

AGENTS FOR CHANGE

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Agents for Change
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Battered Women's Legal
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Fair Housing Act Prohibits Discrimination Against Domestic Violence Victims

On March 10, 2005, the Federal District Court of Vermont handed down a significant victory for battered women. The Court held that the Fair Housing Act prohibits discrimination against victims of domestic violence. The American Civil Liberties Union was co-counsel with Vermont Legal Aid in the discrimination case *Bouley v. Young-Sabourin*.

On October 15, 2003, Ms. Bouley's husband, Daniel Swedo, physically abused her, she called the police and fled her apartment. Mr. Swedo was arrested and eventually pled guilty to a number of criminal charges. Ms. Bouley filed for a restraining order and Mr. Swedo never returned to the apartment.

On October 18, 2003, Ms. Bouley's landlord, Ms. Young-Sabourin, went to Ms. Bouley's apartment and attempted to discuss religion with Ms. Bouley. Ms. Young-Sabourin then left frustrated. Later on the 18th, Ms. Bouley received a letter from her landlord asking her to move out of the apartment by November 30th, because of her belief that violence would continue to happen.

Ms. Bouley sued claiming that Ms. Young-Sabourin violated the Fair Housing Act of 1968, 42 U.S.C. §§ 3601, by discriminated against her on the basis of sex and religion. The Fair Housing Act makes it unlawful, "[t]o refuse to sell or rent after the making of a bona fide offer, or to otherwise refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). Ms. Bouley argued that she was being evicted because she was a victim of domestic violence, which is tantamount to sex discrimination. The court agreed, finding that less than 72 hours after Mr. Swedo assault Ms. Bouley, Ms. Young-Sabourin tried to evict her. The Court stated that the timing of the eviction letter was enough for a reasonable jury to conclude that sex discrimination fueled Ms. Young-Sabourin's eviction action. The defendant settled shortly after this groundbreaking ruling.

Lenora Lapidus, the Director of the ACLU's Women's Rights Project said, "Women who have been abused need to be protected from their abuser[s], not penalized for surviving the assault. If women know that seeking help won't jeopardize their home or their job, they are far better able to escape from violent relationships." Emily Martin, a staff attorney with the ACLU's Women's Rights Project stated, "For the first time, a court has ruled that under the Fair Housing Act, a woman cannot be

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Upcoming Events at BWLAP

- **June 22**

Hot Topics in

Orders for Protection at
Tubman Family Alliance

- **August 11-12**

New Laws, Alexandria

- **August 18-19**

New Laws, Lanesboro

- **August 22-23**

New Laws, White Earth
Reservation

- **September 8-9**

New Laws, Marshall

- **September 15-16**

New Laws, Duluth

- **September 19-20**

New Laws, Twin Cities

Plan Ahead for New Laws Training Series!

New Laws is an annual training held by BWLAP to update advocates and others about laws affecting battered women. Each year BWLAP holds the training in six locations throughout the state – two in the North, two in the South, one in the metro area, and one in central Minnesota. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend.

New Laws includes updates on state, federal, and tribal law, case law, and special focus sessions; this year's special focus topic is pro se appeals.

The following is the 2005 New Laws schedule: Alexandria, August 11-12, Lanesboro, August 18-19, White Earth Reservation, August 22-23, Marshall, September 8-9, Duluth, September 15-16 and Twin Cities, September 19-20.

If you have any questions, please contact us. CLE credits will be applied for. Hope to see you there!

Welcome Dorian!

BWLAP is very proud to announce our newest staff member, Dorian Eder. Dorian comes to BWLAP with over eight years of domestic violence experience in Minnesota. Dorian is an experienced trainer. She has developed trainings on a variety of issues in domestic violence including sexual assault, legislative issues and child witness to violence. Specifically, Dorian has extensive experience and working knowledge of intersection between child protection and domestic violence. Dorian has also worked as a legal advocate and has vast knowledge about the legal system and the law in Minnesota. BWLAP is very excited that Dorian has joined our team, not just for her experience, but also for the enthusiasm and passion she has for the work. WELCOME!

Hello from Dorian Eder

Hello! My name is Dorian Eder and I am very happy to be introducing myself as the newest member of the BWLAP staff.

I've worked with many of you in the battered women's community over the past 8 years. I started my career as a volunteer in a hospital-based program and was soon working as a legal advocate at Home Free Community Programs in Hennepin County. I joined the Minnesota Coalition for Battered Women and worked in Southwestern Minnesota on a collaboration among battered women's advocates and child protection for three years. I've spent the past two years as a training and technical assistance consultant to battered women's programs. My special areas of expertise are in legal advocacy, legislative organizing and child protection issues.

I hope to spend the next couple of months reconnecting with advocates across Minnesota to discuss emerging legal issues, offer BWLAP's resources and discuss the upcoming New Laws training in the fall.

When I'm not on the road, I'll be here in the office available to answer your questions about legal and advocacy issues. Give me a call!

Immigration Corner

In our last issue we wrote an article in Spanish at *Punto de Vista Latino* called “Let’s Talk about Facts and Not about Preconceptions.” Because bi-lingual colleagues told me there would be useful to have that article also in English, so more people can have access to it, I will use this space to follow that suggestion.

It is said that “illegal immigrants” (as some people like to call undocumented immigrants) not only are responsible for the lack of jobs currently available in the market place, but also for the fact that lately minimum wages do not reflect the increase in the cost of life. Also, it is said that “illegal immigrants” are a social charge for our society, as they benefit inappropriately from social services.

Let’s confront those ideas with official data obtained from the National Immigration Law Center’s web-page on April 2005. (www.nilc.org)

1. According to the 2000 U.S. Population Census, immigrants within the U.S. territory constitute 11% of the whole population, reaching, at that moment, the amount of 30 million. It is estimated that currently the amount of immigrants accounts for no less than 35 million.
2. One of every 5 children born in the U.S. is born within an immigrant family.
3. Immigrants and American citizens live together in families: 85% of immigrant families with children, have family members with different legal immigration status, many of them already nationalized.
4. Immigrants contribute significantly to the U.S. economy. In the year 2000, immigrant population amounted for the 15% of the whole country’s labor force.
5. In the year 2000 immigrant men 16 years old and/or older had, in the whole country’s labor force, bigger participation (80%) than the same age men born in the U.S. had (74%).
6. During the year 1998, The National Academy of Science predicted that the U.S. Social Security Administration’s net benefit would reach \$ 500 billions, yet only if the immigration trend into the U.S. remained constant.
7. Immigrants work at low wage jobs, with scarce benefits. Only 7% of the whole U.S.’s work force is constituted by non citizens; however, 20% of the worst paid jobs are taken by immigrants.
8. While 28% of all workers in the U.S. earn less than \$ 7.5 per hour, almost 43% of immigrants earn less than \$ 7.5/hr.
9. Only 26% of working immigrants within the U.S. have health insurance.
10. Immigrants are not interested in welfare benefits. Immigrants receiving social benefits are proportionally less than the U.S. general population receiving welfare. Immigrants come to this country looking for work opportunities, not social benefits opportunities.
11. The different welfare benefits among different U.S. states, do not determine the immigrants settlement trends. During the years 1995 through 2000, the number of immigrant families with children in states with few and small social benefits, like for example Arkansas and Texas, grew up the double than the immigrant population in those states with important and numerous social benefits like California and Massachusetts.
12. Near 33% of low income citizens used Medicaid in the year 2001, while only 13.2% of low income immigrants used Medicaid.
13. Less low income immigrants’ families with children ask for TANF (Temporary Assistance for Needy Families) than low income citizens’ families with children do for the same benefit. .
14. The welfare restrictions for non citizens are mainly suffered for immigrant families’ children.
15. One third of the Medicaid whole amount of eligible children, who are not enrolled, are children born in immigrants’ families.
16. Even though U.S. children living with immigrants parents are eligible for Food Stamps, from years 1994 through 1999 their participation in the Food Stamp program declined 35%.

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thrown out of her home because she was battered.” Ms. Martin also stated, “This important ruling will ensure that when a woman is victimized by domestic violence, she is not doubly victimized with [an] eviction as a result.”

Punto de Vista Latino

Alerta! Luchemos hoy por el mañana de nuestro hijos, luchemos por el Dream Act!

En esta revista, en Febrero pasado comentábamos el resultado de una investigación llevada a cabo por Women’s Foundation sobre la situación socio-económica de las comunidades inmigrantes y de color en Minnesota. Las estadísticas que arrojaron dicha investigación mostraban no sólo la estrecha relación entre educación e ingreso, (en grandes números, a mayor educación mayor ingreso) sino también que la comunidad Latina es la que detenta menor nivel de educación universitaria comparada con otras comunidades de inmigrantes.

Esta realidad, que los latinos luchamos por revertir, tiene una explicación muy clara: el tipo de inmigración por la que la mayoría de los latinos debe optar tiene características propias que nos hacen más vulnerables a la pobreza. Por eso trabajamos sin descanso para romper el ciclo de la pobreza y darle a nuestros hijos la oportunidad de una vida mejor.

Y por eso, la exclusión del DREAM Act del omnibus bill fue la injusticia más grande que pudo acaecerle a las comunidades inmigrantes y en especial a la comunidad Latina.

El DREAM Act permite que jóvenes que han sido traídos por sus padres indocumentados a vivir en Minnesota años atrás, tengan la oportunidad de estudiar en universidades o colegios de Minnesota pagando como residentes del estado.

Por primera vez una propuesta de ley abre una ventana hacia nuestros sueños: da la posibilidad de que nuestros hijos accedan a una educación que los puede liberar de tener que trabajar en posiciones mal remuneradas, sin beneficios y sin seguro de salud, y lo que es peor aún, sin mayores proyecciones de mejor futuro. Paradójicamente, pese a no haber sido aprobado, el DREAM Act es apoyado por los dos partidos políticos más importantes de Minnesota.

Es que esta es una ley que no supone para el estado costo alguno. En efecto, desde el punto de vista fiscal el estado de Minnesota no asume ningún costo con la aprobación del DREAM Act y la economía general del estado se vería beneficiada, empezando por las Universidades y Colegios que tendrían mayores ingresos de dinero debido al aumento en el número de estudiantes registrados.

No obstante, pese a estos beneficios para la economía en general, sin explicación alguna y hacienda gala del más absoluto desprecio por las comunidades inmigrantes que dan vida a esta sociedad y a esta economía, el DREAM Act fue excluido por el Gobernador del estado del grupo de leyes prontas para su aprobación.

Este fue un golpe bajo fe inesperado, pero no todo está perdido, el DREAM Act aún puede ser aprobado, pero para ello necesitamos hacer sentir nuestra voz y hacer saber a los que hoy obstaculizan su aprobación que no olvidaremos y los haremos responsables por su injustificada acción.

Si usted quiere luchar por el futuro de sus hijos, no deje pasar un día más, comúíquese con nosotros o con Centro Campesino y únase a esta campaña por una vida mejor para nuestros hijos.

17. According to official data, children born within immigrants' families are more in danger of not receiving good social services than those children born within citizens' families:
- a) They are more in danger of being poor when they grow up (24% vs. 16%).
 - b) They are more in danger of not having health insurance (22% vs. 10%).
 - c) They are more in danger of receiving insufficient alimentation and/or nutrients (37% vs. 27%).

Evidently, the precedent official numbers make it very clear that immigrants are not a public charge in this country, yet quite the opposite; with their sacrifice they strengthen the fundamental basis of the U.S. economy, receiving in exchange scarce benefits.

Legislative Update

As of this printing, the Minnesota Legislature is still meeting in special session to work out final agreements on several bills, including the tax bill.

During the regular session agreement was reached on the Public Safety bill, including funding for crime victim services and criminal enhancements for offenders. Overall, this was a very productive session for battered women and their children.

Highlights of this legislative session include:

- Crime victim services funding at the Senate proposed level of \$1.24 million in 06-07 and \$1.24 million in 08-09.
- Battered women's shelter funding at \$400,000 in 06-07 and \$400,000 in 08-09.
- Strangulation of a family or household member will now be defined as a felony under the assault statute.

A many of you know, the past several sessions have been disappointing for battered women's advocates. The progress made this session represents a great turn-around upon which we hope to build in the years to come. Our success was due in no small part to your letters, phone calls, emails and testimony to your own legislators – keep up the good work.

An enormous debt of gratitude is owed to Lonna Stevens and the staff at MCBW. Lonna worked tirelessly and diligently to protect our interests while promoting the most significant positive change to the criminal code in more than 5 years. Senator Jane Ranum was instrumental in carrying our agenda and successfully defending it against stiff opposition. Please take some time to contact Lonna and Senator Ranum with your thanks.

Unfortunately, the legislative action this year is not all good news for battered women. The most significant negative impact is likely to be felt on the issue of child support. After several years of trying, a major overhaul of the child support guidelines was passed by both houses this year. The formula is complex, includes a reduction in child support obligations for non-custodial parents who have parenting time, and requires an automatic review in six months. There were far more dangerous provision which were stripped from the bill in conference committee, and what emerged was the result of significant compromise by all parties.

Detailed information about all the new laws passed this session will be presented in our annual New Laws training in August and September.

**CHECK OUT OUR
WEBSITE!
WWW.BWLAP.ORG**

OFP Advocacy Update: Parenting Time and Custody for "ROP Dads"

As you may be aware, current judicial practice in Hennepin County supports awarding parenting time and/or custody to "ROP Dads" (unadjudicated fathers who have signed a Recognition of Parentage) within Order for Protection proceedings. The interplay of the involved statutes, discussed below, allows for more than one interpretation of the issue. However, Hennepin County's current reading has great consequences for our clients and our advocacy needs to adapt.

First of all, it is necessary to understand the applicable statutes. A Recognition of Parentage (ROP) is a voluntary legal document that parents *may* sign to establish the legal relationship between a father and child when the father is not married to the child's mother. ROPs are governed by Minnesota Statute section 257.75, which states, "The recognition has the force and effect of a judgment or order determining the existence of the parent and child relationship under section 257.66." The section goes on to state that once a ROP is properly executed an "action to determine custody and parenting time *may* be commenced *pursuant to chapter 518* without an adjudication of parentage. Until the order is entered granting custody to another, the mother has sole custody." The section also states that the recognition is a basis for bringing an action to award custody or parenting time to either parent and for bringing actions related to child support and other financial matters.

Section 257.66, as referenced above, states that "custody and parenting time and all subsequent motions related to them shall proceed and be determined *under section 257.541*." Section 257.541 then states that "the biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established *under section 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156*." (Note that this provision does not include establishing paternity through the ROP statute, which is 257.75).

Indeed, section 257.541 goes on to state in subd. 3 that if paternity was recognized under the ROP provision, the father "*may* petition for rights of parenting time or custody *in an independent action under section 518.156* (Commencement of custody proceeding). This proceeding must be treated as an initial determination of custody and 518's provisions apply with respect to the granting of custody and parenting time. The action to determine custody and parenting time may be commenced without an adjudication of parentage but the "proceedings *may not be combined with any proceeding under chapter 518B* (Minnesota's Domestic Abuse Act).

The Recognition of Parentage form, which the parties sign, also specifically states that the ROP does not give custody or parenting time rights to the legal father but that it does give the father "*the right to ask the Court* for custody or visitation."

Until recently, the accepted view of these statutes was that ROP fathers had to take the affirmative step of opening either a paternity or family file to seek custody or parenting time. In such files, the Courts have much greater resources to determine the best interests of the child. However, the Hennepin County Court has now decided that pursuant to the above statutes and 518B, they have jurisdiction over these issues in OFP matters.

The legal argument that unadjudicated fathers cannot be awarded custody and parenting time within the context of a domestic abuse matter continues to have merit and should still be made. However, advocacy programs must begin to advise their clients that petitioning for an Order for Protection has become risky on a whole new level. The award of an OFP against a woman's batterer can now also result in an enforceable court order giving the batterer *new* legal rights to the child.

As we know, a batterer will continue to seek ways to maintain contact with his survivor once she petitions for an OFP. Obviously, the best way to do this is by seeking visitation and custody arrangements that will inevitably lead to contact between the batterer and the mother. There is, of course, the argument that children and fathers deserve and need their time together and that parenting time is in the child's best interests. While that argument ab-

solutely has merit in most family cases, it simply cannot be *assumed* within the context of domestic abuse cases.

We must continually remind the court that if it is ordering an OFP, it is because the woman is *not safe* with the Respondent. How can the court then find, given the limited time for hearings, that parenting time between the child and his abusive father is generally a good thing? Such a finding discounts both the issue of power and control and the detrimental effects domestic violence has on children. It ignores the fact that court jurisdiction exists because of violence by the father. Therefore, we must argue that custody and parenting time decisions for ROP fathers – fathers with no current rights to custody and visitation – must be handled within a family or paternity file where the resources exist to fully evaluate the circumstances.

We must have a conversation with our clients apprising them of the risks involving their children. Unfortunately, this conversation has resulted in women deciding not to proceed with an OFP petition. While this result is no doubt unintended, it is happening. It may be a better option for you to work with the client on safety and escape planning than to proceed with an OFP. This is because an OFP granting a ROP father new custody and/or parenting time rights will make "escape" legally impossible.

We will be discussing this issues and other important issues around OFPs in our seminar entitled "Hot Topics in OFPs" on June 22nd and at our New Laws Training in August and September.

Conceal and Carry Bill Re-Enacted

On May 24th, 2005, Governor Pawlenty signed the reenactment of the Minnesota Citizens' Personal Protection Act of 2003, also known as the Conceal-Carry bill into law (S.F. 2259). The 2003 law was struck down by the Minnesota Supreme Court in April in *Unity Church of St. Paul, et. al, v. State of Minnesota, 2005 Minn. App. LEXIS 390 (Minn. Ct. App., 2005)*. *The Court ruled that the law violated the single-subject clause of the Minnesota Constitution, because it was attached to an irrelevant Department of Natural Resources regulation. The 2005 law now exclusively deals with firearms.*

The fundamental point of the Conceal-Carry Law is to replace the subjective issuance of firearm permits by county sheriffs with an objective criterion. The new objective criterion allows anyone over the age of 21 to get a permit as long as he or she has had proper safety training, has no history of mental illness, and is not otherwise prohibited from having a firearm. Those who cannot have a firearm are persons convicted of domestic assault, an Order For Protection violation, stalking, harassment or those subject to a valid, current Order of Protection or Harassment Restraining Order. Additionally, those convicted of criminal sexual conduct in the first through fourth degree, malicious punishment of a child, or neglect or endangerment of a child cannot obtain a gun.

Several amendments were also passed, including one stating that registered sex offenders caught with a gun will be charged with a misdemeanor. Also, a permit holder must disclose whether or not he or she has a firearm if asked by a peace officer. Finally, in the 2003 version, prohibition of guns on private establishments had to be announced both orally and in written form, whereas in the 2005 version either method is sufficient.

In the future it is likely that several groups will challenge the law in court. Faith-based organizations pledge to challenge on the basis of religious freedom. They argue that ordering churches to allow guns on their parking lots is a violation of the "separation of church and state" clause. Also, several counties want to prohibit guns on county property. While it is certain that the Conceal-Carry Law is bound to come before the courts once again, the outcome and the future of the law are uncertain.

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BWLAP is a Minnesota-based, statewide, non-profit organization that provides legal information, consultation, training, litigation support, and policy development assistance to battered women, their advocates, civil/criminal justice, and social service systems.

MARK YOUR CALENDARS!

June 17, 2005
Board of Trustees Meeting

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★ BWLAP's Board? ★
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★ interested, please e-mail: ★
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