them.⁶

Exacerbating this crisis is the severe shortage of affordable housing for low-income individuals and families. Over five million households have “worst case” housing needs: living in substandard housing, doubled-up, or paying over one-half of their income for rent, according to a 2003 federal report.⁷ Federal housing assistance programs, including public housing, housing subsidy programs, transitional and supportive housing, and emergency shelter programs, are all under-funded, under increasing attack, and insufficient to meet the rapidly growing need.

Needs of Low Income and Homeless Women Who are Survivors of Family Violence,” *Journal of American Medical Association*, 53(2), 57-64, Spring 1998.

⁴ *Id.*

⁵ Charlene K. Baker et al., “Domestic Violence and Housing Problems: A Contextual Analysis of Women’s Help-seeking, Received Informal Support, and Formal System Response,” *Violence Against Women* 9(7) (2003): 754-783.

⁶ See, e.g., U.S. Dep’t of Hous. & Urban Dev. v. Rucker, Nos. 00-1771 & 00-1871 (U.S. filed 2001) (brief of amici curiae National Network to End Domestic Violence, et al.); *United States ex rel. Alvera v. C.B.M. Group, Inc.*, No. CV 01-857-PA (D. Or. 2001) (consent decree) (Clearinghouse No. 53,895); *Warren v. Ypsilanti Housing Commission* (E.D. Mich. filed 2002, settled 2003), <http://www.aclumich.org/pdf/briefs/Comp8feb02.pdf>; *Raney v. Crawford/Katica, Inc.* (W.D. Wash. filed 2004), complaint available from Northwest Women’s Law Center, <http://www.nwwlc.org>; *Winsor v. Regency Property Management, Inc.* (Wis. Cir. Ct. 7, 1995) (memorandum opinion, Case No. 94 CV 2349). See also National Law Center on Homelessness & Poverty & National Network to End Domestic Violence, *Survey of Domestic Violence Evictions and Denials*, Summer 2005.

⁷ Office of Policy Development and Research Information Service, U.S. Department of Housing and Urban Development, *Trends in Worst Case Needs for Housing, 1978–1999, Plus Update on Worst Case Needs in 2001* xix (2003), available at www.huduser.org/publications/pdf/trends.pdf.

For an individual who is in a violent relationship and already living in poverty, this harsh reality often means that she must choose between life with her abuser and life on the streets.

Federal law now explicitly addresses some of these barriers. Signed into law on Jan. 5, 2006, VAWA 2005 (Pub. L. 109-162, 119 Stat. 2960) includes important new housing legal protections and programs for victims of domestic violence, dating violence, sexual assault, and stalking.

VAWA Amendments to Federal Housing Programs

Title VI of VAWA 2005 acknowledges the unfortunate and disturbing reality that even in 2005 – “women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.” 42 U.S.C. § 13701 (2006).

VAWA 2005 amended the Public Housing Program, the Section 8 Housing Choice Voucher Program, and Project-Based Section 8 to ensure that victims of domestic violence, dating violence, and stalking and their families are not wrongfully evicted from or denied housing because of the violence committed against them. See 42 U.S.C. § 1437d (2006); 42 U.S.C. § 1437f (2006).

Denial of housing prohibited. These housing statutes now state that an individual’s status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of admission or denial of housing assistance.

Eviction for criminal activity prohibited. The statute establishes an exception to the federal “one-strike” criminal activity eviction rule for tenants who are victims. VAWA 2005 explicitly states that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a serious or repeated violation of the lease or good cause for terminating the assistance, tenancy, or occupancy rights of a victim. VAWA 2005 also states that criminal activity directly relating to domestic violence, dating violence, or stalking does not constitute grounds for terminating a victim’s tenancy.

Definitions; court orders; leases. The amendments follow the federal definitions of domestic violence, dating violence, and stalking as the terms have been defined in VAWA 2005. They also seek to ensure that public housing agencies (PHAs) and Section 8 landlords honor civil protection orders and other court orders from domestic violence and family court judges that address rights of access to or control of the property. The amendments provide that a PHA or Section 8 landlord may bifurcate a lease in order to evict, remove, or terminate the assistance of the offender while allowing the victim, who is a tenant or lawful occupant, to remain.

Documentation and confidentiality. Before complying with the statute, a PHA or Section 8 landlord may ask an individual for documentation that he or she is or has been a victim of domestic violence, dating violence, or stalking,

subject to certain statutory requirements related to confidentiality and the types of documentation that may be used.

Voucher portability. VAWA 2005 clarifies voucher portability for victims of domestic violence, dating violence, and stalking in the Section 8 Housing Choice Voucher Program.

PHA plan. VAWA 2005 amended the PHA planning statute to require that PHAs describe how they are addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking when they are developing their annual and five-year PHA plans.

Consolidated plan. VAWA 2005 added the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking to the “consolidated planning” process that local communities undertake every five years to receive HUD assistance.

Changes in Homeless Management Information System (HMIS)

VAWA 2005 amended the McKinney-Vento Homeless Assistance Act to require HUD to instruct any victim service provider that is a grantee or sub-grantee under the act not to disclose “personally identifying information” to a shared database, such as the Homeless Management Information System (HMIS). The change is intended to protect the safety and confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking who use emergency shelter and homeless services programs that receive funding under the act and are therefore otherwise subject to HMIS data reporting requirements. *See* 42 U.S.C. § 11383(a)(8) (2006).

New Grant Program for Public and Assisted Housing Agencies to Address Domestic Violence, Dating Violence, Sexual Assault, and Stalking

VAWA 2005 also helps PHAs and federally-assisted housing providers respond appropriately to domestic violence, dating violence, sexual assault, and stalking through an incentive grant program. Grants will be used for educating and training agency staff, developing improved housing admissions and occupancy policies and best practices, improving collaboration with victim services organizations, and reducing discriminatory evictions and denials of housing to victims.

To be administered by the Office on Violence Against Women in the Department of Justice, in consultation with HUD and the Department of Health and Human Services

(HHS), the grant program received authorization from Congress for \$10 million for each of fiscal years (FY) 2007 through 2011. *See* 42 U.S.C. § 14043e-4 (2006). Before the program can be administered, it must receive actual funding from Congress through the separate annual appropriations process.

New Grant Program for Collaboration in Developing Long Term Housing Stability for Victims

VAWA 2005 establishes a grant program to fund collaborative local efforts to create long term housing stability for victims of domestic violence, dating violence, sexual

assault, and stalking who are homeless or at risk for becoming homeless. The program is designed to provide an incentive for local housing, homelessness, and victim services providers to establish partnerships in approaching community agencies for development of long term, affordable housing.

To be administered by HHS, in partnership with HUD, the grant program received funding authorization from Congress of \$10

million for each of FYs 2007 through 2011. *See* 42 U.S.C. § 14043e-3 (2006). Before the program can be administered, it must receive funding from Congress through annual appropriations.

Amendments to Transitional Housing for Victims Grant Program

VAWA 2005 clarifies certain requirements in the existing transitional housing program for victims, which the Office on Violence Against Women of the Department of Justice administers, to ensure voluntary participation in supportive services and to permit operating expenses as an eligible use of funds. Congress also increased the program’s annual authorization from \$30 million to \$40 million for each of FYs 2007 through 2011. *See* 42 U.S.C. § 13975 (2006). These changes will go into effect in FY 2007. The program is subject to annual appropriations from Congress. ♡

“VAWA 2005 AMENDED THE PUBLIC HOUSING PROGRAM, THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM, AND THE PROJECT-BASED SECTION 8 TO ENSURE THAT VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING AND THEIR FAMILIES ARE NOT WRONGFULLY EVICTED FROM OR DENIED HOUSING BECAUSE OF THE VIOLENCE COMMITTED AGAINST THEM.”

VAWA 2005 LAV-RELATED CHANGES

By Tracy J. Davis and Erika Sussman

The following is intended to provide Legal Assistance for Victims (LAV) grantees an overview of changes to the Violence Against Women Act (VAWA). VAWA 2005 (Pub. L. No. 109-162) was signed into law on January 5, 2006. The changes detailed below represent the revisions to VAWA that directly impact the scope of the LAV grant program. This summary is divided into three sections: general definitions that apply to all grants covered by VAWA, general grant provisions that apply to all grants covered by VAWA, and changes specific to the LAV grant program.

General VAWA Definitions

These definitions apply to all grants that exist under VAWA, as well as certain other grant programs.

❖ Legal Assistance

The definition of “legal assistance” was expanded in several different ways:

- 1) The population eligible to receive legal assistance now includes *youth*. VAWA, section 40002(a)(16). In VAWA 2005, youth is defined as “teen and young adult victims of domestic violence, dating violence, sexual assault, or stalking.” *Id.*, section 40002(a)(37).
- 2) Under the definition of legal assistance, the types of legal assistance services available to victims have grown to include *employment and campus administrative proceedings*. *Id.*, section 40002(a)(16)(A). In addition, under VAWA 2005, legal assistance includes “criminal justice investigations, prosecutions and post-trial matters (including sentencing, parole, and probation) that impact the victim’s safety and privacy.” *Id.*, section 40002(a)(16)(B).

❖ Confidentiality-Related Terms

VAWA 2005 made several changes to improve survivor confidentiality. The new term “Personally Identifying Information” has been included in the definitions section. This definition is particularly important to VAWA grantees that receive McKinney-Vento money. No victim service provider that receives McKinney-Vento money can disclose personally identifying information about a client.¹

Personally identifying information, as it applies to VAWA grantees, is defined as “individually identifying information for or about an individual including information likely to disclose the location of a victim.” This can include: first and

¹ Amendments to the McKinney-Vento Homelessness Assistance Act can be found at Section 605 of VAWA 2005. Note that the term “personally identifying information” differs for HUD grantees. The relevant definition for HUD grantees also is contained at Section 605 of VAWA. *See infra* p. 3 (discussing the confidentiality changes made to the Homeless Management Information System (HMIS)).

last name; home or other physical address; contact information; social security number; and any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the above would serve to identify any individual. *Id.*, section 40002(a)(18). This term is used to refer to information that VAWA grantees must not disclose with some exceptions which require safety and privacy measures, as outlined in Section 40002(b)(2) and described below.

❖ Protection or Restraining Order

VAWA 2005 clarifies that the definition of protection or restraining order includes all relief issued as part of a protection or restraining order. The effect of this change is that the various types of relief granted in a protection order now must receive full faith and credit enforcement across state lines. At this time, LAPTOP is not certain how this provision will be interpreted when courts are forced to grapple with issues of personal and subject matter jurisdiction when deciding whether or not to enforce specific forms of relief.

The term protection or restraining order includes, “*support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order* [italics added]” and pursuant to the law of the jurisdiction. 18 USC 2266(5), *see also* VAWA, section 40002(a)(20).

General Grant Provision Changes

These grant provisions apply to all grants that exist under VAWA, as well as certain other grant programs.

❖ Confidentiality-Related Provisions

As mentioned above, changes have been made by VAWA 2005 to strengthen the protections for survivor confidentiality.

Grantees and subgrantees “shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied.” Client information can be revealed only with “the informed, written, reasonably time-limited consent” of the person about whom information is sought. Consent cannot be given by the abuser. VAWA, section 40002(b)(2)(B).

When release of personally identifying information is compelled by statutory or court mandate, “grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.” *Id.*, section 40002(b)(2)(C).

Grantees and subgrantees “may share nonpersonally identifying data in the aggregate regarding services to their clients and demographic information” in order to comply with reporting, evaluation, or data collection requirements. *Id.*, section 40002(b)(2)(D).

❖ *Specific Inclusion of Male Victims*

VAWA now includes a provision that specifically states that nothing in VAWA should “be construed to prohibit male victims...from receiving benefits and services” under VAWA. Id., section 40002(b)(8).

In addition to the above changes, significant modifications have been made in the areas of immigration, housing, and confidentiality that impact the services LAV grantees provide to survivors. For detailed information on these changes,


grantees should refer to the summaries prepared by Legal Momentum’s Immigrant Women Project, the National Law Center on Homelessness & Poverty, and the National Network to End Domestic Violence.

Legal Assistance for Victims Improvements

❖ *In General*

Legal Assistance for Victims (LAV) grants are expanded to include both criminal as well as civil legal assistance and youth as well as adult victims. Criminal legal assistance is limited to criminal matters relating to domestic violence, sexual assault, dating violence and stalking. VAWA 2000, section 1201(a), as amended by VAWA 2005.

“GRANTS ARE EXPANDED TO INCLUDE TRIBAL ORGANIZATIONS AND TERRITORIAL ORGANIZATIONS AS WELL AS PRIVATE NON-PROFIT ENTITIES, INDIAN TRIBAL GOVERNMENTS, AND PUBLICLY FUNDED ORGANIZATIONS NOT ACTING IN A GOVERNMENTAL CAPACITY.”

If you have any questions regarding VAWA or other areas of civil legal assistance, please contact LAPTOP at 800.256.5883 ext. 3 or laptop@pcadv.org. 

❖ *Grants*

Grants are expanded to include tribal organizations and territorial organizations as well as private non-profit entities, Indian tribal governments, and publicly funded organizations not acting in a governmental capacity. VAWA 2000, section 1201(c), as amended by VAWA 2005.

❖ *Eligibility*

To be eligible for this grant money, programs must complete training developed not only with State local and tribal programs, but also territorial programs, and related not only to domestic violence or sexual assault programs and coalitions, but also to dating violence and stalking programs and coalitions. VAWA 2000, section 1201(d)(2), as amended by VAWA 2005.

❖ *Evaluation*

The evaluation component of the LAV grant is expanded to include dating violence. VAWA 2000, section 1201(c), as amended by VAWA 2005.

❖ *Authorization of Appropriations*

The amount of the LAV funding authorized has been increased from \$40,000,000 per fiscal year, which it was from 2001 through 2005, to \$65,000,000 per fiscal year from 2007 through 2011. VAWA 2000, section 1201(f)(1), as amended by VAWA 2005.

A minimum of 3 percent of funding must be allocated to tribal organizations, and, for tribal governments, “not less than 7 percent of the total amount available under this section for each fiscal year shall be available for grants under the program authorized by section 2015 of the Omnibus Crime control and Safe Streets Act of 1968 (42 U.S. C. 3796gg-10).” VAWA, 2000, section 1201(f)(2)(A), as amended by VAWA 2005 and S. 3693(7)(d)(1).

AN IMMIGRANT'S DOMESTIC VIOLENCE SURVIVAL STORY

By Chaitra Shenoy

For many who immigrate to the United States, they come with dreams and hopes of a better life. These dreams are shattered for some immigrant women who face domestic violence in their homes. They often feel isolated and do not understand the United States justice system. Cultural, economic, and legal barriers make it more difficult for immigrant battered women to escape the abuse to live free of violence. With the passage of the Violence Against Women Act in 1994, there are several provisions that are specific in targeting immigrant women, including the ability to petition and obtain permanent residency, a Social Security number, public benefits, and work authorization documents.¹

Sifa Wa Nsanga, a domestic violence immigrant survivor, shared her story with LAPTOP. She received legal advice and representation through Tahirih Justice Center, an Office on Violence Against Women Legal Assistance for Victims (LAV) Grantee. At the interview, Sifa's lawyer, Joanne Waters, *pro bono* attorney for the Justice Center, also shared her thoughts on the VAWA self-petition and Sifa's case.

Chaitra Shenoy (CS): *How did you get in touch with Tahirih Justice Center?*

Sifa Wa Nsanga (SW): I got in touch with Tahirih through another survivor when I was residing at My Sister's Place. I was given an appointment and the Justice Center coordinated the meeting with Joanne Waters, my *pro bono* attorney.

CS: *What was your situation before you contacted Tahirih?*

SW: I was living in New York City for the past four years and was subjected to emotional, psychological, sexual, and economic abuse. I was homeless and my husband found out where I was residing, so I fled to Virginia. Then, my husband found out where I was in Virginia, so I went to DC and found shelter at My Sister's Place.

CS: *How did you immigrate to the United States?*

SW: I came to America through a visitor's visa and stayed with my brother. My brother was responsible for getting me a plane ticket back to Europe. I have a history of incest in my family and he was the perpetrator. I never got a plane ticket. Then my husband confiscated my passport, my diploma, and my college degree and I had no way to travel or get a visa extension.

CS: *What instigated you to leave the relationship?*

SW: For me, it was the constant verbal abuse. One day, he called New York City's Child Protective Services on me. He

claimed that I was an unfit mother, mentally ill, and that I did not care for our kids. Child Protective Services came to our home and the caseworker told me that I was a victim of domestic violence, which I had never heard of before. She was the one who advised me to get a restraining order and to leave the house. She told me that if I did not, my children would be considered "at risk," not because I was an unfit mother, but because the environment they were living in was "unhealthy."

I sought a restraining order in New York City and I went to court and it was extended for a year. Nobody helped me. I was told where the court was and that I needed a police report. I took the police to serve him with the papers. When we went to court, in front of the judge, I had to prove why I was requesting a restraining order. I told the judge that he was not being financially supportive and that he was physically and emotionally abusive to my kids and me. I didn't have any evidence, but I just told my story again. I did the get the order. I went to stay at a shelter and he found out where I was living.

CS: *Why did you flee to Virginia?*

SW: I didn't feel safe in New York City. My husband began showing up every day to harass me [at the shelter], which made it too hard for me to stay in the same environment. I was on the verge of a break down. However, [in New York City], I was working very hard to find permanent housing, through Section 8, and I set everything up. However, all I needed was the landlord to sign the documents. Yet, on the day of the appointment, the landlord never showed up and that was the last straw for me.

I felt as though as I wasn't strong mentally to keep caring for my children and finding ways to care for myself and my children. I needed to leave New York City so I came to Virginia, which is where my cousin-in-law lives.

CS: *Joanne, as a pro bono attorney, how did you prepare yourself for Sifa's VAWA case?*

Joanne Waters (JW): The Justice Center provided me with great resources. For example, every time I had an immigration question, I would call the Justice Center and they helped me sort through the problem. I also attended an in-depth domestic violence training with the Justice Center, in which they explained the VAWA petitions, how to assist a domestic violence survivor, and what types of questions to ask. I learned that, for a new attorney, the key is just to listen.

CS: *Joanne, describe the VAWA self-petition process in a nutshell.*

JW: The survivor has to describe the entire domestic violence experience and find many incidents that support her case. It is a time consuming process. A lot of times it is embarrassing and personal. The difficulty is having to transcribe the most personal feelings and experiences so that the person reading the petition can grasp how traumatic and life altering the domestic violence that occurred was for that client.

¹ Victims of Trafficking and Violence Protection Act of 2000, Title V- Battered Immigrant Women Protection Act of 2000 Sec. 1503(b)(1); See 8 U.S.C. §1154 (VAWA provisions codified into Immigration and Nationality Act).

CS: *Joanne, how long was the process until Sifa heard from the Immigration Board?*

JW: Sifa and I started meeting regularly in March 2003 and then filed the appropriate papers in November 2003. In addition to the declaration we drafted demonstrating the history of abuse, we also had to provide additional evidence, such as the citizenship of the abuser, existence of a good faith marriage, and a shared residence. We provided pictures, certificates, and letters certifying the marriage and the shared residence, as well as the naturalization documents evidencing the husband's citizenship. We received notice in August 2004 that she was granted her VAWA petition. However, Sifa's case seems to be an exception in terms of timeline because there were several technical glitches that we had to overcome. For example, Sifa's employment authorization application was misplaced by one of the agencies and we had to re-file. The Justice Center was very helpful in answering these questions and addressing these hurdles.

CS: *Sifa, did you find that having an attorney was helpful in obtaining your permanent residency?*

SW: It is very important to have an attorney or advocate in this process. You have to remember that we [immigrant survivors] have no voice here and we have been told we do not amount to anything without the abuser. You literally entrust your life to your advocate and lawyer and they become your voice. They become your wings. I did not have the strength, the ability, and knowledge to do what they did for me.

It is important that you have a lawyer who understands where you are and who can advocate for you, who can be that force to make it happen. I am where I am now because I had someone believe and validate my experience because a lot of times I thought I was crazy. I still have to sit back and remind myself, "Joanne worked with you hard, Tahirih worked with you very hard, My Sister's Place worked very hard, so what you went through matters. Don't discount it, don't dismiss it because people have worked so hard that you matter and your story matters."

CS: *How has your daily life changed after your successful self-petitioning process?*

SW: I have many more options as far as job hunting since I am legal. I also can apply to colleges since I am eligible for financial aid due to my status. I found an apartment since I have a job and can pay bills. Ever since then, I have become empowered. I have made long and short-term goals and believe I can implement them. I really want to purchase a house but I need credit. And now I can work on that. It has really changed my life.

CS: *How has it impacted your safety?*

SW: I am mentally stronger and emotionally stronger because of all the support. Now I am in a place where I am able to make choices that are not dictated by fear. When I got my green card, I felt like I belonged, that I exist. Now I have a voice. I can be my own advocate.

CS: *What challenges did you face when working with an attorney or advocate?*

SW: The biggest challenge for me was to trust sharing my stories with others. Also I did not know if my story really mattered because I had not been validated for so long, so I had no trust that I would be worthy of their attention. Many times I thought I was crazy, over reacting and exaggerating stuff. Even when My Sister's Place suggested counseling, I did not do it because I couldn't see why I needed it. By listening to others, and learning from them, I came to recognize that I was a domestic violence survivor. I was not dreaming these things up, and it was my reality.

CS: *What advice would you give to immigrant domestic violence survivors?*

SW: Have trust in the process, be as honest as possible with your lawyer or advocate, and do not give up. It is tedious, painstaking, and frustrating, but the end result is worth it. Having a green card and social security card is freedom, liberating, and empowering. I can look back and say that it was worth it.

I would hope that immigrant women would take the opportunity, where domestic violence is really a crime in this country. They should no longer think what is right in their country and acceptable and run with that. They live in America and in America it is wrong for your husband to abuse you.

CS: *As an immigrant, did you find it difficult to put your story in the American cultural context?*

SW: I am originally from Zaire, Western Africa. I did not feel that it was challenge to talk about my domestic violence. I had an excellent attorney who was available, respectful, and always ready to work with me around my schedule. Some of the sessions were overwhelming and she didn't push me.

I don't think culture was a problem and it's maybe because I have traveled extensively. I was comfortable with different types of people.

CS: *What advice would you give to an attorney working with immigrant domestic violence survivors?*

SW: Be available, have the ability to listen to the survivor and don't push her. Have faith in her situation and be ready and willing to go the course because it is pain-staking.

CS: *Joanne, what suggestions do you have?*

JW: Don't let not having an immigration background stop you from taking on a VAWA case. It is some of the most fulfilling advocacy I have done on a personal and professional level. It hones your advocacy skills and has made me a better attorney. ♀

LAPTOP EVENTS UPDATE

By Chaitra Shenoy and Sara Shoener

Economic Advocacy Institute: Placing Economic Justice at the Center of our Advocacy

On February 2-3, 2006, in partnership with the Office on Violence Against Women, LAPTOP hosted their fourth Economic Advocacy Institute in San Francisco, CA. Because access to economic resources is the strongest indicator of a survivor's likelihood of separating from her abusive partner, this training has become increasingly popular with advocates and attorneys. To that end, 40 LAV grantees and a collection of economic justice experts from across the country came together to learn and to brainstorm ways to put economic issues at the center of their advocacy.

The first day began with opening remarks from Valerie Despres, a Program Specialist in the Office on Violence Against Women, US Department of Justice, and Erika Sussman, the Senior Attorney for LAPTOP. After Ms. Sussman opened the training with an introductory discussion about the connections between economic justice and violence against women, Katie VonDeLinde and Sheila Fazio from Redevelopment Opportunities for Women led the rest of the morning. Ms. VonDeLinde began by offering a basic overview of skills and strategies necessary to be an economic advocate for survivors of gender-based violence. The institute participants learned ways to help survivors assess, map, and implement their financial goals. Participants then broke into smaller working groups to learn about effective economic advocacy strategies and the basics of credit. The economic advocacy strategies workshop focused on tools such as prioritizing debts, creating spending plans, and increasing survivors' incomes. The credit workshop detailed the impacts of one's credit score, ways to build and repair credit, and credit issues to consider when safety planning. The institute participants reconvened at a working lunch facilitated by Caroline Antone and Tracy Davis to share their personal strategies for garnering basic material goods for survivors. In addition to continuing the morning's breakout workshops, the afternoon included a presentation from Ms. Sussman, who provided strategies for accessing economic relief through civil protection orders.

The second day of the institute began with Caroline Antone, the Family Resource Coordinator at the Tohono O'odham Department of Health and Human Services, and Mercedes Lorduy, Attorney at Law in Miami, Florida. As survivors of intimate partner violence, Ms. Antone and Ms. Lorduy discussed the economic impacts of abuse in their lives and the efficacy of the economic advocacy that they received. In addition to continuing the breakout workshops with Ms. VonDeLinde, Ms. Fazio led the participants in a working lunch discussion about growing economic advocacy networks and resources in one's local community. Grantees were able to share their own successful strategies and helpful tactics for developing relationships with important individuals in financial institutions and other key organizations. Minouche Kandel, a Staff Attorney at Bay Area Legal Services, discussed effective methods for working within the

Temporary Assistance for Needy Families (TANF) system to strengthen one's economic advocacy toolbox. Tanya Brannan, a Community Organizer and Founder of The Purple Berets, closed the institute with a session on community organizing for economic justice. Ms. Brannan outlined basic organizing skills that advocates can use to increase economic justice in their local communities. The institute participants and staff left the institute energized and ready to utilize their new skills for securing economic justice for survivors. Anyone who would like the written materials that were generated for this institute can email Sara Shoener at sjs@pcadv.org.

Domestic Violence in the Military II: Family Law Litigation

On January 26, 2006, LAPTOP held a teleconference, "Domestic Violence in the Military II: Family Law Litigation." This teleconference was the second in a series of teleconferences focusing upon domestic violence in the military. The two teleconferences sought to provide LAV attorneys and advocates with the tools to effectively represent domestic violence survivors who are service members or whose abusers are service members. Advocacy for survivors in the military requires a particularized set of knowledge. Effective advocacy requires that attorneys and advocates have an understanding of military culture, the military legal system, and the context of military law. The teleconference faculty consisted of Deborah Tucker, the Executive Director of the National Center on Domestic and Sexual Violence, and Christine Zellar Church, former Staff Attorney at the Legal Aid Society of Middle Tennessee and the Cumberlands, Clarksville, Tennessee Legal Aid Office.

The teleconference was divided into three parts: basics on military law, child custody issues, and maximizing benefits for military families. Ms. Zellar Church began the teleconference discussing the importance of jurisdiction in military cases. The first question an advocate must ask is whether they have jurisdiction to file a motion against a service member under state law. Most state laws equate jurisdiction with domicile. Domicile consists of two pieces: 1) physical presence of the person, and 2) if they have a permanent intent to stay.

Next, Ms. Zellar Church described the basics of the Servicemembers Civil Relief Act (SCRA). The SCRA is an important component of military law which allows for civil judgments to be set aside. The Act accords several rights to the servicemember, including the right to an attorney and the right to be present at trial. Most attorneys ignore the SCRA, which may damage their client's case. For example, if a servicemember does not show up to trial and the court renders a default judgment, the SCRA states that a servicemember can request to set aside a default judgment and a court would need to honor that request, as long as the servicemember remains on active duty.

In the child custody section, the Uniform Child Custody Jurisdiction Enforcement Act's (UCCJEA) primary consideration is the children's place of residence in the six months prior to the filing of the child custody action. When

custody is addressed in a protection order case, lawyers are often unaware of the UCCJEA provisions that impact military clients who relocate frequently. Ms. Zellar Church emphasized that advocates and attorneys must be aware of personal and subject matter jurisdiction when custody is addressed. She emphasized the need for weaving military culture into case theory. She stated that, in the military, family “comes second.” The military considers a servicemember who is active to be “on call” 24 hours a day. Ms. Zellar Church also reminded participants that the military keeps records (like school and medical records) that can and should be used to bolster the client’s custody case.

Finally, Ms. Zellar Church and Ms. Tucker discussed strategies for maximizing benefits for military families. Ms. Zellar Church stated that pension benefits are the largest source of assets for military families. Therefore, she urged advocates to focus on pensions and to determine whether state law allows for the division of a pension as property or simply as a source for alimony. Practitioners perceive dividing the military pension as a federal law issue according to the Uniform Former Spouses Protection Act (UFSPA). However, the UFSPA instructs courts to look to the state court’s orders. The faculty also addressed survivor benefit plans, life insurance, medical benefits, child support, and spousal support. The teleconference was comprehensive and covered many issues in detail. Participants gained practical litigation tips, a list of Internet resources, and a better understanding of the advocacy needs of survivors in the military.

If you are interested in obtaining handouts for the Military I or II teleconferences, please email Chai Shenoy at cps@pcadv.org.

Securing Child Custody Survivors of Domestic Violence: Physical and Economic Safety

On March 30, 2006, with support from OVW, LAPTOP held a teleconference entitled “Securing Child Custody Survivors of Domestic Violence: Physical and Economic Safety,” facilitated by Judge Maureen McKnight. Judge McKnight is an Oregon Circuit Court judge hearing various cases, including family and criminal matters. Prior to taking the bench, Judge McKnight worked at the Legal Aid Society of Oregon for twenty years.

This teleconference offered Judge McKnight’s thoughts on child support advocacy from the perspective of an adjudicator. She stated at the outset of the teleconference that advocates have a lot of potential opportunities for educating the adjudicator by crafting zealous legal arguments in child support hearings. She highlighted three major areas in child support laws: federal laws, enforcement, and systems advocacy.

Judge McKnight provided a detailed overview of the federal laws governing child support. She discussed that, in order for states to receive federal money for their welfare programs, they are required by law to have a child support program in place. “States don’t want to run the risk of being sanctioned. They want to be in compliance with the program,” she emphasized. Judge McKnight stated that advocates should


get to know their local federal child support liaison, because this individual is a good resource for understanding child support laws in both the state and federal systems.

Judge McKnight emphasized the need for attorneys to know the child support laws of their jurisdiction. Each jurisdiction is different in terms of applying the child support laws - in some it is adjudicated through the courts, in others it is adjudicated through administrative agencies. Knowing the different evidentiary and ethical rules of your state-specific child custody adjudication process will empower you as the advocate.

Judge McKnight discussed the role of confidentiality and survivor’s safety when seeking child support. She urged advocates to be competent with regard to the Family Violence Indicator. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 required each state to establish a State Case Registry (SCR) that includes, among other things, the Family Violence Indicator. When a file is “flagged” for family violence, the state notifies the Federal Office of Child Support Enforcement, and the only way the information in the client’s file can be disclosed is through judicial intervention.

If the other party, who has a restraining order against him, is seeking to find information about the survivor, there will be a flag on the survivor’s file. Judge McKnight stressed that LAV attorneys must argue that release of the confidential information will harm their client or client’s child. The judge may ask several questions to decide whether to override the flag, which include: whether there is an existing restraining order, whether there is a criminal conviction, the nature of the information that exists that resulted in a flag, how recent the information is, and whether there is a way that the information can be provided without impairing the client’s safety. She noted that it is important for attorneys working on domestic violence cases to request findings in writing. If the case is re-opened, the survivor will benefit from judicial findings in court orders that document the history of domestic violence.

Judge McKnight also addressed the different ways support orders can be enforced. Support orders are typically enforced through wage garnishment. However, if the parent is earning a salary “off the books,” the state can enforce support through contempt charges, property liens, license and passport suspensions, and/or make a report to credit agencies. Judge McKnight also explained how enforcement works between states through the Uniform Interstate Family Support Act, Full Faith and Credit provisions of Violence Against Women Act (VAWA), and the related provisions of the 2005 VAWA.

Judge McKnight concluded her presentation with a piece on systems advocacy. Participant reviews indicate that they learned key advocacy pointers and practical tips from Judge McKnight. If you would like the handouts from the teleconference, please contact Chai Shenoy at cps@pcadv.org. 

By Tracy J. Davis

Civil Protection/Restraining Orders❖ *Monterroso v. Moran*¹

In *Monterroso v. Moran*, a California appeals court reversed a trial court's decision to enter mutual restraining orders against a petitioner and her defendant husband. This case began when Ms. Monterroso sought a temporary restraining order against her husband. At the trial court hearing, Mr. Moran was represented by counsel and Ms. Monterroso was not. Both parties were assisted by a Spanish interpreter. The trial court asked if the matter could be resolved and Mr. Moran's counsel told the court that the parties had been to conciliation court and agreed to mutual restraining orders, but that they could not agree on child custody and visitation.² The trial court asked Ms. Monterroso if she agreed to a mutual restraining order and she said "yes."³ The trial court made no findings of fact, simply altered the proposed restraining order submitted by Ms. Monterroso to include mutually binding provisions, and had each party sign it. Ms. Monterroso appealed the trial court's issuance of mutual restraining orders. The two issues addressed by the appeals court were whether or not a reversal was required if the trial court did not make the detailed findings of fact required by statute and whether or not Ms. Monterroso was estopped from seeking appeal of the trial court's decision because she agreed to the mutual restraining order.⁴ The appeals court found that "because the trial court did not fully explain the import of a mutual restraining order, there is no indication that Ms. Monterroso could appreciate all of its ramifications. Under these circumstances, it cannot be said that Ms. Monterroso consented to the mutual restraining order such that such she is estopped from seeking redress on appeal."⁵ The appeals court reversed the trial court's decision, remanded the case, and directed the trial court to rule upon the merits of Ms. Monterroso's application for a restraining order. In their opinion, the court stated, "[w]e exhort them [trial courts] to recognize that an improvidently issued mutual restraining order may adversely impact victims of domestic violence and continue their victimization."⁶

¹ *Monterroso v. Moran*, 135 Cal. App. 4th 732 (2006).

² *Id.* at 735.

³ *Id.*

⁴ *Id.* at 736. See California Family Code, § 6305, "The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense."

⁵ *Supra* note 1 at 737.

⁶ *Id.* at 738.

This is a Supreme Court of North Dakota case involving the interpretation of the state's protection order statute. The parties, Angela and John Ficklin, were married in 2000. After a fight over the weekend of August 13-15, 2005, Angela Ficklin filed a petition for a temporary restraining order requesting that John Ficklin leave the family home. In her petition, Ms. Ficklin alleged that Mr. Ficklin threatened to burn down the house, treated her like a child, and called her a "bitch."⁸ A temporary restraining order was issued and Mr. Ficklin moved out of the house after he received notice of the order. At the hearing on the permanent protection order, Ms. Ficklin testified that Mr. Ficklin's statement that if he didn't get to stay in the house, he would burn it down made her feel afraid and that her children's safety could be in danger.⁹ Mr. Ficklin testified that he did not say it in a threatening way.¹⁰ Ms. Ficklin's testimony also included statements about a fight three years earlier where Mr. Ficklin assaulted her and she hit and slapped him. The court granted the permanent protection order for six months and using the standardized protection order form, found that Mr. Ficklin represented a credible threat to the safety of Ms. Ficklin and her children.¹¹ Mr. Ficklin appealed and argued that there was a lack of physical violence and the court misinterpreted the protection order statute. Under the North Dakota protection order statute, the petitioner must show actual or imminent domestic violence.¹² The statutory definition of domestic violence includes the infliction of fear of physical harm and the harm feared must be actual or imminent.¹³ In their ruling, the Supreme Court of North Dakota faulted the trial court for making no findings regarding the imminent nature of the threat or the history of physical harm. The court emphasized the responsibility of courts to "make accurate and adequate findings to support the issuance of an order."¹⁴ The Supreme Court of North Dakota reversed the protection order, finding that although there was evidence supporting Ms. Ficklin's fear, the evidence in the record did not show that her fear was of imminent harm.¹⁵ The court went on to state that the trial court had misinterpreted the statute and made inadequate findings.¹⁶

Custody❖ *In re the Marriage of Brown and Yana*¹⁷

On February 2, 2006, the Supreme Court of California released its decision in this custody relocation case. In 1999,

⁷ *Ficklin v. Ficklin*, 2006 N.D. LEXIS 47.

⁸ *Id.* at *2.

⁹ *Id.* at *3.

¹⁰ *Id.*

¹¹ *Id.* at *5.

¹² N.D.C.C. 14-07.1-02(4).

¹³ N.D.C.C. 14-07.1-01(2).

¹⁴ *Ficklin v. Ficklin*, 2006 N.D. LEXIS 47, at *10.

¹⁵ *Id.* at *13.

¹⁶ *Id.* at *14.

¹⁷ *Brown and Yana*, 127 P.3d 28 (Cal. 2006).

a trial court awarded Nicole Brown sole legal and physical custody of her son, Cameron. Ms. Brown subsequently remarried and had two children with her second husband. On June 12, 2003, Ms. Brown's ex-husband, Anthony Yana, filed an order to show cause to modify legal custody from sole to joint, to expand his visitation, and to appoint counsel for Cameron. Ms. Brown then informed Mr. Yana that she was moving with Cameron to Las Vegas, Nevada. On June 27, 2003, Mr. Yana responded by filing an order to show cause to restrain Ms. Brown from moving with Cameron and to request a psychological evaluation and evidentiary hearing on the relocation issue.¹⁸ On the same day, Ms. Brown filed an order to show cause to adjust Mr. Yana's visitation schedule upon her move to Nevada. In supporting documents, Ms. Brown stated that her husband had taken a job in Las Vegas, that Cameron was very close to his half siblings, and that there was no basis for Mr. Yana's requested relief because Cameron was doing well in her sole custody. Ms. Brown also argued that she had a legitimate reason for the move and that the move would not constitute a change of circumstances.¹⁹ The trial court determined that because Ms. Brown had sole legal and physical custody, Mr. Yana was required to assert some detriment to warrant an evidentiary hearing. The court found that Mr. Yana was entitled to a hearing and later established a modified visitation schedule. Mr. Yana appealed this decision and the Court of Appeal reversed, holding that, in a relocation case, "a parent with no legal or physical custody rights is entitled to an evidentiary hearing."²⁰ Ms. Brown appealed this decision. The California Supreme Court concluded that when a final custody order is in place, and "a noncustodial parent seeks to modify custody in response to a proposed relocation, the trial court must apply the changed circumstance rule."²¹ The noncustodial parent first must show that relocation will cause detriment to the child and if he or she meets this burden, the court will then evaluate whether a change in custody is in the child's best interests.²² The California Supreme Court reversed the Court of Appeal's decision that Mr. Yana was entitled to an evidentiary hearing and remanded the case to that court for further proceedings.

Civil Gideon – Child Support

❖ *Pasqua v. Council*²³

This case was brought by three indigent parents who were jailed after being held in contempt for failure to pay child support. They brought a Section 1983 action against state court judges and the administrative director of state courts,²⁴

¹⁸ *Id.* at 30.

¹⁹ *Id.* at 31.

²⁰ *Id.* at 32.

²¹ *Id.* at 35.

²² *Id.* at 36.

²³ *Pasqua v. Council*, 2006 WL 551876 (N.J.).

²⁴ 42 U.S.C.A. §1983 is part of the Civil Rights Act of 1871. Section 1983 makes individuals operating under "statute, ordinance, regulation, custom, or usage of any State or Territory

The parents argued that they had a right to appointed counsel under the Due Process Clause of the Fourteenth Amendment because they faced the loss of their liberty.²⁵ In this case, the Supreme Court of New Jersey sided with the parents and found that the "Fourteenth Amendment Due Process Clause mandates the appointment of counsel to assist parents found to be indigent and facing incarceration at child support enforcement hearings."²⁶ The court specifically ruled that at such hearings, "courts must advise litigants in jeopardy of losing their freedom of their right to counsel and, if indigent, of their right to appointed counsel."²⁷ The court denied the parents claim that they were entitled to reasonable attorney's fees and costs as the prevailing party in a Section 1983 action.²⁸

Criminal – Battered Woman's Syndrome

❖ *Thomas v. Wyoming*²⁹

On March 22, 2006, the Supreme Court of Wyoming issued a decision in which a defendant, Francis Thomas, appealed his convictions for aggravated assault and battery and habitual criminality. Among other things, Mr. Thomas argued that error occurred when the State used battered woman's syndrome in an impermissible manner and elicited irrelevant victim impact testimony.³⁰ The affidavit supporting the charges in this case indicated that while traveling along an interstate highway in Wyoming, Mr. Thomas hit the victim several times. Mr. Thomas drove onto a side road while the victim tried to escape from the moving vehicle. Mr. Thomas grabbed and dragged her beside the vehicle as he continued to accelerate down a dirt road. He then stopped the vehicle, dragged the victim, and attempted to strangle her. Mr. Thomas left the victim in the snow for approximately an hour before returning, apologizing, and offering to take her to the hospital. Instead, he took her to the motel where they were staying and left her there. The victim called 911, a police officer arrived, and the officer took her to the hospital.³¹ The victim initially told law enforcement that someone else inflicted her injuries. When she still was at the hospital, the victim subsequently indicated that Mr. Thomas attacked her.³² During trial, the State had a psychiatrist testify about battered woman's syndrome and the general behaviors associated with the syndrome.³³ The

or the District of Columbia" who deprive other individuals of any federal right liable to the injured party.

²⁵ *Pasqua v. Council*, 2006 WL 551876, at *1.

²⁶ *Id.* at *8.

²⁷ *Id.*

²⁸ 42 U.S.C.A. § 1988(b) states that a prevailing party in a Section 1983 action may be awarded by the court reasonable attorney's fees as part of the costs except when the action was brought against a judicial officer who was acting within his/her jurisdiction.

²⁹ *Thomas v. Wyoming*, 2006 Wyo. LEXIS 37.

³⁰ *Id.* at *2.

³¹ *Id.* at *3-4.

³² *Id.* at *4.

³³ *Id.* at *19.

State used this testimony to explain the victim's behavior and her relation to Mr. Thomas. On appeal, Mr. Thomas argued that this testimony was improperly allowed because it concerned character evidence regarding his behavior. In ruling on the issue, the Wyoming Supreme Court turned to a 2004 case issued by the same court in which the court found that expert testimony concerning battered woman's syndrome was admissible for the purposes of explaining the victim's conduct and the characteristics of the relationship.³⁴ The court ruled against Mr. Thomas and found that the doctor's testimony only "concerned the behavior of victims of abuse and did not address the characteristics or behaviors of perpetrators of abuse. The State used the testimony in closing argument to explain why someone who had been abused would go back into or stay in the abusive relationship. This is a permissible use of battered woman's syndrome evidence."³⁵ The court also ruled against Mr. Thomas on all other issues in his appeal and affirmed his conviction.³⁶

Criminal – Protections for Unmarried Survivors

❖ *State v. Ward*³⁷

In this decision issued on March 24, 2006, the Court of Appeals for Greene County, Ohio concluded that the Ohio domestic violence criminal statute does not extend protections to a "person living as a spouse" because the statute is contrary to the Defense of Marriage Amendment to the Ohio Constitution.³⁸ Karen Ward was charged with the crime of Domestic Violence for allegedly assaulting her live-in boyfriend. Ms. Ward argued that the charge should be dismissed because the criminal statute extended protection to a person "living as a spouse," violating the Ohio Constitution's Defense of Marriage Amendment. The trial court agreed with Ward, finding the statute unconstitutional, and dismissed the indictment. The State appealed the decision. In analyzing the issue, the appeals court first looked to determine the meaning of the constitutional amendment. The court interpreted the amendment to mean that "the legal status of a *de facto* marital relationship shall neither be created nor recognized in Ohio as having the same effect as the legal

³⁴ *Kenyon v. State*, 96 P. 3d 1016 (Wyo. 2004).

³⁵ *Thomas v. Wyoming*, 2006 Wyo. LEXIS 37, at *24.

³⁶ *Id.* at *38.

³⁷ *State v. Ward*, 2006 Ohio App. LEXIS 1318.

³⁸ OHIO REV. CODE ANN. §2919.25(F)(1)(a)(i). The criminal statute in question reads, "Family or household member means any of the following: (a) Any of the following who is residing or has resided with the offender: (i) A spouse, or person living as a spouse, or a former spouse of the offender. . . ." *Id.* The Defense of Marriage Amendment is found at, Article XV, Section 11 of the Ohio Constitution. It states, "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of the marriage." This amendment was made to the Ohio Constitution by popular vote following an initiative petition.

status of a *de jure* marital relationship."³⁹ As the second step of their analysis, the court looked to see if the provision which extended the protection of the domestic violence statute to "a person living as a spouse" violated the constitutional amendment. The court concluded that a "person living as a spouse," "for purposes of the Domestic Violence statute, is the sort of quasi-marital relationship that the Defense of Marriage amendment was concerned with."⁴⁰ In issuing their decision, the majority acknowledged that Ohio courts have reached opposite conclusions on this issue and opined that the "Supreme Court of Ohio will ultimately be called upon to decide this issue."⁴¹

Criminal – The Fourth Amendment and Warrantless Searches

❖ *Georgia v. Randolph*⁴²

In *Georgia v. Randolph*, the Supreme Court of the United States took up the issue of whether or not consent given by one occupant refuses to allow such a search. In this case, after a "domestic dispute," Janet Randolph complained to the police that her husband had taken their son.⁴³ The police arrived at the marital home and Ms. Randolph told the officers that her husband was a cocaine user. She also explained to the police that she had recently returned to the marital home after the couple had separated two months earlier. Scott Randolph then returned home and told the police that he took the couple's son to the neighbor's house because he was concerned that his wife would take the boy away again. He denied cocaine use and told the police that his wife abused alcohol. One police officer took Ms. Randolph to recoup her son and when they returned to the marital home, she informed the police that there was drug evidence in the house. The officers asked for permission to search the house and Mr. Randolph "unequivocally refused."⁴⁴ The officers then asked Ms. Randolph for consent to search and she agreed. She took the officers to Mr. Randolph's bedroom, where one officer found and collected evidence of cocaine. The officer then left the house to collect an evidence bag and call the district attorney's office. The officer was instructed by the district attorney's office to stop the search and apply for a warrant. When the officer returned to the house, Ms. Randolph withdrew her consent. After obtaining a search warrant, the police returned to the house and completed their search, gathering evidence that was later used to indict Mr. Randolph for possession of cocaine.

³⁹ *State v. Ward*, 2006 Ohio App. LEXIS 1318, at *14.

⁴⁰ *Id.* at *16.

⁴¹ *Id.* at *4.

⁴² *Georgia v. Randolph*, 2006 U.S. LEXIS 2498.

⁴³ *Id.* at *8.

⁴⁴ *Id.* at *9.

Mr. Randolph filed a motion with the trial court to suppress the evidence because it was a product of a warrantless search. The trial court denied his motion and ruled that Ms. Randolph had the authority to consent to the search. The Georgia Court of Appeals reversed the trial court's decision.⁴⁵ The Georgia Supreme Court upheld the Court of Appeals decision, finding that "the consent to conduct a warrantless search of a residence given by an occupant is not valid in the face of the refusal of another occupant who is physically present at the scene to permit a warrantless search."⁴⁶ The United States Supreme Court affirmed the state Supreme Court's decision, stating that "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him."⁴⁷ Both the majority and dissent opinions addressed how this decision will impact domestic violence calls. For the majority, Justice Souter wrote that "this case has no bearing on the capacity of the police to protect domestic victims."⁴⁸ Souter distinguishes the ruling in this case from "[t]he undoubted right of the police to enter in order to protect a victim."⁴⁹ Justice Roberts wrote in his dissent that, "[p]erhaps the most serious consequence of the majority's rule is its operation in domestic abuse situations, a context in which the present question often arises."⁵⁰

UPCOMING LAPTOP EVENT:

❖ *Institute:* Survivor-Centered Advocacy: Identifying and Assessing the Needs of Battered Women, Sexual Assault and Stalking Survivors
September 18-19, 2006 Pittsburgh, PA

⁴⁵ *Randolph v. State*, 590 S.E. 2d 834 (Ga. 2003).

⁴⁶ *State v. Randolph*, 604 S.E. 2d 835, 836 (Ga. 2004).

⁴⁷ *Georgia v. Randolph*, 2006 U.S. LEXIS 2498, at *2.

⁴⁸ *Id.* at *27. Notably, Justice Souter also wrote in the majority opinion that, "we recognize that domestic abuse is a serious problem in the United States." *Id.* at *26.

⁴⁹ *Id.* at *28.

⁵⁰ *Id.* at *63.

TRAININGS FOR LAV GRANTEES

FOR MORE INFORMATION ON TRAININGS OFFERED TO LAV GRANTEES BY OTHER TECHNICAL ASSISTANCE PROVIDERS, PLEASE CONTACT THESE ORGANIZATIONS:

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202.662.1737

LEGAL ASSISTANCE PROVIDERS' TECHNICAL OUTREACH PROJECT

www.laptop.pcadv.net
202.265.0967

LEGAL MOMENTUM, IMMIGRANT WOMEN PROGRAM

www.legalmomentum.org/issues/imm
202.326.0040

LEGAL RESOURCE CENTER ON VIOLENCE AGAINST WOMEN

www.lrcvaw.org
301.270.1550

NATIONAL INSTITUTE OF TRIAL ATTORNEYS

www.nita.org
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