

AGENTS FOR CHANGE

Volume 11, Issue 5

December 2006

Agents for Change
is a publication of the
**Battered Women's Legal
Advocacy Project, Inc.**

1611 Park Ave South
Suite 2
Minneapolis, MN
55404

Office: 612.343.9842

Toll Free: 800.313.2666

Fax: 612.343.0786

Email: info@bwlap.org

Website: www.bwlap.org

Staff

Maria Gloria Fressia

Rana SA Fuller

Contractor

Robin Wetzel

On-Going Emergency Continues to be Defined

The Minnesota Court of Appeals came down with a great decision in the distinction between testimonial and non-testimonial evidence in *Minnesota v. Washington*, ___ N.W.2nd ___ (Minn. Ct. App. 2006).^{*} In *Crawford* the court found that the Confrontation Clause of the Constitution forbids the admission of all testimonial statements made by a witness who is absent from the trial. This conclusion by the *Crawford* Court raised a big question, what is a testimonial statement? In an attempt to help clarify the 2004 *Crawford* case, in 2006 the US Supreme Court decided *Davis v. Washington*. In general testimonial statements are those made in contemplation of a court action. In *Davis*, the Court defined a non-testimonial statement as "made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Davis v. Washington*, 126 S. Ct. 2266, 2273 (2006). Clear as mud, right? The *Davis* decision leads to another question, what is an on-going emergency? This case, *Minnesota v. Washington*, ___ N.W.2nd ___ (Minn. Ct. App. 2006) is Minnesota's first attempt to decide what an on-going emergency is.

On April 12, 2005, an unidentified woman, later determined to be LW, called 911 asking the police to be sent to her home because she had been assaulted by her son's father. During the call with the 911 operator, LW was assaulted again. LW identified Mr. Washington to the operator and then Mr. Washington fled the home. When the police arrived they confirmed that it was LW who called 911. LW was upset and she showed the police a bite mark on her arm and stated that Mr. Washington had kicked in her door. Mr. Washington used part of the door with a nail in to hit her, from which she received a scratch. The police asked her questions about her injuries and what type of vehicle Mr. Washington would be driving. LW refused an ambulance or shelter, but she did request that the police stay for her safety while she packed up her things and left the building. Mr. Washington was arrested on April 21, 2005 and charged with two counts of 5th degree assault. LW did not testify.

Mr. Washington objected to the 911 tape being admitted and the police testimony based on a violation of his 6th Amendment Right to Confrontation. The Court found that the challenge to the 911 tapes were "easily resolved" because this was basically the same situation as *Davis*, a 911 call during an assault. The Court noted that this operator got more information about the assailant than the operator in *Davis*, but the court found that these questions were necessary to resolve an on-going emergency. Therefore the Court found the victim's statements were non-testimonial and there was no error in

(Continued on page 3)

Goodbye Dori

As many of you might know by now, Dorian Eder, our extraordinary advocate, left BWLAP to pursue a different position at the Minnesota Coalition for Battered Women. During her period at BWLAP's, Dori shined because of her positive energy, strong opinions, and capacity for critical thinking. Generous with her great experience and knowledge, Dori was recognized for her ability to make Minnesota advocates stronger. While we are very sad to see Dori leave BWLAP, we are happy that she continues to be involved in the domestic violence movement and we wish her the best of luck.

2006 Order for Protection and Harassment Restraining Order Summary is now available!

The newly updated and revised 2006 Order for Protection (OFP) and Harassment Restraining Order (HRO) Summary is now available!

This is an undeniably amazing resource that summarizes all of the civil case law, published and unpublished, dealing with OFPs and HROs from 1984 to July, 2006. You want to know if threats to kidnap the children qualify the petitioner for an OFP: look to the summary, I bet there is a case on point. You want to know how many published HRO cases there are in Minnesota: this summary can tell you. After looking to the summary, you find out there is not a HRO case on point, so you want to know if you can apply OFP case law to a HRO context: the summary can tell you that also!

To get your very own fancy pants OFP/HRO summary, send BWLAP \$10.00 plus postage for a printed copy or \$5.00 plus postage for a CD copy. Save on postage; order the OFP/HRO Summary and receive it via e-mail for only \$5.00. Get yours today!

JOIN BWLAP'S LIST-SERVE FOR LEGAL ADVOCATES

In June, BWLAP has launched its new list-serve for Minnesota legal advocates! The goal of this new email list is to connect advocates to each other, share new resources, and strategize about solutions to common problems. Rana Fuller will be moderating and answering your legal questions on the list.

For more info call Rana at (612) 343 9844 or email to rana@bwlap.org

TO SIGN UP: Contact Rana at rana@bwlap.org with your preferred email address.

Hello Spring Interns!

It is time now to say welcome to our new Spring interns: Katie, Kristine and Sunita. BWLAP is able to do all the work it does and all the services it provides thanks to the hard work of its interns.

A big welcome and thank you to you all!

Punto de Vista Latino

Frente a las redadas que se han llevado a cabo el pasado mes de Diciembre en Worthington y en otras localidades de Minnesota, en las cuales Immigration Customs and Borders Enforcement (ICE por sus siglas en inglés) ha concurrido a los lugares de trabajo para detener trabajadores presuntamente indocumentados, Battered Women's Legal Advocacy Project desea comunicar a la comunidad latina que se solidariza con su dolor y sufrimiento por estos hechos sin precedentes y que al mismo tiempo está en desacuerdo con el uso de redadas en los lugares de trabajo como herramienta para controlar el estatus migratorio de los trabajadores.

El costo social e individual de este tipo de prácticas es enorme, sin contar con el dolor de las familias que se ven divididas y súbitamente sin recurso alguno para poder hacer frente a sus necesidades más básicas. La propia legalidad de la medida ha sido puesta en tela de juicio por expertos y prestigiosas organizaciones están preparando demandas por perjuicios basadas en la inconstitucionalidad de dicha práctica.

A los efectos de ayudar en esta difícil situación, Battered Women's Legal Advocacy Project ha dispuesto una línea telefónica gratuita para recibir llamadas de larga distancia de todos aquellos que han sufrido las consecuencias de estas redadas y se consideran – o simplemente sospechan que pueden ser - víctimas de violencia doméstica.

El número al que usted puede llamar gratuitamente es el 1 800 313 2666. Usted escuchará un mensaje bilingüe luego del cual puede dejar su mensaje en español y una persona latina se comunicará con usted inmediatamente.

Battered Women's Legal Advocacy Project quiere destacar que aquellas personas víctimas de violencia doméstica o de cualquier otro crimen de violencia, o que sean padres de hijos menores que padezcan o hayan padecido este tipo de crímenes, pueden tener acceso a una vía legal para regularizar su estancia y/o residencia legal en los Estados Unidos. Violence Against Women Act (VAWA por sus siglas en inglés) proporciona vías para que las personas que han sufrido violencia doméstica o que hayan sido víctimas de otros crímenes de violencia, puedan regularizar su situación y aún cancelar la deportación en trámite.

Battered Women's Legal Advocacy Project, a través de su Iniciativa de Inmigración proporciona servicios a mujeres maltratadas. Si usted, o alguno de sus hijos menores, cree o tiene dudas de que pueda ser o haber sido víctima de violencia doméstica u otro tipo de actividad criminal, llame al 1 800 313 2666. También, si lo desea puede llamar directamente a Gloria Fressia al 612 343 9846 con quien podrá plantear su caso en español. Nuestros servicios son gratuitos. Además de darle valiosa información legal, también podemos referirla/o a otros organismos que prestan servicios legales para inmigrantes también gratuitos.

Comuníquese cuanto antes!

the admittance of the 911 tape.

The Court then looked at LW's statements to the police at the on-site interview. The Court found that the situation in this case was different than the on-site interview in *Davis*, because here the assailant is still at large. The police and LW did not know where Mr. Washington was and LW's request for the police to stay while she packed up her things is evidence of an on-going safety concern and thus an on-going emergency. The Court stated the information the police obtained was necessary to reasonably respond to the emergency situation. The Court found that the victim's statements to the police were non-testimonial and there was no error in the admittance of the victim's statements through police testimony.

This is good news for an area of the law that has been very confusing to the say the least. This case reaffirms that 911 cases made under emergency situations can be admitted without the victim's testimony, states that not all on-site interviews will be found to be testimonial and helps clarify what is an on-going emergency. We will wait and see if this case is appealed to the Minnesota Supreme Court.

*For more information on testimonial and non-testimonial statements and why they are important, please read our publication on *Washington v. Crawford* at www.bwlap.org/publications.html.

Annual Report

Battered Women's Legal Advocacy Project's mission is to effect system's change, to secure access to justice, and to improve the legal system's response to battered women and their children, particularly underrepresented women.

We believe the legal system is strengthened for all battered women if the most disenfranchised populations (minority, immigrant, rural, lesbian and bisexual women, among others) are served. As the calendar 2006 year ended we want to share with you our work, challenges, and achievements. None of our work would be possible without the support of funders and the recognition and confidence of the community. Therefore, we want to thank our funders and colleagues working tirelessly to end domestic violence and all kinds of oppression in the lives of women and their children.

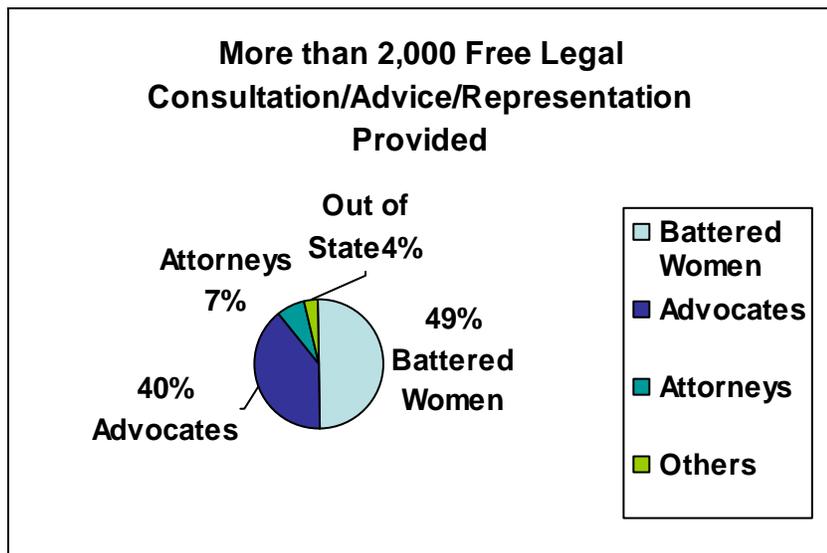
Who we are

BWLAP is a highly efficient organization that with small staff and a group of volunteers provides support to battered women in Minnesota by making the law and the legal system work more effectively to protect victims of domestic violence. Established as an independent agency in 1996, BWLAP concentrates on critical, but not always visible, issues in the law and court arenas, which affect all battered women. Programs and services offered include, but are not limited to:

1. Technical Assistance

Once again, last year, BWLAP was the first call for a battered woman, an advocate or an attorney, while dealing with a difficult domestic violence situation/case. During that year, BWLAP provided consultation, assistance, research, and other legal advice in 2,001 cases. In 31 of those cases, because of unavailability of free legal representation and due to the complexity of the case, BWLAP directly represented battered women and their children at Court.

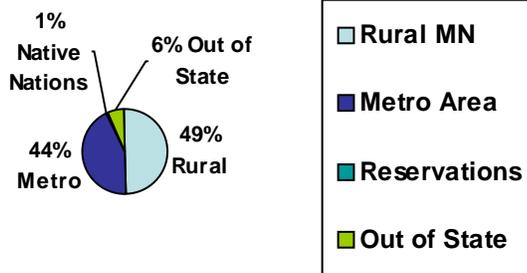
The following chart shows the number and the origin of legal advice requests received by BWLAP in the year 2006.



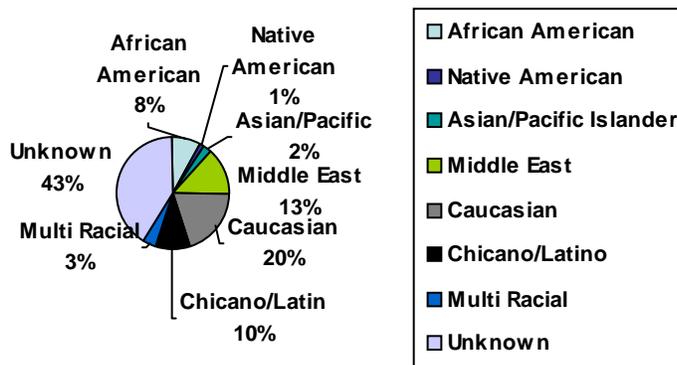
The geographical and ethnic breakdown of services shows that BWLAP, faithful to its mission, prioritized its services to underrepresented populations, either living in rural areas or recognized as minorities. The following charts show the geographical and ethnic breakdown of services provided.

Do you need technical assistance with Minnesota's current domestic violence issues?
Check out BWLAP's Website
www.bwlap.org

Free Consultations Geographical Breakdown



Services' Ethnic Breakdown



Cont. page 6

Subpoenas and Motions for Records!

BWLAP is seeing an increasing in the number of subpoenas domestic violence organizations are receiving. We have also heard of a new argument that is being made by public defenders that certain agencies are really “agents of the city/police department” and therefore must make their records available. BWLAP has a number of stock motions, memoranda, arguments and other materials on how to quash subpoenas and motions for records that are available for domestic violence programs. If an agency is subpoenaed or ordered by a court to turn over confidential documents, please call BWLAP before releasing any documents. We are available to provide on the spot advice and consultation to help the agency.

Since there is an increase in these demands it is a good time for each agency to review their contracts with the city, police department or city/county attorney, if applicable. Agencies may want to review their record keeping policies, remind the staff the procedure if a subpoena is served upon a program and verify who the custodian of the records is. If any agency needs assistance in creating or updating their record keeping policies or their policy on what to do when a subpoena is served, BWLAP has a number of resources and model policies for domestic violence agencies.

Would You Like to Receive *Agents for Change* Via E-mail?

If so, let us know! We can either e-mail each new addition of *Agents for Change* to you or let you know when the newsletter is posted on our website.

If you are interested in receiving this newsletter in electronic form instead of on paper, send an e-mail to info@bwlap.org and let us know how you would like to receive the newsletter.

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

While only 20% of BWLAP's services were provided to victims who identified themselves as Caucasian, 37% were provided to people who identified themselves differently. The 43% of "unknown" reflects BWLAP's policy of avoiding questions to ethnicity while providing assistance through its free hotline.

2. Trainings

Similarly to former years, during 2006 BWLAP provided, with the co-sponsoring of Minnesota Coalition for Battered Women and the Family Law Section of the Minnesota Bar Association, the already classical New Laws 2-day training, in seven different locations around Minnesota, six in rural areas and one in Minneapolis.

The total number of attendees amounted to 233 people. Among them, 18 were attorneys, and 215 advocates and other service providers.

Continue Legal Education (CLE) credits were granted as follows:

1st. Day: 8 Standard CLE Credits

2nd. Day: 2 Eliminations of Bias, 1.25 Standard CLE, and 1 Ethics CLE credit.

The comments received were overwhelming positive. Some of them were: "Excellent as always", "Great, informative, and interesting. Thanks", "This training is always good and I look forward to them."; "Very resourceful and informative"; "Really appreciate the materials and handouts"; "Would be nice to have trainings such as this more often."

Besides New Laws, BWLAP facilitated many other trainings and conferences, such as:

1. Specialized on immigration issues aimed to attorneys and experts working with immigrant battered women, on the topics of VAWA Reauthorization 2005, Asylees and Refugees Fleeing Violence, Immigration Law: Victims of Domestic Violence and other crimes of violence, and Domestic Violence and the Law for Immigrants, at the MN Bar Association, St. Catherine University, MN Legal Services Coalition and Central MN Legal Services, respectively.

2. Specialized on the intersection of housing and domestic violence and tailored trainings focused on the dynamics of domestic violence, guided to advocates and other social workers serving battered women and victims of sexual assault, as needed.

3. Technical Support through Written Materials

This past year 2006, besides updating several Technical Assistant Packets of its library, BWLAP produced the following new Packets, which—with the exception of Minnesota Orders for Protection and Harassment Order Case Law's Summary— can be consulted freely in its web site: www.bwlap.org

Parental Kidnapping

Minnesota's Best Interest Factors in Custody Cases (in Somali)

Minnesota's Best Interest Factors in Custody Cases (in Spanish)

Waivers to remove conditions from legal residency for battered immigrant women

U Visa Fact Sheet

Summary of the Violence Against Women Act 2005

Minnesota Order for Protection and Harassment Order Case Law's Summary

4. Collaborations for System's Change

During the past year BWLAP continued with its tradition in collaborating with Minnesota Coalition for Battered Women (MCBW) on engaging advocates from across Minnesota and train them on the principles of collaborations. On that trend, this past year, BWLAP worked with MCBW in different committees, promoting ample participation of advocates. Those committees were: Women of Color, Legislative, Domestic Violence and the Law, Guardian *ad Litem* Work Group and Child Support Work Group. BWLAP also took the lead in filing *Amicus* briefs in appeals of state-wide significance to battered women and assisted battered women in filing pro se appeals in cases in which courts have ruled against established precedents. Also, BWLAP led collaboration efforts among immigration attorneys, immigrant services and battered women's advocates, to adequately meet the needs of immigrant battered women. BWLAP worked effectively with the Immigrant and Refugee Battered Women's Task Force, MCBW, Minnesota Advocates for Human Rights, Casa de Esperanza, Asian Women United of Minnesota, Bryan Coyle Community Center, Tubman Alliance, Day One, and many other organizations building a more welcoming climate for immigrants and refugee battered women. Finally, BWLAP provided testimony to legislative committees on several occasions.

Immigration Corner

Writ of mandamus directing the USCIS to adjudicate Plaintiffs' pending I-485 change of status was recently granted by United States District Court, District of Minnesota. (Civil No. 06-3215 (DWF/AJB)). This sentence is published.

On December 8th 2006, the District Court of Minnesota, in a published sentence 06-3215 (DWF/AJB), ordered the United States Citizenship and Immigration Services (USCIS) to complete its adjudication of plaintiffs' I-485 applications (legal permanent status) within 30 days. It also mandated that upon completion of the adjudications, the USCIS shall promptly inform the Court and the plaintiffs of its decisions. Finally, the sentence dictates that the Court will retain jurisdiction over the matter in the interim to ensure that the USCIS complies with the order.

In this case, plaintiffs (3), on August 3, 2006, initiated a suit seeking a writ of mandamus directing the USCIS to adjudicate their pending I-485 change of status. Plaintiffs had filed their Form I-485 applications with the Nebraska Service Center, pursuant to 8 C.F.R. § 209.2, in order to become lawful permanent residents of the United States on January 6, 2000, October 18, 2000, February 13, 2002 and had never received any response.

In the complaint, plaintiffs asserted jurisdiction under 28 U.S.C. § 1361 (mandamus statute); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 701; and 4 U.S.C. § 551 (Administrative Procedure Act).

Under the matter of jurisdiction:

Defendants' motioned to dismiss for lack of subject matter Jurisdiction. The District Court found it had jurisdiction. Defendants argued that mandamus jurisdiction must fail because their decision of whether to grant or deny an adjustment application is wholly discretionary. The Court agreed with defendants on that but made clear that plaintiffs were not requesting that the Court review a denial, nor were they seeking to compel defendants to grant their applications. Instead, plaintiffs were only asking the Court to compel defendants to make *any* decision.

The mandamus statute grants federal district courts "... jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.

A Writ of Mandamus is an extraordinary remedy. In order to be eligible for mandamus relief, (1) the plaintiff's claim must have a clear and indisputable right to the relief he sought; (2) the defendant must have a non-discretionary duty to honor the right; and (3) there must be a lack of an alternative or adequate remedy.

Plaintiffs argued that they had exhausted their efforts with the USCIS and that the only remedy available to them at that point was through order of the Court.

In the matter of lack of alternative, the Court highlighted that Plaintiffs had not adequate, alternative means to address the fact that – after four and six years – they were still waiting a response from USCIS.

Under the matter of unreasonable delay:

Having asserted jurisdiction, the core of the case was to determine if the delay was unreasonable.

In that matter the Court found that the delay in adjudicating plaintiffs' applications was partially attributable to defendants. Defendants' attempted to place blame solely on the FBI, but that argument resulted unpersuasive. The record reflected that the delay of the adjudications largely stemmed from the USCIS's untimeliness in its initial request to the FBI.

The Court reasoned that "While FBI background checks are important and may sometimes require extensive amounts of time, the FBI's delay here does not negate the USCIS's duty to process the Plaintiffs' applications in a reasonable time". "The USCIS simply does not possess unfettered discretion to relegate aliens to a state of "limbo", leaving them to languish there indefinitely."

Therefore, the Court found that the delay the Plaintiffs had experienced was unreasonable and ordered that the Defendants' Motion to Dismiss was denied and remanded to USCIS. The USCIS was ordered to complete its adjudication process within 30 days. Upon completion the USCIS should inform the Court and Plaintiffs of its decision and the Court would retain jurisdiction over the matter in the interim to ensure that the USCIS complies with its order.

A Call for Pro/Low Bono Attorneys

BWLAP is calling for pro/low bono attorneys to represent battered women throughout the State. If you are an attorney and interested in helping battered women in a variety of legal situations, please e-mail us at info@bwlap.org and let us know. If you are an organization that has a list of attorneys who will represent battered women in either a pro or low bono way, let us know. Through pro/low bono attorneys, we can make sure that all battered women receive the representation that they need and deserve.

Battered Women's Legal Advocacy Project, Inc.
1611 Park Ave South, Suite 2
Minneapolis, MN 55404

Non Profit Organization
US Postage Paid
St. Paul, MN
Permit 3542

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.
Questions or Comments? E-mail us: info@bwlap.org

Cell Phone Donations

BWLAP is still collecting old cell phones . Many of you have old cell phones gathering dust at the bottom of a desk drawer. These phones can be put to good use and you may also be able to get a tax deduction based on the value of the phone you donate. Please consider donating cell phones that you no longer use, no matter the condition. Drop off used phones at our office or you can mail them to us.

Thank you!

BWLAP extends its heartfelt gratitude to our funders:

It is only with the help of our funders that we may help others. *Thank you!*

Alkire Foundation
Elmer and Eleanor Andersen Foundation
Bremer Foundation
Bush Foundation
DeLuxe Corporation Foundation
IOLTA
Office of Justice Programs (ex-MCCVS)
Jay & Rose Phillips Foundation
MN State Bar Foundation
Hennepin County Bar Association
Archie D. & Bertha Walker Foundation
WCA Foundation-Pillsbury