Supreme Court to Decide if Police Must Safeguard Due Process in the Enforcement of Protective Orders

On March 22, 2005, the U.S. Supreme Court heard oral arguments in Gonzales v. Town of Castle Rock, Colorado, to determine if law enforcement officials violated the constitutional rights of a victim of domestic violence when her protective order was not enforced and procedures were not in place to ensure the safety of her family.

The case was brought by Jessica Gonzales, whose three daughters were murdered by their father after Castle Rock police refused to enforce the court-issued protective order against him.

The National Network to End Domestic Violence (NNEDV) and its member state domestic violence coalitions, including the National Center, submitted an amicus brief asking the Court to recognize the constitutional rights of Ms. Gonzales and affirm the Court of Appeal’s ruling in her favor. “The loss of Ms. Gonzales’s children at the hands of their father is senseless and could have been prevented,” said Lynn Rosenthal, Executive Director of NNEDV. “Police officers are responsible for protecting our communities. The police need to have some procedural safeguards in place when they deny a request to enforce an order.”

Twenty-five to 31 percent of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives, and from 3 million to 10 million children witness that abuse each year. Because domestic violence tends to increase when a victim makes attempts to separate from an abuser, protective orders — commonly referred to as restraining orders — offer abused women a chance to live a life without abuse. Studies show that the majority of victims who seek protective orders complain of serious abuse: physical assaults.

— continued on page 6

Fort Campbell Community Collaboration Project Starts Strong

Fort Campbell Installation Commander Major General Thomas R. Turner hosted the kickoff luncheon, which included welcoming remarks from Colonel Dave Martino, Chief of Staff for the 101st Airborne Division (Air Assault) and Fort Campbell.

Since 70 percent of Fort Campbell’s soldiers live off post, surrounding community agencies such as law enforcement, county courts and victim advocacy agencies need to work with the military to increase access to services and enhance safety for victims and to hold offenders accountable.

The Battered Women’s Justice Project of Minneapolis, MN, is subcontracting with the National Center to assist in implementing this project, which is funded by the Office on Violence Against Women and the U.S. Department of Defense.

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Mission

The National Center on Domestic and Sexual Violence designs, provides, and customizes training and consultation; influences policy; promotes collaboration; and enhances diversity with the goal of ending domestic and sexual violence.

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Altria Group, Inc., recently made a generous contribution to support the National Center's website:
www.ncdsv.org

Thank you, Altria!

NOTICE

SPRING 2005

SPRING 2005

NOTICE

111 Dispatcher Training:
Domestic Violence Calls

The National Sheriffs’ Association (NSA) and the National Center on Domestic and Sexual Violence are conducting an innovative domestic violence training for emergency dispatchers and call takers. The next class is scheduled for May 11-12, in Arcadia, WI. The goal is to train rural dispatchers to respond properly to domestic violence calls. More information is available at: www.ncdsv.org/ncd_ongoingtrain_dvtep.html

Notices

in this document are those of NCDSV and do not necessarily represent the official position or policies of U.S. Department of Justice. This publication is also supported in part by Grant 2003-WT-BX-K004, awarded by the Office on Violence Against Women, U.S. Department of Justice. Points of view expressed are those of the author(s) and do not necessarily reflect the position of the U.S. Department of Justice.

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100 Spencer Street, Suite 200
Hastings, MN 55033
T 888-623-0855
F 763-431-2180
www.ncdsv.org

T he city of New York settled the class action lawsuit, Nicholson v. Scoppetta, 332 F.3d 100 (2d Cir. 2003), on the merits. The suit challenged the allowable practice of the City's Administration for Children's Services (ACS) of removing children from victims of domestic violence on the sole basis that the children were exposed to domestic violence.1

The case came before the Court of Appeals as a result of a federal civil rights action challenging the removal of half of battered women's children and their children against ACS, the City and State of New York (city and state), and various city departments.2 The lawsuit alleged that the ACS's practice and policy of removing children from battered mothers “because, as victims, they engaged in domestic violence” violated the constitutional rights of both mothers and children to: preserve their family integrity; retain custody, custody, and control of their children; and not be forcibly separated from their children unless found unfit.3 The suit alleged that ACS was holding battered women responsible for abuse committed by other individuals because it was administratively easier to punish the mother by separating her from her children.4

On March 18, 2002, an injunction against ACS was granted ordering that all such policies and practices cease immediately.5 Because the lower court believed that some of the constitutional questions raised in the class action lawsuit could not be decided without guidance as to certain unresolved issues in New York’s child protection laws, it requested that the Court of Appeals respond to three certified questions. Specifically, the Court of Appeals was asked to determine: whether a battered woman can be charged with neglect not because she is a victim of domestic violence against her parent, without more, as a form of neglect warranting removal. This case will provide guidance and instruction for states across the country experiencing similar issues.7

T o ensure that ACS complies with the Nicholson decision, ACS, as part of the settlement under the class action lawsuit, is required to establish a dispute resolution procedure for disputes concerning the application of the principles of the law set forth in the Stipulation & Order of Settlement.8 Pending ACS’s compliance with the decision, the plaintiffs’ request for permanent injunction was suspended until September 1, 2005.

While this case is specific to New York law, it is the first class action lawsuit in the country to challenge a state agency’s policy of treating children’s exposure, without more, as a form of neglect warranting removal. This case will provide guidance and instruction for states across the country experiencing similar issues.

Sources referenced are on page 7.

Origially published in Synergy (vol. 9, no. 1, winter 2005). Reprinted with permission of Altria Group, Inc., formerly Synergy, a publication of the National Council of Juvenile and Family Court Judges, Family Violence Department.
The Violence Against Women Act (VAWA) is up for reauthorization this year. As reported in the Fall 2004 edition of this newsletter, VAWA’s passage in 1994 and its reauthorization in 2000 dramatically changed the landscape for victims who previously suffered in silence with limited assistance. Under the leadership of Senator Joseph Biden (D-DE), VAWA has been remarkably effective in moving society in the direction needed to end domestic violence, sexual assault, dating violence and stalking. Reauthorization and expansion of VAWA are the next vital legal steps. Like its predecessors, the 2005 reauthorization has the potential to vastly improve the services and funds available to help victims.

In the coming weeks, the VAWA 2005 reauthorization is expected to be introduced in Congress. The National Task Force to End Sexual and Domestic Violence (STOP) Grants, initially enacted in the 1994 legislation, were designed to improve interactions among victims’ services, victims, law enforcement, prosecutors and the courts. Reports indicate that victims often find themselves trapped in a system with no clear route between the separate components. Congress provided a means to make victims safer and supported more collaborative efforts. One service provider explained, “STOP Grants are the best place to start helping victims. As we develop our community, transition from service to service, the system ensures we’re making things easier, not harder for victims.”

While STOP Grants have been enormously successful, advocates, service providers, and law enforcement officials believe there are several areas where improvement is necessary:

1. Expanding authorization to $225 million per year to support the grants.
2. Emergency and long-term victims’ services programs;
3. Adding new definitions for key crimes and practices for STOP, LSPA, and related programs;
4. Requiring the U.S. Department of Justice and its grantees to develop improved mechanisms for providing linguistically accessible and culturally specific services.

Advocates, service providers and law enforcement officials agree that a key component to greater success is a requirement that grants to assist tribes and states have a diverse, national coalition of advocates, service providers, and law enforcement officials agree that a key component to greater success is a requirement that grants to assist tribes and states have a diverse, national coalition of advocates, service providers, and law enforcement officials, specifically those recommendations addressing the availability of confidential services for victims involved in the military. The commission would facilitate collaborations between state and local agencies and military installations, as well as between DOD and other federal agencies. Advocates in Congress should build on its past efforts by providing for research and the publication of information necessary to enhance the availability and efficacy of batterer intervention programs targeting military members. Along these lines, included in the 2005 reauthorization proposal are provisions for public education and prevention campaigns, development of contractual relationships with various support, hotlines, availability of sexual assault nurse examiners and implementation of the Victim Assistance Program.

**Recommendations for VAWA 2005**

**STOP Grants**

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**Sexual Assault Services Act**

The Sexual Assault Services Act (SASA) was developed in recognition of the vital role of rape crisis centers. Many factors influence an individual’s response to and recovery from sexual assault, including the social support network available. VAWA advocates and service providers believe that despite the tremendous progress these centers have made in meeting victims’ needs, their ability to help has historically been hampered by a significant lack of resources. There has never been a federal funding stream dedicated solely to provision of direct services for victims of sexual violence, and shortage of state-level funding caused by budget cuts in the recent years has exacerbated the problem.

Many centers have been forced to reduce staff, change or lose administrators, or contract out, or assume direct-service duties, have staff work multiple jobs, or reduce or end their hours of hotline operation — among the most crucial services the centers provide. This lack of resources has been particularly daunting to underserved populations, in which victims experience sexual assault at very high rates. Even more troublesome is that many communities still have no accessible rape crisis centers at all. The lack of accessible rape crisis centers is a particular problem given that one in six women and one in 15 men in the U.S. have experienced an attempted or completed rape as either a child or an adult.

The proposed SASA will create desperately needed funding for direct services for sexual assault victims and will also provide resources for state sexual assault coalitions. SASA would also award grants to assist the states in their effort to provide services to adults and minor sexual assault victims and their family and household members. The grants could be used for general improvements in services and capacity and could provide training and technical assistance on the passage of VAWA 1994 and 2000 and in writing the proposals for the VAWA 2005 reauthorization.

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**Lynn Rosenthal** is the Executive Director of the National Network to End Domestic Violence (NNEDV), in Washington, D.C. "Advocates are recommending that the proposed reauthorization include the approach that a survivor’s problems are not just legal or criminal in nature — and a complete solution must not be confined to those areas either. Rather, it must include measures designed to help survivors become self-sufficient in other areas of life, including housing, health care and the workplace."
Employer Fails to Heed Protective Order, Resulting in Kidnapping, Rape and $2.25 Million in Favor of Domestic Violence Victim

In February, a federal jury awarded a $2.25 million verdict to a Maryland security guard who was injured in a workplace attack by a former employee. The case underscores the need for employers to develop and strictly adhere to policies related to protective orders for employees who obtain domestic violence protective orders.

The verdict, posted in federal district court in Greensboro, NC, awarded $2 million in punitive damages to Dominique Gantt for failing to protect employees from acts of violence. In the workplace, they can have far-reaching effects beyond the victim and the perpetrator.

Other Areas of Interest

Proposals for VAWA 2005 also aim to enhance victim services through public information campaigns designed to teach immigrant, racial and ethnic communities the importance of protective orders. It is hoped that these communities would require the active participation of members of the community in the campaign development.

These recommendations, championed by Rep. Linda Scola (D-FL-12), (hereinafter referred to as “Scola”), seek to increase awareness about services available to these communities and to encourage them to be more involved in creating solutions.

However, the effectiveness of VAWA is evident in the progress that continues to be made. We increasingly see local, state, and national laws changing and responding to victim’s needs, and as our laws become more protective and over-increasing numbers.

The VAWA 2005 reauthorization is a step toward toward a society in which domestic violence is not accepted. It is a step toward toward a society in which domestic violence and stalking are eradicated. We have come far, but we still have a long way to go.

For more information about the VAWA 2005 reauthorization, visit www.ncdsv.org.

“We are encouraged by this decision and we hope it will serve as a call to action for employers to develop and strictly adhere to policies related to protective orders for employees who obtain domestic violence protective orders,” said Dion.

"Supreme Court to Decide," continued from page 1

threats to kill or harm her or attempts to take the children. The protective orders are a valuable tool for safeguarding victims from further violence as they make their way to shelter. However, in Massachusetts showed that only six percent of protective-order defendants were convicted of violating the order.

“Protective orders are not merely a piece of paper,” said Fernando Llaguara, a member of MINT, Levin, Cohn, Ferri, Globsky and Popocan and chairman of NNEDV. “They are life-saving tools. Law enforcement officials should have policies in place for dealing with protective orders to violated to ensure battered women who are in danger receive due process.”

The court ruling is expected this summer.

The case, the amicus brief and several news accounts are available at www.ncdsv.org/publications.protectororders.html

VAWA 2005 Reauthorization, continued from page 3

Gal Parr
Twenty-year veteran of family law

Gal Parr is the founding treasurer of the National Center’s Board of Directors and the family law attorney in private practice in Austin, TX. After law school, her first job was at the Texas Department of Corrections (now the Department of Criminal Justice) representing inmates.

She was appointed to the bench of the 3rd Court of Appeals in the State of Texas, as the only judge who has had an extensive background in domestic violence. Parr left the bench and is a women’s advocate in Austin, TX.

In her practice, Parr handles family law cases and some of her clients are victims of family violence, but she does not continually litigate by the way in which lawyers can have a positive impact on family dynamics. “Lawyers can influence the judge, but they can also affect how a family comes through the process. We have to be courageous to our obligation to not make things worse. These are not casual entities, they are individuals who are affected by their family’s actions. And any more. No matter how much is necessary to represent your client’s interests, and it is a fine line.”

For more information on Parr, visit www.ncdsv.org/aboutncdsv, and then on Board of Directors.

Class Action Lawsuit, continued from page 3


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Register Now for Expert Witness Training!

The National Center is presenting a training for expert witnesses in domestic violence cases, October 6–7, 2005, in Austin, TX. This 1½-day training is for domestic violence service providers and professionals with advanced degrees who are interested in being considered as expert witnesses in court cases involving domestic violence.

Registration is $75 and is limited to 50 participants. Cosponsors include the University of Texas at Austin School of Social Work, Institute on Domestic Violence and Sexual Assault; the University of Texas School of Law; SafePlace of Austin; and the Travis County Task Force on Domestic and Sexual Violence. For more information, visit www.ncdsv.org or e-mail Vickie Smith at vsmith@ncdsv.org.

This training has been coordinated with the Fifth Biennial Trapped by Poverty/Trapped by Abuse National Research Conference (see blurb, far right).

PROPOSED RECOMMENDATIONS FOR VAWA 2005 REAUTHORIZATION

- Children and Youth
- Crimes and Courts
- Economic Security
- Health Care Response
- Housing
- Immigrant Issues
- Prevention
- Responding to Communities of Color
- Services and Outreach
- Services for Military Victims
- Sexual Assault Services
- Tribal Programs

For information about Sexual Assault Awareness Month, visit the National Sexual Violence Resource Center at www.nsvrc.org.