# AGENTS FOR CHANGE

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**Agents for Change**
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Battered Women's Legal
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## Introducing the Stalking Response Program at BWLAP

BWLAP is very excited and pleased to announce the implementation of the Stalking Response Program. Due to the overwhelming, positive feedback we received from participants of the Stalking portion of the New Laws Trainings in 2008, BWLAP, with Cornerstone's blessing, will be taking the Stalking Response Program statewide. Thirty-eight Project Partners in seventeen counties in Minnesota agreed to receive training and look at creating a Coordinated Community Response (CCR) for their community.

The overarching goal will be to train law enforcement, prosecution, victim-service providers and judicial stakeholders on the nature of stalking and its intersection with domestic violence and sexual assault in addition to providing technical assistance to those who are looking at developing a CCR in their community. The tools identified in the *Stalking Response Protocol*—Incident and Behavior Logs, Time-line, Safety Plan, and Victim/Offender Folders-- will be at core of the CCR. Training will include content from the National Center for Victim's of Crime, Stalking Resource Center as well as Minnesota State specific programming materials. The Stalking Response Program will be available for trainings with non-project partners in Minnesota and provide technical assistance as needed and based on availability. In addition to training we will be developing an evaluation plan with battered women's advocacy to assess needs in their community and inform training and practice in the future.

Deirdre Keys came to BWLAP in January 2009 to continue the work she started at Cornerstone. She is available to assist folks who are working on stalking protocol for their agency through December 2010. In the last two years she worked exclusively with stalking victims, giving her a unique view on victim safety and making her a valuable asset to the mission of BWLAP.

In conclusion, the formation of the Stalking Response Program is based on the project started at Cornerstone Advocacy Service and we thank them for their pioneering spirit and willingness to collaborate and pass on the materials created there.

If you desire training, technical assistance, or victim advocacy please contact Deirdre Keys at deirdre@bwlap.org

## Upcoming Events

New Laws (TBA)
August 13-14

New Laws (TBA)
August 20-21

New Laws (TBA)
August 27-28

New Laws (TBA)
September 10-11

New Laws (TBA)
September 17-18

New Laws (Metro)
September 21-22

## Host a New Laws Training

New Laws is an annual training held by BWLAP to update advocates and others about the new laws affecting battered women. While the trainings are geared towards domestic violence advocates, anyone is welcome to attend and CLE and POST credits are available. The scope of this training ranges from family to criminal law and government benefits. Each year BWLAP holds the training in six (6) locations throughout the state – two in the North, two in the South, one metro and one in central Minnesota. Last year we held trainings in Windom, Alexandra, Bemidji, Aitkin, Faribault, and Minneapolis.

We need local agency hosts for the coordination of the training logistics. The host finds a local training site, makes arrangements for food, lodging and directions. BWLAP will pay for all the costs. The biggest benefit of hosting the training is you don't have to travel as the training is in your hometown! Like last year, the trainings will be held on Thursday/Friday in Greater Minnesota and Monday/Tuesday in the Metro and will be held in August and September. If you would like to host a New Laws Training please e-mail Deirdre at Deirdre@bwlap.org or call Deirdre at 612-343-9845 by March 20, 2009.

Another way to provide input for New Laws is to submit ideas and scenarios that you have experienced over the past year that we could use as example exercises or training topics. Potential topics include: Hands on in advanced and basic legal advocacy (two tracks simultaneously), orders for protection, VAWA 2005, full faith and credit, guardian ad litem, custody issues, immigration, housing, and administrative policies. Please e-mail Deirdre at Deirdre@bwlap.org with your comments or if your agency would like to host a training.

## 2008 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, 2008. 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. For more information contact Rana at rana@bwlap.org or 612-343-9844. Get yours today!

# *Immigration Corner*

## USCIS issued interim rules to adjust status for T and U Visa holders

The United States Citizenship and Immigration Services (USCIS) announced on December 2008 an interim final rule that will allow individuals holding "T" and "U" nonimmigrant visas to adjust their status to legal permanent residents. Provisions creating "T" and "U" visas were part of the Trafficking and Violence Protection Act of 2000. These visas are intended to protect victims of serious crimes who have the courage to come forward, report the crime to the authorities, and assist them in the investigation and prosecution. The "T" visa applies to victims of severe form of human trafficking. The "U" visa applies to non-citizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic abuse. It took seven years to get the final rules implementing the adjudication of those visas approved by the Trafficking and Violence Protection Act of 2000. However it wasn't until now that those nonimmigrant "T" and "U" visa holders have a procedure in place to adjust their status from nonimmigrant visa holders to legal permanent residents.

The reasons invoked to implement this interim rule stress the public interest on promoting further humanitarian interests protecting victims of human trafficking and victims of other serious crimes and reiterate the believe that law enforcement's ability to investigate and prosecute crimes is enhanced when immigration benefits to victims are provided. The philosophy behind those considerations are at the root of the creation of the "U" and "T" visas and must be recalled every time law enforcement or prosecutors are called to collaborate with immigration attorneys and advocates working with victims.

The National Network to End Violence Against Immigrant Women, Legal Momentum, National Immigration Law Center, and many other organizations applaud the release of "T" and "U" Visas Regulations. The Battered Women's Legal Advocacy Project through its immigration initiative Path to Freedom also welcomes this huge step toward implementing at home the human rights invoked at international treaties and conventions. The National Network to End Violence Against Women has issued an interim rule Fact Sheets for each U Visa and T Visa Adjustment. To see those Facts Sheets please go to: http://asistahelp.org/U%20Adjustment%20Fact%20Sheet.pdf and http://asistahelp.org/T%20Adjustment%20Fact%20Sheet.pdf, respectively. The interim rules were published in the Federal Register, Vol. 73, No. 240, on Friday December 12, 2008. You can see them at: http://edocket.access.gpo.gov/2008/pdf/E8-29277.pdf

Encouraging related breaking news refers to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, about to be signed by the President, which adds statutory provisions for fee waivers of any fees associated to T, U, VAWA self-petitioners, VAWA cancellation, VAWA suspension, and visa holders and derivatives seeking employment authorization. Once this bill becomes effective, there will be fee waivers available for T and U visa applicants who need to submit waivers for grounds of inadmissibility and for not having a valid passport (currently $ 545 each, Forms I-192 and I-193). Also waivers for approved T and U nonimmigrant status holders and their derivatives seeking adjustment of status there will be available.

For more information regarding waivers please go to: http://asistahelp.org/Filing%20Fees%20Fact%20Sheet.pdf

# *Giles v. California*: The United States Supreme Court Further Broadens Confrontation Right

Author: BWLAP Intern

In *Crawford v. Washington*, the United States Supreme Court held the Sixth Amendment guarantees a defendant the almost absolute right to confront witnesses against him or her. Therefore, under *Crawford*, any prior testimonial statements are admissible at trial only if the witness who made the statements is available to testify or if the defendant had a prior opportunity to cross-examine that witness. The only exceptions to this right are those that existed *at the time the United States was founded. Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). In *Giles v. California*, the Court considered whether the doctrine of forfeiture by wrongdoing was such an exception to the right to confront.

In 2002, Giles shot and killed his ex-girlfriend Brenda Avie outside the garage of his grandmother's house. There were no witnesses, but Giles's niece heard what transpired from inside the house. At first, Giles and Avie were simply conversing, but then Avie yelled "Granny!" several times and gunshots sounded; when Giles's grandmother and niece emerged, they found Giles with a gun in his hand near Avie, who had been shot six times. *Giles v. California*, 128 S.Ct. 2678, 2681 (2008). At trial, Giles claimed he acted in self-defense and characterized Avie as jealous. To impeach his testimony, prosecutors admitted statements Avie made to police responding to a domestic violence report three weeks before the shooting; these statements related how Giles and Avie argued after he accused her of having an affair. Avie told police that "Giles grabbed her by the shirt, lifted her off the floor, and began to choke her." *Id.* When she broke free, she fell to the floor and Giles punched her in the face and head. After she broke free again, he held a knife three feet from her and threatened to kill her if he found her cheating on him. Over Giles's objection, these statements were admitted under a California law allowing such statements if the declarant is unavailable to testify and the statements are deemed trustworthy. *Id.* at 2682.

A jury convicted Giles of first-degree murder, and he appealed. The California Court of Appeal held the admission of Avie's statements to police did not violate Giles's confrontation right under *Crawford* because *Crawford* recognized the doctrine of forfeiture by wrongdoing as an exception to the confrontation right. The California Court of Appeal reasoned Giles forfeited his right to confront Avie because he committed the murder for which he was on trial, and that intentional criminal act made Avie unavailable to testify. The California Supreme Court affirmed on the same grounds and the United States Supreme Court granted certiorari. *Id.*

Justice Scalia, writing for the Court, held California's theory of forfeiture by wrongdoing was not a founding-era exception to the Confrontation Right, nor had it been established in American jurisprudence since the founding. Justice Scalia noted the forfeiture by wrongdoing doctrine was rooted in common law tradition that admitted statements of an absent witness who was "detained" or "kept away" by the "means or procurement" of the defendant. British and early-American case law applied the doctrine of forfeiture in a very narrow context: where the defendant had caused the absence of a witness *to deliberately prevent that witness from*

*testifying at trial*. Scalia concluded the forfeiture by wrongdoing doctrine was a limited exception to the confrontation right, only allowing prior, un-confronted testimonial statements at trial if the defendant acted wrongly with *the specific intent or purpose of preventing a witness from testifying*. The limited nature of this doctrine was deliberate, Scalia reasoned, to protect a basic precept of the judicial system: the presumption of innocence. Because the admission of Avie's statements violated Giles's right to confront, the judgment of the California Supreme Court was vacated and the case was remanded.

Justices Thomas and Alito filed concurring opinions in which they expressed full agreement with Justice Scalia's analysis of forfeiture by wrongdoing. Both Justices also expressed their opinion that the Sixth Amendment right to confrontation was not at issue in this case because Avie's statements were not "testimonial." However, the parties stipulated the statements were testimonial, so that issue was not before the Court.

Justice Breyer dissented, joined by Justices Kennedy and Stevens. Breyer concluded Giles forfeited his right to confront Avie because he intentionally killed her, causing her unavailability to testify, and should not benefit from that criminal wrongdoing. Breyer cited several reasons supporting application of the forfeiture rule in this case. First, Breyer argued the traditional language used to establish and define the forfeiture exception was broad enough to cover cases of murder. Second, the application of forfeiture rule accords with the "basic purposes and objectives" of the doctrine by preventing the defendant from taking advantage of wrongdoing. *Id*. at 2697 (Breyer, dissenting). Third, intent was easily established in this case because the law generally holds an individual responsible for the known likely consequences of their actions as if those consequences had been intended; Giles intentionally killed Avie and a known consequence of that act was to cause her unavailability to testify at *any* future trial, implicating the forfeiture rule. While this interpretation accorded with general principles of law, Breyer stated the majority's purpose- or motive-based interpretation of the forfeiture rule was anomalous. Fourth, Breyer noted the majority's interpretation of forfeiture created evidentiary issues. For example, Breyer contrasted the situation in which a defendant assaulted his wife, then threatened her with harm if she testified, with the situation in which the defendant assaulted his wife, then murdered her in a fit of rage. The majority's interpretation would not allow the first defendant to benefit from his wrongdoing, but the second, who arguably committed the greater wrong, would benefit. Finally, Breyer argued the majority's interpretation was not, as the majority argued, necessary to provide a defendant with evidentiary safeguards. Breyer noted other safeguards were in place to protect the defendant's presumption of innocence, including a separate, pre-trial analysis to determine the reliability of prior un-confronted testimonial statements and whether such statements should be admitted. Breyer also noted the application of the forfeiture rule did not mandate admission of such statements, it only lowered the constitutional bar, allowing for states to adapt and apply their hearsay rules.

Given the underlying domestic violence context of this particular case, both Justices Breyer and Scalia discussed what effect, if any, evidence of domestic violence would have on the application of the forfeiture by wrongdoing exception. Justice Breyer stated the forfeiture by wrongdoing doctrine is primarily implicated in cases of domestic violence and the majority's additional requirement, that the abuser act purposefully to prevent the abused from testifying, is a "windfall" for defendants and breaks the promise of *Davis v. Washington*, to prevent "one who obtains the absence of a witness by wrongdoing" from taking advantage of that wrong.

*(continue to page 7)*

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# *Punto de Vista Latino*

Recientemente el Presidente Obama firmó una ley denominada el Acta del 2009 para Reautorizar Seguro Medico de Niños. Esta ley reautoriza el Programa del Seguro Médico de Niños (CHIP, por siglas en inglés), que autorizó que los Estados reciban fondos federales para proveer cobertura de salud a los niños en los Estados Unidos.
Pero la nueva ley no se limitó sólo a la reautorización de la anterior (CHIP).

Esta nueva ley ha introducido un cambio muy importante y es que elimina el período de cinco años de espera para niños inmigrantes legales y mujeres embarazadas, al autorizar que los Estados utilicen fondos federales para dar cobertura de salud a través de los programas CHIP y Medicaid a estos inmigrantes legales.

Los defensores de los derechos de los inmigrantes han aplaudido esta nueva ley y nosotros nos sumamos a este festejo. A nuestro jucio no tiene ningún sentido negarle acceso a la salud a inmigrantes legales que en corto tiempo serán ciudadanos. La salud pública es un derecho y un valor social que debe ser respetado, valorado y cuidado por la comunidad, pues somos hoy nosotros y mañana serán nuestros hijos el motor del progreso y bienestar social.

Minnesota, junto con otros veinte Estados, ya cubría, a través de Medicaid, los costos de la cobertura de salud para niños y mujeres embarazadas residentes legales, sin tener en cuenta el tiempo desde que habían recibido esa documentación, y absorbiendo los costos que fondos federales no resarcían.

En Minnesota se entendía correctamente que cubrir la salud de niños y mujeres embarazadas redundaba en un ahorro de dinero para la comunidad, pues reducía en al menos un 22% hospitalizaciones que podían haberse evitado de haber tenido el paciente previo acceso a la salud y prevenía el riesgo de nacimiento de niños prematuros o con un peso reducido, por cuya razón necesitaban luego de costosos cuidados especiales.

Pero además existen otras razones morales. Se ha subrayado que para un niño cinco anos es toda una vida. Tener acceso ilimitado a los servicios de salud para tratar ciertas condiciones como la diabetes, asma, todo tipo de alergias, autismo, entre muchas otras, cambia totalmente la calidad de vida de que esos niños gozarán en el largo plazo. También el acceso a todo tipo de vacunas y tratamientos preventivos favorece la eliminación de riesgos de enfermedades en el largo y mediano plazo.

Muchos de los niños inmigrares documentados no tienen seguro de salud pues sus padres trabajan en empleos que no ofrecen esos beneficios. La posibilidad de que todos los niños accedan a la salud a través de los fondos federales es muy importante pues como ya sabemos las familias inmigrantes latinas no siempre acceden a altos puestos de trabajo con importantes beneficios.

Esta nueva ley recientemente aprobada es justa y va a beneficiar a residentes legales a través de todo el país. Para el caso particular de Minnesota, va a permitir que nuestro Estado comience a recibir fondos federales para rembolsar el gasto en que incurra por la cobertura de salud de niños inmigrantes y mujeres embarazadas en general.

Esta nueva ley redunda en un beneficio económico muy importante para Minnesota, sobre todo en estos tiempos en que el presupuesto del Estado se ve amenazado por la crisis económica.

*(Continued from page 5)*

Justice Scalia argued the forfeiture exception would not be as useful as Breyer implied since only unconfronted prior *testimonial* statements are excluded but also noted in dicta that evidence of domestic violence may establish an intent to silence sufficient to meet the newly announced purpose-based requirement for the application of the forfeiture exception.

Ultimately, this case firmly establishes the Court's expansive view of a defendant's confrontation rights under the Sixth Amendment. The Court reaffirmed its holding in *Crawford* that prior testimonial statements made by a witness who is subsequently unable to testify at trial are inadmissible unless having been previously subject to cross-examination. While the Court recognized a forfeiture exception to this rule, it also limited the application of this exception to cases of deliberate witness-tampering, requiring *specific intent* to prevent a witness from testifying. It is clear this decision will have a significant impact on domestic-violence related murders, significantly limiting prosecutors' ability to introduce prior evidence of domestic violence reported to police. However, Justice Scalia clearly stated the confrontation right only applies to *testimonial* statements; non-testimonial statements would still be admissible subject to hearsay rules and exceptions. Questions remain about what exactly constitutes testimonial statements, especially given the concurrences of Justices Thomas and Alito, arguing the statements at issue in *Giles* (statements made to a police officer following Avie's 911 domestic abuse call) were non-testimonial. Additionally, Justice Scalia's acknowledgement that evidence of domestic abuse may still be admissible to show intent to silence may lessen the otherwise forceful impact of this opinion. How this particular language will be subsequently interpreted and applied is yet to be seen.

## JOIN BWLAP'S LIST-SERVE FOR LEGAL ADVOCATES

Are you a legal advocate in Minnesota? Then you should join BWLAP list-serve for Minnesota legal advocates! The goal of the listserv is to connect advocates to each other, share new resources, and strategize about solutions to common problems. 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.

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

**If so, let us know! BWLAP 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.**

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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.

## 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.

For more information, please contact BWLAP at info@bwlap.org or visit our website at www.bwlap.org.

*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!***

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