DOMESTIC VIOLENCE REPORT™

LAW • PREVENTION • PROTECTION • ENFORCEMENT • TREATMENT • HEALTH

Vol. 3, No. 3 ISSN 1086-1270 Pages 33–48 February/March 1998

Washington Watch

by Sheila Wellstone

Family Violence Option Amendment

So how, after the Family Violence Option Amendment passed 98 to 1 on the Senate floor on September 10th, did it get dropped in conference? The Ways and Means Committee Chair, Bill Archer (R-TX), and the subcommittee chair, Clay Shaw (R-FL), sent a letter to the Republican conferees threatening to "take this issue to the House and Senate Leadership" if "there is any doubt about whether this provision will be removed from the conference report." At the conference meeting, Rep. Anne Northrup (R-KY) spoke out against the FVO, agreeing with Archer and Shaw that the FVO was just another excuse for women to stay on welfare. She argued that forcing these women to work would provide the means for these women to escape violence. In an effort to address the Republican charges that women would invent claims of abuse in order to stay on welfare, some conferees offered a very narrow and harsh definition of domestic violence, implying that a woman must be bruised and bleeding in front of a case worker in order to be classified for the temporary waiver.

Along with Senator Murray and Representatives Lowey, DeLauro and Pelosi, Senator Specter defended the FVO as a necessary provision. Although Shaw and Archer prevailed, Rep. Livingston promised hearings if Senators Murray and Wellstone would drop their crusade. Senator Specter promised to help get Senate hearings and "work until this issue is resolved." The final con-

See WASHINGTON, page 44

All Courts to Address the Issue Uphold Constitutionality of VAWA Civil Rights Remedy

by Julie Goldscheid

Women are using the ground breaking Civil Rights Remedy that was enacted as part of the 1994 Violence Against Women Act ("VAWA") to recover damages from injuries they suffer as a result of gender-based violence such as domestic violence, rape and sexual assault. The initial reported court decisions have primarily addressed the law's constitutionality, responding to defendants' arguments that Congress lacked the authority to enact the law. To date, each of the six federal courts to address the question have ruled that the Civil Rights Remedy is constitutional. These courts reasoned that Congress properly enacted the Civil Rights Remedy under its Commerce Clause powers based on Congress' recognition that gender-based violence against women has a substantial effect on interstate commerce. Those courts distinguished the United States Supreme Court's 1995 decision in **U.S. v. Lopez**, which struck down a law that criminalized gun possession near schools, finding that activity near schools was not sufficiently connected with interstate commerce to warrant federal legislation. In contrast to **Lopez**, Congress enacted the Civil Rights Remedy in response to four years of Congressional fact-finding that revealed the dramatic and direct impact of gender-based violence on interstate commerce. Each of these decisions is summarized below.

Cases Upholding the Civil Rights Remedy's Constitutionality

Brzonkala v. Virginia Polytechnic, 1997 U.S.A.P. LEXIS 35970 (4th Cir. Dec. 23, 1997), *rev'g.*, 935 F. Supp. 779 (W.D. Va. 1996). In the first appellate court decision addressing the issue, the Fourth Circuit Court of Appeals reversed the only district court ruling that had found the law unconstitutional. On December 23, 1997, a two judge majority of the appeals panel ruled that Congress acted within its constitutional authority in enacting the VAWA Civil Rights Remedy. The court's reasoning rested in large part on its recognition that Congress passed the law as a rational response to the "voluminous" evidence before it, which documented the enormity of the problem caused by violence against women as well as its costs to society. Specifically, the court recounted the evidence before Congress that domestic violence, rape and sexual assault has a substantial effect on interstate commerce, including its impact on medical costs,

See VAWA, next page

ALSO IN THIS ISSUE

VAWA, from page 33

employment, homelessness, consumer spending, and interstate travel. The court also ruled that the Civil Rights Remedy is a civil rights law, which is an appropriate subject for federal legislation.

Notably, before addressing the Civil Rights Remedy's constitutionality, the decision upheld Ms. Brzonkala's complaint against challenges that she had not stated a claim of "gender motivation." The court concluded that the allegations of a gang rape and defendants' statements showing gender bias satisfied the law's requirements.

Materials from this case, including briefs and court decisions, are available at HTTP:\\www.soconline.org\brzonkala.

Anisimov v. Lake, No. 97 C 263, 1997 U.S. Dist. LEXIS 12995 (N.D. Ill. Aug. 27, 1997). On August 26, 1997, Judge George M. Marovich of the United States District Court for the Northern District of Illinois, Eastern Division upheld the VAWA Civil Rights Remedy as constitutional and allowed a woman, who alleged that her employer engaged in crimes of violence motivated by gender, to proceed with her VAWA civil rights claim. The court found the law to be a proper exercise of Congress' Commerce Clause power, citing the four years of congressional hearings and lengthy congressional findings preceding the law's passage that showed the substantial effect of gender-motivated violence on interstate commerce. The court found the law to be "a reasonable means to a worthy goal."

The court also ruled that the issue whether a crime is motivated by gender "must be addressed on a case-by-case basis." It found Anisimov's allegations, including charges that Lake had fondled her, grabbed her breasts, assaulted and attempted to rape and ultimately raped her to be sufficient to state a claim under the VAWA Civil Rights Remedy.

Crisonino v. New York City Housing Authority, No. 96 Civ. 9742 (HB), 1997 U.S. Dist. Lexis 18268 (S.D.N.Y. Nov. 18, 1997). On November 18, 1997, Judge Harold Baer of the Southern District of New York issued a ruling upholding a woman's VAWA civil rights claim as well as her Title VII claim against the Housing Authority and her Section 1983 claims against individual defendants. The court found that there were triable issues of fact concerning whether she stated a claim of "gender motivation" based on the sexual assault by her supervisor and that she had satisfied the Civil Rights Remedy's requirement that she survived a "crime of violence." In addition, the court upheld the Civil Rights Remedy as constitutional under the Commerce Clause, crediting the four years of Congressional testimony establishing the substantial impact of violence against women on interstate commerce. The court declined to address whether the law also was authorized under Section 5 of the Fourteenth Amendment. In a footnote, the court thanked the Department of Justice as well as NOW LDEF and *amici curiae* for the supplemental briefs submitted, which the court said "were helpful to the court in reviewing the Act's extensive legislative history and analyzing its constitutional implications."

Doe v. Doe, 929 F. Supp. 608 (D. Conn. 1996). On June 20, 1996, Judge Janet B. Arterton of the United States District Court of Connecticut in New Haven ruled that a battered woman could proceed with her VAWA claim, rejecting the defendant's arguments that the Act was unconstitutional. The woman sued for damages following a seventeen-year marriage fraught with a systematic and continuous violent pattern of physical and mental abuse that included physical assault, threats, property destruction, and coercion. The court ruled that VAWA's legislative findings "qualitatively and quantitatively demonstrate the substantial effect of gender- based violence on interstate commerce," in stark contrast with the **Lopez** decision's "theoretical impact arguments." The court upheld the Civil Rights Remedy's constitutionality and also concluded that the VAWA complements state criminal and civil laws by recognizing our "societal interest in ensuring that persons have a civil right to be free from gender-based violence." The case settled while it was being briefed to the Second Circuit Court of Appeals.

Doe v. Father Hartz, 970 F. Supp. 1375 (N.D. Iowa 1997), *appeal docketed*, Nos. 97-3086, 97-3087 (8th Cir. July 31, 1997) . On June 23, 1997, Judge Mark W. Bennett of

See VAWA, page 46

DOMESTIC VIOLENCE REPORT™

Editor: **Joan Zorza, Esq.**
Associate Editor: **Nancy K.D. Lemon, Esq.**
Assistant Editor: **Anne L. Perry, Esq.**
Managing Editor: **R. Mark Davis, Esq.**
Contributing Editor: **Wanda Mohr Ph.D., R.N.**
Editorial Director: **Felicia A. Rosenfeld, Esq.**
Publisher: **Arthur H. Rosenfeld, Esq.**
Associate Publisher: **Mark E. Peel**

Domestic Violence Report is published bimonthly by Civic Research Institute, Inc., 4490 U.S. Route 27, P. O. Box 585, Kingston, NJ 08528. Periodical postage paid at Kingston, NJ and at additional mailing office. Subscriptions: $125 per year in the United States and Canada. $30 additional per year elsewhere. Vol. III, No. 3. February/March 1998.

State Court Decisions Regarding the Use of Battered Woman's Syndrome Testimony

by Anne L. Perry and Nancy K.D. Lemon*

Use of BWS Testimony in Prosecuting Batterers

In **Commonwealth v. Goetzendanner**, 679 N.E.2d 240 (Mass. App. Ct.), *cert. denied*, 682 N.E.2d 1362 (1997), the Appeals Court of Massachusetts held that the testimony of an expert witness concerning battered woman's syndrome (BWS) was admissible to explain the reasons for the victim's behavior. After defendant Darrien Goetzendanner punched the victim in the face and body repeatedly, beat her with a stick, held a knife to her throat, and raped her, the trial court issued a restraining order against him. In response to the defendant's request to assist in his defense, she had the restraining order removed and recanted her earlier statements. At trial, an expert testified about domestic violence generally and about BWS specifically, but made no attempt to "diagnose" the victim as suffering from BWS.

BWS Evidence Admissible as Generalized Description. Massachusetts courts had not passed on the question of whether BWS evidence may be admitted on behalf of a victim who is not the defendant. Noting precedents from other state and federal courts, the court concluded that, "where relevant, evidence of [BWS] may be admitted through a qualified expert to enlighten jurors about behavioral or emotional characteristics common to most victims of battering and to show that an individual victim or victim witness has exhibited similar characteristics." Such evidence must be "confined to a description of the general or expected characteristics shared by typical victims of a particular syndrome or condition," and "may not relate directly to the symptoms exhibited by an individual victim." The expert's testimony was thus properly admitted and the defendant's convictions were upheld.

In **State v. Griffin**, 564 N.W.2d 370 (Iowa 1997), the defendant, Kevin Griffin, held his common law wife, Dee Dee Griffin, in a motel room, choking and hitting her repeatedly on her head and body with a bottle and sexually assaulting her. She eventually lost consciousness, but Kevin continued to assault her. When she was taken to a hospital, Dee Dee stated that Kevin had assaulted her; she later recanted and then at trial testified consistently with her first story. Kevin was found guilty of kidnapping and willful injury.

The Supreme Court of Iowa allowed the use of expert testimony on BWS with respect to the victim's recantation and held that such use did not cross the line into impermissible testimony on the truthfulness of the witness. The expert did not offer an opinion on Dee Dee's credibility, but instead testified concerning the medical and psychological syndrome present in battered women generally. The convictions were affirmed.

BWS Evidence Admissible to Address Credibility of Recanting Victim. In **Carnahan v. State**, 681 N.E.2d 1164 (Ind. Ct. App. 1997), the defendant, Paul Carnahan, and his wife Carla had an argument during which Paul struck Carla's face, causing her injuries, and threatened to kill her. Carla filed a police report and cooperated with an investigation which led to charges of battery against Paul. At trial, Carla recanted her earlier allegations and stated that Paul had never hit or threatened her and that she had been pressured by a family member into filing a false report. In response to this testimony, the state called an expert on domestic violence to testify concerning the cycle of violence and the reasons battered women do not leave their husbands, to explain why victims may recant allegations of abuse. Following his conviction, Paul appealed, contending the BWS evidence was irrelevant since no facts showed that Carla was a battered woman.

As a matter of first impression, the court of appeals held the BWS evidence was "directly relevant to Carla's credibility which, because she testified, was an issue at trial." The court also found that the state had introduced sufficient evidence that Carla was a battered woman independent of the expert testimony, including testimony that she had stayed at a battered women's shelter, together with police reports and police photos. Finally, the court concluded that the testimony was offered for the limited purpose of attacking Carla's credibility, not for the improper or misleading purpose of showing that the defendant battered Carla. The testimony was properly admitted and the judgment was affirmed.

The California Court of Appeals has also concluded that BWS evidence is properly admitted to bolster the credibility of a victim who recants her story. **People v. Morgan**, 58 Cal. App. 4th 1210 (Cal. Ct. App. 1997). Julie Parker reported to sheriff's deputies and medical personnel that the defendant, David Morgan, had beaten her. Morgan was charged with battery, but by the time of trial (17 months later), Parker had resumed a "close relationship" with Morgan and changed her description of events. In response, the prosecution offered BWS testimony, which addressed the prevalence with which battered women recant their stories.

The sole issue on appeal was the admissibility of such evidence. The court of appeals held that the BWS testimony was "relevant and admissible to explain or offer a motive for Parker's recantation and thereby reconcile inconsistencies in her testimony." The use of BWS evidence to rehabilitate the victim's credibility was not "an end run around" to the prohibition of the use of such evidence to prove the occurrence of abuse. The expert expressed no opinion as to Parker and the jury was specifically instructed on the limited purpose of that evidence.

BWS Expert Testimony Not Required. In **State v. Cooke**, 1997 WL 428332 (Wash. Ct. App. 1997), the Washington Court of Appeals ruled that the prosecutor could properly refer to the victim as a battered woman in the absence of support by any expert testimony on battered women's

See BWS TESTIMONY, page 42

Annie L. Perry, a graduate of Boalt Hall School of Law, is an attorney practicing in Oakland and an Associate Editor of DVR. Nancy K..D. Lemon, also an Associate Editor of DVR, is a lecturer on domestic violence at Boalt Hall School of Law, University of California at Berkeley, and a consultant and writer.

National Stalking and Partner Abuse Studies Confirm That Men Are the Aggressors

Men More Abusive Than Women

In a large government sponsored study, Patricia Tjaden and Nancy Thoennes of the Center for Policy Research in Denver surveyed 8000 men and 8000 women age 18 or older for their experiences with violent behavior. Their preliminary findings on partner abuse, as released in an article on November 18, 1997 to *USA Today,* strongly refute the 1977 and 1985 studies of Murray Straus that had found that men and women are roughly equally assaultive. Tjaden and Thoennes instead find that women are twice as likely to be injured by their partners, twice as likely to report the violence to the police, three times as likely to be assaulted in some way, three times as likely to receive medical care, three times as likely to be hospitalized as a result of their latest injury, five times as likely to obtain a restraining order against their partners, and 17 times as likely to be badly beaten over their lifetime.

Their new injury statistics are also in keeping with other recent data from 91 representative hospitals in the "Study of Injured Victims of Violence" (SIVV). See, Michael R. Rand & Kevin Storm, *Violence-Related Injuries Treated in Hospital Emergency Departments,* NCJ- 156921. The SIVV study found that 204,400 females and only 39,000 males were treated by the emergency departments for intimate partner injuries, and thus females comprised 84% of the patients treated for injuries perpetrated by current or former intimate partners. Females were 5.7 times more likely than males to be treated for injuries by a spouse or ex-spouse, and 5 times more likely to be treated because of the abuse of a past or present lover.

Stalking Results

Tjaden and Thoennes' stalking results from their survey have been released by the National Institute of Justice as a 60 minute video ($19, NCJ 163921, from NCJRS, P.O. Box 6000, Rockville, MD 20849-6000) or as a free two page summary, entitled "The Crime of Stalking: How Big Is the Problem," November 1997.

1.4 Million Stalked Annually. Based on a stalking definition requiring a high level of fear by the victim, Tjaden and Thoennes found that stalking was a far bigger problem than previously estimated, affecting almost 1.4 million Americans over the age of 18 each year: 1,006,970 women and 370,992 men. To get a relative sense of how common stalking is compared to other crimes against women, each year 1% of women will be stalked, 1.8% of women will be physically assaulted and 0.3% of women will be raped. Over the course of a lifetime, 8.2 million women and 2 million men will be stalked.

Editor's Note: *Although the 1.4 million figure is 5 times the estimated rate of stalking found in a prior study, in that prior study the expert, Paul Dietz, had restricted his stalking definition to people who were not intimate partners nor otherwise related.*

Stalking behavior is not significantly different among racial or ethnic groups, except that it is significantly lower among Asians/Pacific Islanders and considerably higher among Native Americans/Alaska Natives. The stalking rate is so high against Native American/Alaska Native women that 17% of them will be stalked during their lifetimes.

Men Are Normally the Stalkers. Further findings are that 79% of all adult stalking victims are female (almost 4 out of 5 stalking victims), and that 87% of all adult stalking perpetrators are male. Fifty-nine percent of female stalking victims are stalked by current or past intimate partners, and for 43% of these women the stalking did not occur until after the relationship ended (21% are stalked only during the relationship and 36% are stalked both during and after the relationship). In contrast, men are mainly stalked by strangers and acquaintances, with only 30% of them stalked by intimate partners. Homosexuals are more likely to be stalked than heterosexual men, with men who had ever lived with a man as a couple having almost the same likelihood of being stalked as women.

Although men tend to be stalked by strangers and acquaintances, because women are stalked in such greater numbers, women are actually at greater risk of been stalked by strangers (1.8% of women vs. 0.8% of men), and acquaintances (1.5% of women vs. 0.7% of men). Stalking lasts 1.8 years on average, but stalking by intimate partners last twice as long on average as stalking by others (2.2 years vs. 1.1 years, respectively). Also, women tend to be stalked by a lone stalker, but roughly half of men are stalked by someone with an accomplice, usually a friend or girlfriend.

Stalking Behaviors. Contrary to common belief (and a legal requirement in some states' stalking statutes), most stalkers do not make overt threats to their victims; only 45% of women victims and 43% of male victims are ever threatened verbally or in writing. Stalkers instead engage in a course of conduct against their victims to harass and terrorize them. Women victims are more likely to be followed, spied upon or staked out (82% for women vs. 72% for men); to receive unsolicited telephone calls (61% vs. 42%); or to have a family pet killed or threatened (9% vs. 6%). About the same number of female and male victims report that their stalkers vandalized their property or sent them unwanted letters or items (roughly 30% for each sex and each category).

Eighty-one percent of women who were stalked by current or past intimate partners had been assaulted and 31% sexually assaulted by that partner. This is four times the assault rate and six times the sexual assault rate against women who have ever been married or lived with a man. The men who stalked their wives or ex-wives "were significantly more likely … to engage in other emotionally abusive and controlling behaviors …[and] have a hard time seeing things from their wives' point of view. These men tended to be jealous, possessive, provoke arguments, restrict their wives activities and friends, withhold money, isolate their wives, demean and frighten their wives, and insist on knowing their whereabouts constantly."

Impact of Stalking on Victims

Significant numbers of victims sought psychological counseling because of their victimization (30% of female victims, 20% of male victims); were concerned abut their personal safety (42% of victims vs. 24% of non victims); were very concerned about being stalked (30% of victims vs. 10% of non victims); or resorted to car-

See AGGRESSORS, page 43

Results of Australian Study of Stalking

An Australian study of 100 referred and self-selected stalking victims has been completed, in which all participants in the study had been followed, kept under surveillance, or received repeated, unwanted communications by letter, telephone or electronic mail.

Demographics of Participants

The participants consisted of 83 female and 17 male victims; 10 of the female victims had been stalked by other females and 4 of the males had been stalked by other males. In contrast to the U.S. stalking study by Doris M. Hall that was reported in 3 DVR 3 (1997), only 29% of the Australian stalkers were ex-partners, whereas 25% first encountered their victim through a professional relationship, 21% through casual social encounters, 16% had no known prior contact, and 9% encountered their victim through work related contexts. However, none of the cases involved "celebrity" stalking. Over one-third of the victims (36%) were employed in professions such as medicine, teaching and the law when the stalking began.

Stalkers' Behavior

Each of the victims experienced multiple stalking episodes that included more than one form of intrusive behavior and lasted for at least one month, with the longest lasting for 20 years. The median duration was 24 months, with 52 of the victims experiencing ongoing stalking at the time of the survey. All reported multiple forms of harassment, including telephone calls (78%), letters (62%), and electronic mail (2%). Phone calls were mostly made at night, at work or at other inconvenient times. Employed professionals were the most likely to be harassed by phone and e-mail. Exactly half of the victims received unsolicited material from their stalkers, with flowers and photographs (particularly of the victim) the most popular. Most stalkers (79%) directly approached their victims, usually at their home, school or workplace, and 71% of them followed their targets or kept them under surveillance. However, professionals were less likely to experience this type of harassment. Stalkers often damaged property (36%), most often the victims' cars or houses, but sometimes the property of their friends, family and even tradesmen.

Threats and Assaults of Stalkers. In 58% of the cases the stalkers made overt threats, 14% of the stalkers directed their threats solely at the victim, 7% solely at the victim's family or friends, and the remaining 37% directed at both the victim and third parties. Death threats were common, sometimes directed at the victim's children, and some stalkers threatened to rape their victim. These threats were not just idle; 34 of the victims were assaulted, 31 physically and 7 sexually. Most assaulted victims (26 of the 34) had previously been threatened.

Few interventions helped; most exacerbated the victims' feelings of guilt and worthlessness.

The assaults were sometimes extremely serious. Two victims were strangled, another poisoned with life-threatening strychnine, one was attacked by her former lover with a broken bottle, and a male victim sustained blows to the face and kicks to the groin by his former partner. Two subjects were abducted by their stalkers, one was held by her ex-husband all weekend while he raped her and watched pornographic movies.

Just as Hall found in the U.S. stalking study, violence was more likely when the parties formerly had an intimate relationship. Female victims were not more likely to report violence than were male victims, and the duration of the pursuit was unrelated to the incidence of violence.

Help-Seeking Behavior

Every one of the victims sought help or advice from at least one source: 78% from family or friends, 69% from police, 38% from at least one lawyer, 44 from doctors, 19 from work colleagues or supervisors, and several from private detectives or clergy. Most of those contacting police or lawyers had suffered property damage, whereas those receiving unsolicited items tended to contact doctors. Those stalked by intimates were more likely to consult lawyers, whereas those harassed at work were almost the only ones to consult others at their workplace.

Effects on Victims

All victims felt that the stalking deleteriously impacted their psychological, interpersonal and/or occupational functioning, to the extent that 94% reported major lifestyle changes. The vast majority (82%) modified their usual activities, 73% employed various security measures (e.g., using an unlisted phone number or post office box, installing security systems, hiring security guards, purchasing guard dogs, obtaining weapons though firearms are rarely kept for personal protection in Australia, and changing their car or even their surname), 73% curtailed social outings, and 39% moved.

Many victims found that their stalkers had easy access to them when they were at work or school, with the result that 53% stopped or reduced their work or school participation. Over one- third of the victims (37%) changed their workplace, school or career, almost always resulting in their declining in social, occupational or academic status.

That victims were able to do so much is remarkable, given that 75% of them expressed overwhelming feelings of powerlessness. Almost a quarter (24%) seriously considered or attempted suicide; 83% reported heightened anxiety levels; 74% experienced chronic sleep disturbances due to hyperarousal, recurring nightmares or continual telephone calls; 55% experienced excessive tiredness or weakness; and 47% were bothered by more frequent and severe headaches. The stalking affected the victims' eating, with 48% reporting appetite disturbances, 45% noting weight fluctuations (mostly loss, but a few gained weight), 30% had persistent nausea, 27% suffered indigestion, 23% reported changes in bowel habits, and 23% increased alcohol or cigarette consumption.

Over half (55%) experienced recurrent and distressing intrusive recollections and vivid flashbacks some years after the stalking had stopped. Detachment, estrangement and other avoidance or numbing responses were experienced by 38%. Indeed, 37% fulfilled the criteria for PTSD diagnosis, and another 18%

See STALKING, page 44

Recent Cases Around the Country

EIGHTH CIRCUIT: No Recovery on Accidental Death Policy Where Death Was Foreseeable. During her marriage to Gerald Jennings, Billie J. Jennings was the recipient of a pattern of verbal and physical abuse from her husband. Following their divorce, and while under a restraining order, Mr. Jennings came to the home of Mrs. Jennings and her new fiancee in the early hours of the morning, demanding to be let in. In the course of an argument, he struck Mrs. Jennings in the head. Her fiancee intervened by firing two warning shots with a pistol. Mrs. Jennings took the gun and fired another warning shot, and as Mr. Jennings grabbed her, the gun accidentally discharged and hit him in the arm. Mr. Jennings raised his fist and said, "I will kill you" as he charged at her. Mrs. Jennings turned her head, fired one more shot, and killed her ex-husband. She was acquitted of second degree murder.

Both Mrs. Jennings, the primary beneficiary, and the decedent's father, the secondary beneficiary, sought accidental death benefits pursuant to two insurance policies. The district court dismissed the case on the grounds that the decedent's death was not accidental. The U.S. Court of Appeals for the Eighth Circuit noted that "the insurer can overcome the presumption of accidental death by showing that the decedent knew or reasonably *should have known* that Mrs. Jennings would respond to his attack with deadly force." **Jennings v. Jennings**, 109 F.3d 477 (8th Cir. 1997). The beneficiaries argued that although Mrs. Jennings' relationship with the decedent was abusive, she never physically retaliated and their history of arguments never involved the use of firearms. However, the court noted that despite their history, "the decedent was aware that Mrs. Jennings was pointing a gun at him during an extremely tense moment and was capable of firing it." Thus, the Eighth Circuit held that the district court did not err in finding that the decedent should have foreseen his death, and therefore the death was not accidental and the insurance companies were not liable.

NINTH CIRCUIT: Extended Statute of Limitations on Domestic Violence Makes Claims Viable. Barbara Papenthien brought suit in federal district court against her former husband for injuries arising out of alleged acts of domestic violence during their ten year marriage. Her original complaint was dismissed for improper venue; although 8 of the alleged 13 acts occurred in California, the two most recent incidents falling within the one year California statute of limitations occurred in New York and Hong Kong. After the trial court issued its order of dismissal, the California Code of Civil Procedure was amended to provide a three year statute of limitations for domestic violence actions.

On appeal, Mr. Papenthien argued that the amended statute of limitations could not apply retroactively. **Papenthien v. Papenthien**, 120 F.3d 1025 (9th Cir. 1997). The U.S. Court of Appeals for the Ninth Circuit noted that a statute that affects procedure can properly be employed in lawsuits pending at the time of its enactment. In applying the law as it exists when deciding the action, no retroactivity analysis is necessary. Since Mrs. Papenthien's action was filed prior to the expiration of the new three year statute of limitations, her claims were not time-barred, thus venue in the district court was appropriate. The court reversed and remanded.

ALASKA: Domestic Violence Properly Considered in Awarding Custody. Rob and Kimberly Borchgrevink obtained a divorce and Kimberly was awarded legal and primary physical custody of their three minor children. Rob appealed, arguing that the court failed to consider all the relevant custody criteria and allowed the domestic violence factor to outweigh all other factors. The Supreme Court of Alaska noted that with respect to most of the statutory factors, neither parent was significantly superior to the other. **Borchgrevink v. Borchgrevink**, 941 P.2d 132 (Alaska 1997). The trial court had placed heavy emphasis on the remaining statutory factor, evidence of domestic violence, as this was the most contentious trial issue and the factor the court felt was most critical. The supreme court noted that domestic violence is broader than the violence itself, and extends to the batterer's ongoing attempts to control the partner. It also noted the deleterious effects on children of witnessing domestic violence. According to the supreme court, "The trial court did not impermissibly punish Rob for past domestic violence, but appropriately considered Rob's proven past domestic violence and his current behavior in the context of the present impact on the children and their relationship with their parents."

[According to the Ohio Supreme Court,]…a trial court has the discretion to dismiss a criminal case on its own motion over the objection of the prosecution where the complaining witness does not wish for the case to proceed.

OHIO: Trial Court Has Discretion to Dismiss Criminal Case at Victim's Request Over Prosecution's Objection

Dorothy Cordiano filed two complaints against the father of her child, Warren Busch, for allegedly striking her and, on another occasion, dragging her down stairs and burning her with a cigarette. Busch was charged with two counts of domestic violence. Cordiano filed an affidavit a week later stating that she did not want to go forward with any criminal charges. A month later at a scheduled pretrial hearing, she testified that she still wished to have the charges dropped. The court refused to dismiss the charges, but ordered Cordiano and Busch to enter counseling prior to trial. Cordiano continued to reiterate her desire for the charges to be dropped, testifying that the couple was continuing in counseling, she did not fear that Busch would ever assault her again, and she still desired a family relationship with him. The trial judge, over the prosecution's objection, dismissed the charges, stating that "these parties think they can work their problems out. And this branch of the court doesn't think it should stand in their way of doing that."

The state appealed the dismissals, arguing that the trial court exceeded its discretion, and the court of appeals agreed. The Supreme Court of Ohio

See RECENT CASES, page 45

From the Bookshelf

by Nancy K.D. Lemon and Joan Zorza

Evidentiary Privileges

Jaffee v. Redmond: Towards Recognition of a Federal Counselor-Battered Woman Privilege

by Michael B. Bressman and Fernando R. Laguarda
30 Creighton L. Rev. 319 (1997)

This article arose out of an amicus brief in a federal case, **Jaffee v. Redmond**, 116 S.Ct. 1923 (1996), which extended the therapist/client privilege to licensed clinical social workers. The authors note that evidentiary privileges are the product of the tension between individuals' and societal interests in keeping certain information confidential, on the one hand, and the need for all relevant evidence at trials, on the other. The Supreme Court based its decision in **Jaffee** on the legislative history of Federal Rule of Evidence 501, in which Congress stated that courts should develop rules of privilege on a case by case basis, creating a body of federal common law, through evaluating "reason and experience."

Bressman and Laguarda use **Jaffee** to argue for the development of a new Federal Rule of Evidence that would treat communications between battered women and their counselors as privileged. They note that while a majority of states currently have enacted such a privilege for victims of sexual assault and/or domestic violence, there is no federal counterpart.

The authors note that Congress has recognized the importance of policies aimed at stopping domestic violence, in enacting VAWA and in authorizing millions of dollars for domestic violence programs. These policies must include confidential counseling, which is necessary to assess the level of danger and the needs of the victim, and to assist the victim to heal psychologically. Both society and individual battered women have a strong interest in protecting communications between domestic violence counselors and victims.

Editor's Note: *The authors raise an important concern, given how many domestic violence cases are filed in federal courts, e.g., section 1983 actions against police and civil rights actions under VAWA. Congress would be well advised to enact such a rule of confidentiality. Furthermore, VAWA requires the Attorney General to propose such legislation affecting confidentiality. 42 U.S.C. §13942.*

Welfare Reform and Battered Women

How Will Battered Women Fare Under the New Welfare Reform?

by Sheryl L. Howell
12 Berk. Women's L. J. 140 (1997)

Welfare and Immigration Reform: Refusing Aid to Immigrants

by Emily Stubbs
12 Berk. Women's L. J. 151 (1997)

The Family Violence Option of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Interpretation and Implementation

by Wendy Pollack & Martha F. Davis
30 Clearinghouse Rev. 1079–98 (1997)

In these three articles, the authors examine the recent Congressional developments in the area of welfare reform and its impact on battered women.

Howell, the first author, describes the connections between domestic violence and poverty: while domestic violence occurs in all classes, it is a major cause of homelessness and indigency. She also provides many reasons why battered women are reluctant to self-identify as such, including shame, isolation from friends and family, fear of retaliation, and fear of losing custody to the batterer or to the state due to financial instability once separated from the father. Howell also notes the first finding by Congress in the Welfare Act, namely, that "marriage is the foundation of a successful society," and the Act's consequent emphasis on family preservation and reunification. These are obviously very problematic goals, given the epidemic of domestic violence.

Howell then details four specific areas of the Welfare Act which are likely to create more domestic violence, unless dealt with carefully: 1) the lifetime limit of 60 months for welfare, 2) the mandatory work requirements, 3) the requirement that mothers identify their children's fathers and cooperate in the collection of child support, and 4) the requirement that unwed teenage mothers live with their own parents or guardians. She explains how these provisions give batterers more power over their partners by limiting their financial options and by requiring contact between batterers and victims to be maintained or re-established. The author also cites earlier data showing that batterers will often deliberately sabotage their partners' attempts to go to school or work.

Howell makes several recommendations. The Family Violence Option (the Wellstone/Murray amendment, discussed below) should be mandatory for each state rather than optional, and each state needs sufficient funding and technical assistance to implement the program. Any screening for domestic violence needs to be kept confidential from all other agencies. Welfare workers need training on domestic violence issues and resources, and should be provided with clear guidelines regarding exemptions for victims from welfare limitations. Battered women should be exempted from having to cooperate with child support enforcement if this would endanger them and their children. Finally, the Congressional limit on exemptions of 20% of all welfare recipients should be repealed, since battered women alone exceed this figure. Howell concludes, "Impervious to domestic violence, and riddled with faulty stereotypes, welfare reform will likely translate into unforgivingly harsh social policy."

Welfare and Immigration Reform. The second author, Stubbs, notes the intersection between welfare reform and immigration reform, another 1996 Congressional Act. She points out that the immigration act builds on the self-petitioning features of VAWA by allowing undocumented battered women married to US citizens or lawful permanent residents to receive public benefits while their petitions for lawful status are pending. However, even with this assistance, battered immigrant women will be entitled to receive only the benefits available to legal immigrants in the state where they live. Many states have threatened to, or have cut, benefits for all immigrants, legal or not.

See BOOKSHELF, next page

BOOKSHELF, from page 39

The Family Violence Option. The third article focuses on the Family Violence Option, which invites states to 1) screen applicants for domestic violence while maintaining confidentiality, 2) make referrals to counseling and supportive services, and 3) grant good-cause waivers for certain welfare program requirements. (See "Washington Watch" on p. 33 of this issue). These requirements include the various time limits on receiving welfare, residency requirements, child support cooperation requirements, and child exclusion provisions. Domestic violence and abuse are defined broadly, including threats, mental abuse and deprivation of medical care. The authors explain that the plain language of the Option indicates that its provisions are in addition to the statutory cap for exemptions of 20% of welfare recipients based on hardship. That is, states should not be penalized if their domestic violence exemptions are larger than 20% of the overall caseload.

Editor's Note: *Since this article was written, concerted efforts have been unsuccessfully made to have Congress clarify its intent that the Option be in addition to the 20% cap.*

Pollack and Davis go on to stress the importance of welfare and domestic violence advocates collaborating with state and local governments and welfare agencies, to ensure that implementation of the Option is guided by their expertise. They also describe what implementation should resemble: education of recipients, notification of rights, universal screening, confidentiality, trained and educated staff, an integrated service delivery system, a clear and efficient waiver process, and flexibility. They conclude by cautioning that without thoughtful implementation, survivors of domestic violence are particularly vulnerable to the negative impact of welfare reform.

Judicial Training on Domestic Violence

Sex, Sense, and Sensibility: Trespassing into the Culture of Domestic Abuse

by Jacqueline St. Joan
20 Harv. Women's L. J. 263 (1997)

The author of this article, who is the director of a law school clinical domestic violence program and a former judge, describes a judicial training program she helped create on domestic violence. In this program, the trainers sought to go beyond "DV 101," to reach the underlying beliefs of judges in this area, and effect a change on a fundamental level. They also wanted to develop the ability of judges to hear the life experiences of people very different from themselves, i.e., battered women. St. Joan and her colleagues decided that the best vehicle for the training was literature.

They chose a short story called "Trespass" by Sandra Scofield, in *The Ploughshares Reader: New Fiction for the Eighties* 469 (Dewitt Henry ed., 1985), which depicts many characteristics typical of a domestic violence relationship, such as the batterer's attempts to control the victim's reality, the cycle of violence, increased abuse during pregnancy, the escalation over time, both parties' minimization and depression, etc. The judges were asked to read the story before attending the training.

St. Joan wrote a play, "After Trespass," which was performed at the training, and which was based on the facts of the short story, but in a courtroom setting. One of St. Joan's aims was to illustrate for her colleagues the ways that the rules of evidence and the interrogatory format of the trial process serve to defeat the truth-finding function of the trial: the victim's attempts to testify about what happened are continually limited in the play, and labeled irrelevant, circular, and narrative. The attorneys' interpretation of her story leaves her appearing not credible.

The article arises from the law and literature movement, which encourages attorneys and judges to use literature in order to broaden their understanding of human nature, to develop empathy, and to notice the cultural values which all people apply to evaluating credibility and decision making. St. Joan argues that the traditional legal tool, logic, if applied without passion and intuition, can lead to unfair results, especially in domestic violence cases. She also challenges her fellow jurists not to ignore their consciences, and to guard against their own mental avoidance techniques, which cause them to hide behind professional ethics, role limits, and separation of powers arguments in order to avoid dealing with the real issues presented by cases.

The evaluations from the training were very positive. Other trainers might well consider incorporating literature, plays, or movies into domestic violence training sessions, in order to reach the hearts as well as the minds of judges and other players in the legal system.

Editor's note: *In this same spirit, Jacqueline St. Joan and Annette Bennington McElhiney have just edited "Beyond Portia: Women Law & Literature in the United States (Northeastern University Press, 1997)," an exceptionally fine book, with one of its four sections devoted entirely to "Law and Literature on Abuse of Women." DVR heartily recommends it as serious reading, for teaching the subject, for brilliant new insights about literature, and also for its superb bibliographies on feminist issues.*

Mandatory Prosecutions

Forum: Mandatory Prosecution in Domestic Violence Cases

Papers by Sheila James Kuehl, Donna Wills, and Linda G. Mills
7 UCLA Women's L. J. 169–199 (1997)

These papers are a debate about mandatory prosecution of domestic violence cases, most specifically the wisdom of whether "no drop" or "no dismissal" policies help or hurt battered women. In the introduction, Sheila Kuehl, a longtime domestic violence advocate and the current Speaker Pro Tem of the California State Assembly, sets forth the debate about the wisdom of prosecuting without the victim. As a policy-maker, she asks for input on which route will "help to end the nightmare for millions of victims of domestic violence."

In "Domestic Violence: The Case for Aggressive Prosecution," the Los Angeles County prosecutor Donna Wills argues that domestic violence is a public safety issue, impacting all of society: "children, neighbors, extended family, the workplace, hospital emergency rooms, good samaritans who are killed while trying to intervene, and the death row inmates who cite it as a reason not to be killed," (many of whom have histories of domestic violence or child abuse). She notes that no studies have shown whether aggressive prosecution actually reduces the violence or is effective in decreasing the public's tolerance of it. Because batterers are "master manipulators" influencing many victims to drop charges or not cooperate with prosecution, she believes that "no drop" polices are necessary when there is legally sufficient evidence for society to "seize the 'window of opportunity' given to us."

In "Intuition and Insight: A New Job Description for the Battered Woman's

See BOOKSHELF, page 47

Mostly Helpful Book on Family Law and Domestic Violence

The *1997 Wiley Family Law Update* (Wiley Law Publications, 1997) is a generally excellent and helpful book, edited by the Wiley Law Publications Editorial Staff, which combines 11 chapters on various aspects of family law with an appendix of highly useful sample discovery forms.

Of greatest help to battered women's advocates is a superb chapter by Teresa Meuer and Kathryn Webster, "Effects of Domestic Abuse on Child Witnesses." They discuss not only the effects of violence on children and the myth that the violence ends after separation, but also how to plan for the safety of the victims and their children, and how to negotiate many of the evidentiary obstacles to bring the abuse before the court.

In addition, the authors inform the reader of how most batterers are men, and that when women use violence normally in self-defense rather than to control. The authors also explain how batterers engage in a pattern of coercive behavior to control and terrorize their female partners. This behavior extends to all aspects of women's lives and their children's lives as well, degrading, humiliating, and depressing all of them.

Effects of Domestic Violence on Child Witnesses

Because the abuser forces the family to exist primarily to meet his needs, the violence "diverts energy and attention away from children's growth and development," with everyone focusing on the abuser's behaviors in an effort to predict and avoid the next attack. The stress of trying to stay safe puts children at greater risk of being hurt physically and emotionally, as do the indirect results of frequent moves and other disruptions.

While the effects on children vary greatly, depending on their age, gender and emotional development, Meuer and Webster explain how all child witnesses are impacted in some ways. They discuss the research that shows that male children are at increased risk for future violent behavior, generally in proportion to the severity of the violence they witness or experience. The data is much less clear as to whether daughters are at future risk for adult victimization. The authors also discuss other factors that compound the effects of witnessing domestic violence on the children, e.g., living in poverty, having a mentally ill or substance abusing parent, or having a stressful relationship with the mother. They also cite studies showing that a strong, positive relationship with the mother helps to decrease the effects on child witnesses. Child witnesses often feel conflicted about their abusive fathers, finding it hard to receive emotional support from fathers they fear.

Evidentiary Issues

The chapter gives concrete examples of evidence that documents abuse and provides sources on the harm of witnessing domestic violence. It then discusses how, when and why to use an expert witness, who can be one, and where to find one.

Many specific evidentiary problems are discussed: relevance, documentary evidence, hearsay, hearsay within hearsay, admissions, prior inconsistent statements, statements not offered for the truth of the matter asserted, photographs, and medical records.

Finally, the authors discuss both the problems with mediation, conflict resolution, friendly parent provisions, and joint custody, and also how to minimize the effects of these issues in jurisdictions where their use is actually or effectively mandatory.

Use of MMPI in Litigation

Another highly recommended chapter by Kenneth H. Waldron, "Illusion of Objectivity: Use of the MMPI and Other Mental Health Scales in Child Custody Litigation," explains not only the meaning of the different scales, but how to cross-examine an expert whose results are unfavorable to your client.

Issues in Child Sexual Abuse Cases

Of great use to anyone representing a party in a child sexual abuse case is the chapter entitled "Evaluating Medical and Mental Health Testimony in Child Sexual Abuse Cases" by Rosalyn Schultz. She notes the difficulty in establishing that a child was sexually abused because few tests are definitive, no symptom or syndrome conclusively proves the abuse, medical practitioners lack training in the area, and medical knowledge about sexual abuse is still in its infancy. Furthermore, the term "medical history" of child sexual abuse implies only that the patient reported information that is assumed to be true, just as the terms "diagnostic findings consistent with sexual abuse" or "consistent with abuse" merely mean that sexual abuse was not ruled out. Howev-

See NEW BOOK, page 48

New Videos on Domestic Violence

A Battered Woman's Perspective

Breaking the Rule of Thumb

by Andrea K. Elovson, 1997 (36 min., purchase $225, rental $60)

Breaking the Rule of Thumb contains interviews with battered women, shelter workers, a legal scholar, family court judges, police officers and a news reporter who writes about domestic violence. It shows how verbal and mental abuse is often more devastating than physical violence. The interview with a formerly battered woman police officer, who was abused by her police officer husband and not helped by her follow officers, challenges the stereotypes of battered women who stay. Through her story and others, the video lays out the connections between women's decisions and their reality-based perceptions about safety. It links a victim's decisions to report the violence, leave, stay, or return to the treatment and support she receives from the system. At a time when there is a resurgence of hierarchical family values and "blaming the victim," the video urges that battered women must be given resources and support for a quality of justice that makes their leaving less dangerous than staying with their abusive partners. In addition, as the title indicates, the video reminds us that the 17th Century Rule of Thumb (which gave the man the right to chastise his wife with a stick no wider

See NEW VIDEOS, page 47

BWS TESTIMONY, from page 35

syndrome. Edward Cooke was convicted of assault, rape, and unlawful imprisonment for two attacks on his girlfriend, Debra McKenzie. McKenzie had received treatment for a broken arm and broken leg which she explained were caused by a fall, although she later testified that the injuries were caused when Cooke kicked her arms and legs. After being treated, she returned to live with Cooke, who sexually assaulted her, then prevented her from leaving the bedroom for two days. In closing argument, Cooke argued that McKenzie's testimony was inconsistent because she would not have returned to Cooke if she had been abused. The prosecutor, responding in argument, said, "she thought she could make it work, and she kept going back. That doesn't make her an uncredible or noncredible person. It makes her a domestic violence victim."

On appeal, Cooke contended that the argument was misconduct because it was unsupported by any expert testimony regarding BWS. The Washington Supreme Court has allowed expert testimony concerning BWS when the battered woman was the complaining witness, but has never required it in such cases. The court of appeals ruled that the jury was called on to determine the credibility of both the defendant and the victim, and that expert testimony was not necessary to this determination, as "the jurors could evaluate the argument in light of human experience." Cooke's convictions were affirmed.

Use Of BWS Testimony for the Defense

In **People v. Erickson**, 52 Cal. App. 4th 1391 (Cal. Ct. App. 1997), the defendant, Deborah Erickson, was repeatedly sexually assaulted and threatened by the victim, Ron Pruitt. Erickson made plans to get a job and move out of the household, but when Pruitt found out, he told her he would kill her if she tried to leave. When Pruitt fell asleep, Erickson made plans with her son to kill Pruitt; her son fired two shots into Pruitt's head and neck. They made it appear as if Pruitt had been killed in a robbery and called the police. Both eventually confessed. At trial, the court allowed testimony with regard to battered women's syndrome generally, but not as to Erickson's beliefs or perceptions. Erickson was found guilty of first degree murder.

BWS Expert Testimony Not Admissible to Show Defendant's State of Mind. On appeal Erickson claimed the court impermissibly excluded expert testimony concerning her mental state on the night of the crime. The court of appeals noted case law holding that BWS testimony is admissible to explain a defendant's subjective belief in the need to defend herself, but not to assert an "expert's opinion that the defendant *actually perceived* that she was in danger and needed to defend herself." The court of appeals thus held that expert testimony concerning Erickson's state of mind on the night of the crime was properly excluded. Additionally, the prosecution expert's opinion statement at trial that Erickson "did not view herself in imminent danger of being killed by Mr. Pruitt" was ruled not prejudicial as the jury was admonished to disregard the testimony. Erickson's conviction was affirmed.

COMMENT: While the holding of this case is consistent with other case law, unfortunately the case is full of references to BWS as a mental disease or defect, since that is how the testimony was presented at trial. This mischaracterization of BWS testimony is not consistent with People v. Humphrey, 56 Cal Rptr. 2d 142 (1996), the only California Supreme Court case on point (see 2 DVR 22), and tends to reinforce inaccurate stereotypes about battered women.

BWS Testimony Not Admissible to Show Lack of Mental Capacity. In **State v. Mott**, 931 P.2d 1046 (Ariz. 1997), *cert. denied*, 117 S.Ct. 1832 (1997), the Arizona Supreme Court held that expert testimony regarding BWS was not admissible to show that the defendant, Shelley Kay Mott, lacked the mental capacity to commit child abuse. Mott's two-and-a-half year old daughter, Sheena, was severely injured while in Mott's boyfriend's care. Mott ignored a friend's advice to take Sheena to the hospital, but the following morning Sheena would not wake up and was exhibiting spasms. Doctors found a large hemorrhage in the brain, as well as numerous other injuries, and the cause of the child's death was noted as "non-accidental." Mott admitted to police that she had confronted her boyfriend five or six times in the past about bruises on Sheena that he said was caused by falling, but Mott did not believe him. She stated that she had been trying to leave him because she did not want Sheena to get hurt.

At her trial, Mott claimed that she lacked the capacity to act due to BWS. Mott was found guilty of felony-murder and two counts of child abuse for leaving Sheena with her boyfriend and for failing to take Sheena to the hospital. An expert would have testified that Mott was a battered woman, explaining why she lacked the capacity to defy her boyfriend and affecting her ability to decide to take Sheena to the hospital. The trial court found that the purpose in offering this testimony was to demonstrate that Mott lacked the necessary knowledge or intent on the child abuse counts, a use the court held to be "diminished capacity." The court disallowed the expert testimony since Arizona has rejected such a defense.

The court of appeals reversed, but the Arizona Supreme Court affirmed Mott's conviction, stating that the sole standard for criminal responsibility is by reason of insanity, and consequently, Arizona does not allow evidence of a defendant's mental disorder short of insanity. The court found that Mott's actions were "clearly purposeful," thus satisfying the intent requirement, and noted that Mott was capable of recognizing that her child was injured and needed medical attention.

A strong dissent argued that the majority confused the concept of diminished capacity with the mens rea required for the crime, pointing out that since the charge was a specific intent crime with different levels of culpability based on different mental states, testimony about the defendant's state of mind was not only relevant but necessary. Thus, the dissent opined that both the state and federal constitution's guarantees of due process had been violated.

Jury Must Have Instruction on BWS Self-Defense Claim if BWS is Established. In **Smith v. State**, 486 S.E.2d 819 (Ga. 1997), the Georgia Supreme Court held that the jury must be given specific instructions on BWS when such a self-defense claim has been properly established. The defendant, Vernita Smith, was beaten and threatened repeatedly by her husband during their marriage. On the day of the shooting, as her husband continued hitting her, she grabbed a pistol and fired one shot into his arm, lodging in his chest and killing him. An expert conducted a lengthy assessment of Smith, then testified generally about BWS, and concluded that Smith suffered from BWS. Smith requested three separate jury charges pertaining to BWS; all were reject-

See BWS TESTIMONY, next page

AGGRESSORS, from page 36

rying something to defend themselves (45% of victims vs. 29% of non victims). Just over a quarter of stalking victims (26%) reported their victimization had caused them to lose time from work, of which 7% never returned to work and the remainder lost an average of 11 days of work.

Just over one-half of the stalking victims (56% of the women and 51% of the men) reported taking some kind of self-protective measure: 18% enlisted the help of family or friends, 17% got guns, 11% moved out of town, 11% changed their address, 5% talked to a lawyer, 5% varied their driving habits, 4% moved to a shelter, 4% stopped going to work or school or otherwise going out, 1% got public records sealed, and 1% hired a private investigator.

Responses to Stalking

Police Response. About one-half of stalking cases are reported to police (52% for women victims, 45% for men). However, police were no more likely to arrest stalkers after 1995, after every state had enacted a stalking statute, than they were before 1990, when California passed the nation's first stalking statute. Though police were slightly more likely to arrest or detain the perpetrator or refer the victim to victim services when the victim was a female, the police were also slightly more likely to do nothing when the victim was female (19% vs. 17%).

Editor's Note: *Though police were slightly more likely to arrest or detain the perpetrator when the victim was a female, this may be because female victims were more likely to report the victimization themselves, thus providing the criminal justice system with a cooperating complaining witness.*

Roughly one-half of stalking victims who reported their cases to police were satisfied with the police response; 76% were most satisfied when their stalkers were arrested while 42% were satisfied though no arrests were made. The one-half of victims who were dissatisfied with the police felt that their stalkers should have been jailed (42%), that the police should have taken the matter more seriously (20%), or that the police should have done more to protect them (16%).

Court Response. Although perpetrators were criminally prosecuted in only 13% of female victim cases and 9% of male victim cases, these prosecutions represented 24% and 19% of the stalking cases reported to the police. "The stalkers were charged with a large variety of crimes, including stalking, harassment, menacing or threatening, vandalism, trespassing, breaking and entering, robbery, disorderly conduct, intimidation, and simple and aggravated assault." Just over one-half (54%) of those charged were convicted, and 63% of those convicted were sent to jail or prison.

Restraining orders were obtained against stalkers by 24% of victims (28% of females vs. 10% of males), but 69% of female victims and 81% of male victims said their stalker violated the order.

Overall, 61% of both male and female victims were satisfied with the courts' response.

What Ends Stalking?

The 92% of victims who were no longer being stalked thought their stalking had ceased because they had moved away (19%), the stalker got a new love interest (18%), police warned the stalker (15%), the victim talked to the stalker (10%), the stalker was arrested (9%), the stalker moved (7%) or got help (4%) or died (4%), the victim got a new love interest (4%), it stopped without explanation (3%), or the stalker was convicted of a crime (1%). The majority stopped because of informal rather than formal justice system interventions.

Study's Recommendations

Stalking should be treated far more seriously, with the focus on acquaintance and intimate partner staking rather than the unusual "celebrity" cases. Police, prosecutors and attorneys need comprehensive training on the particular safety needs of stalking victims, and the mental health community must learn how to appropriately treat them. The credible threat requirements should be eliminated from anti-stalking statutes, since stalking is far more likely to be a "crime of deeds," rather than a "crime of words." Stalking intervention strategies must include keeping confidential the addresses of victims who relocate. In addition, more research is needed to determine what law enforcement interventions are most likely to succeed.

DVR notes that training and research must also be directed toward offenders, and that mental health laws should be used to commit and treat offenders. Name changes (and issuance of new social security numbers) and relocation and address confidentiality options must be offered to endangered children of the victims as well as to the victims. In some cases, especially where supervised visitation is inadequate, laws should permit termination of the stalker's parental rights.

Editor's Note: *DVR welcomes this important study but would have liked more sex specific data on which stalking perpetrators were physically or sexually assaultive, and the seriousness of these cases.* ■

BWS TESTIMONY, from page 42

ed. The defense was allowed to explain in closing argument how BWS affected Smith's state of mind, but the jury instructions were limited to language on justification and self-defense generally.

The Georgia Supreme Court traced the use of BWS and battered person syndrome, which is permitted to illustrate the defendant's reasonable belief in the imminence of the victim's use of unlawful force. The court noted that the term "battering and its effects" is now preferred by many experts and social scientists in place of "BWS," citing the 1996 NIJ Report on this topic. The court then stated that the syndrome is not a separate defense, but "is relevant in a proper case as a component of justifiable homicide by self-defense," and as such the defendant is entitled to a jury charge explaining the theory. The court thus announced a new rule that "when a battered person syndrome self-defense claim has been properly established, the court should give specific jury instructions on self-defense which are tailored to explain how the defendant's experiences as a battered person affected that defendant's state of mind at the time of the killing." Because Smith was entitled to such instruction, her conviction was reversed. ■

WASHINGTON, from page 33

ference agreement requires that the US General Accounting Office conduct a study of the effects of family violence on the use of welfare programs.

Currently 28 states have independently elected to adopt the FVO and an additional 18 states have included violence programs and services in their state welfare plan. At the same time many states, including Texas and Illinois, have balked at adopting the option because it remains unclear whether or not domestic violence waivers count toward the states' cap on hardship exemptions. States that exceed the cap, which cannot be more than 20% of the welfare population, fear being penalized and losing TANF (Temporary Assistance of Needy Families) funds.

Passage of Legal Services Amendment

Now to the good news. The Legal Services amendment remained in the Commerce Justice State Appropriations bill and was passed into law. This amendment, introduced by Senator Wellstone in the Senate and Rep. Pelosi in the House, eases access to legal counsel for victims of domestic violence. Currently, the Legal Services Corporation uses the Federal Poverty Guidelines for household income to determine eligibility for all of its legal services. The inclusion of this amendment in the larger appropriation bill means that eligibility for victims of domestic violence for Legal Services Corporation programs will now be calculated using only the income of the woman seeking services, and not the income of her husband or domestic partner.

Postponement of Introduction of VAWA II

While many on the Legislative Committee of the National Task Force on Violence Against Women have worked hard to compile and complete the Violence Against Women Act II (VAWA II) by the end of summer, they have decided to postpone its introduction to the House and Senate until the second session of the 105th Congress. At the same time pieces of the Act have been introduced by various legislators. Below is a review of relevant legislation introduced since April.

Full Faith and Credit to Protective Orders. Senator Lautenberg introduced legislation on April 19, 1997 that will help ensure that states give full faith and credit to protective orders issued in other states. Like the legislation introduced by Rep. Conyers on March 3, 1997, the bill allows the Attorney General to withhold 10% of all formula Byrne grant crime fighting funds given to a state for failing to enforce out-of-state protective orders.

Domestic Violence Victims Housing Act. Senator Paul Wellstone introduced S. 1128, the Senate version of the Domestic Violence Victims Housing Act on July 31, 1997, which follows Rep. Barney Frank's House version introduced on February 27, 1997. Both bills make available Section 8 housing certificates for victims of domestic violence.

Supervised Child Visitation Centers. Senators Wellstone and Durbin introduced the Safe Havens for Children Act on July 31, 1997, designed to shield children from further exposure to violence by creating a grants program to which domestic violence service providers can apply on a competitive basis to create family visitation centers. Since the link between exposure to violence during childhood and juvenile violence is well documented, these centers were conceived to minimize stressful and potentially dangerous interactions among family members and break the cycle of violence.

Child Custody and Child Abuse. On October 30, Rep. Morella (R-MD) introduced a concurrent resolution expressing the sense of Congress with respect to child custody, child abuse, and victims of domestic and family violence. The resolution calls on states to be "far more protective of victims of domestic and family violence in custody and visitation determinations and not order mediation, couples counseling, shared custody, mutual orders of protection, unsupervised visitation, or other measures when they may endanger victims of domestic and family violence." It also calls on states to provide training for professionals involved with cases that include child custody and domestic violence and child abuse.

Silent Witness Initiative

The Silent Witness march, co-hosted by Sheila and Senator Paul Wellstone, proceeded from the Washington Monument to the nation's capitol on October 18th. Men and women from across the United States carried 1500 life sized red cut outs of women who had been killed by their husbands or boyfriends. This was the first year that a national march representing all fifty states took place. The march ended with testimony, speeches and a candlelight vigil.

Sheila Wellstone is a national advocate on domestic violence issues, and a member of the Advisory Council On Violence Against Women. She is married to Senator Paul Wellstone (D–MN), and can be contacted at (202) 224–5641. ■

STALKING, from page 37

met the DSM-IV diagnosis except for not experiencing actual or threatened physical harm or threat to their physical integrity or to that of a significant other. Furthermore, victims who had been followed were significantly more likely to suffer these symptoms than were those experiencing other forms of harassment. Likewise, victims exposed to violence were more likely to suffer these symptoms.

Interventions

Few interventions helped; most exacerbated the victims' feelings of guilt and worthlessness. Typical were the police who minimized their experiences or doctors who prescribed sleeping pills. Most victims received conflicting advice from traditional sources of help, leaving them at best confused about what to do. Some sources of help were counter-therapeutic to the point of being collusive with the stalker, such as the police informant who recited the victim's confidential address in court with her stalker present. One-half of the victims had not yet found an effective solution to end the stalking.

The study ends by reminding the medical community that it behooves them to minimize victim suffering, particularly where our "own members may indeed be overrepresented among the ranks of the victims."

To read more about the Australian study, see Michele Pathé & Paul E. Mullen, "The Impact of Stalkers on Their Victims," 170(2) British Journal of Psychiatry 12–17 (1997). ■

RECENT CASES, from page 38

reversed, holding that a trial court has the discretion to dismiss a criminal case on its own motion over the objection of the prosecution where the complaining witness does not wish for the case to proceed. **State v. Busch**, 669 N.E.2d 1125 (Ohio 1996).

The supreme court reasoned that "certainly a court's resources in a domestic violence case are better used by encouraging a couple to receive counseling and ultimately issuing a dismissal than by going forward with a trial . . . in a case where the only witness refuses to testify." It also stated that this was "a matter which no longer seemed to fit the court system." However, the court cautioned that a trial judge does not have "unfettered discretion" to dismiss every domestic violence case in which the victim refuses to testify. Other factors to consider are the seriousness of the injuries, the presence of independent witnesses, the status of counseling efforts, whether the victim's refusal to testify is coerced, and whether the defendant is a first-time offender. In this case, the court found that the trial judge did not abuse his discretion but handled the case well, using the possible dismissal as an incentive for the couple to continue in counseling.

COMMENT: The court's use of couples counseling in this case is extremely troublesome. As both the American Medical Association and American Psychiatric Association acknowledge, couples counseling is contraindicated in domestic violence cases, at least until the abuser has completely stopped being violent. Couples counseling before the violence has ended endangers the victim and communicates to both parties that the problem is a relationship problem rather than the abuser's problem.

TEXAS: No Employer Duty to Protect Employee From Husband. Blanca Moyeda, an employee at a medical center, was shot and killed by her husband, Enrique Moyeda, while she was at work. Her minor children and parents sued the medical center for negligence in failing to exercise reasonable care in providing security to ensure her safety. The trial court granted summary judgment in favor of the medical center. The Court of Appeals of Texas held that an employer does have a duty to use reasonable care in providing a safe work place, and the duty to protect employees against the criminal acts of third parties arises only if there is a foreseeable risk of harm. The evidence on appeal focused on whether the shooting was generally or specifically foreseeable. **Guerrero v. Memorial Medical Center**, 938 S.W.2d 789 (Tex. Ct. App. 1997).

The evidence established that prior to the day of the shooting, Enrique had visited Blanca at the medical center several times and tried to get Blanca to leave with him. She refused and reported the matter to the security department, and the following morning, she requested a security escort into the building. Enrique was spotted in the parking lot and ran away when guards attempted to talk with him. He was found again on the premises and was told if he returned criminal trespass charges would be filed against him. He was calm and cooperative and made no threats against anyone. While Blanca's family was aware that Enrique beat Blanca, the medical center was apparently never informed of the beatings. However, the security department was aware that Enrique was a threat and had noted in their records, "Employee's husband (separated) on property stalking wife."

The court concluded that as to general foreseeability, the medical center "did not know and did not have reason to know from *past* experience of a likelihood of conduct on the part of third persons in general which would endanger the safety" of employees. As to specific foreseeability, in spite of the security log notes, the medical center "did not know and had no reason to know that Enrique Moyeda had been physically abusing Blanca and was about to murder her." Thus, in a two to one opinion, the court affirmed the summary judgment granted to the medical center.

WASHINGTON: No Joint Decision Making in Parenting Plan Following Finding of Domestic Violence

Mrs. C. appealed from the court's entry of a parenting plan providing that the children would reside with her but ordering the parents to make major education, health care, and religious decisions jointly. She argued that the court erred in ordering joint decision making after finding that her husband had engaged in a history of acts of domestic violence. The statute at issue provides that a parenting plan shall not require mutual decision making if it is found that a parent has engaged in "a history of acts of domestic violence . . . or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." The court ordered the plan because the domestic violence did not result in grievous bodily injury or the fear of such injury, reasoning that the statutory limitation was to protect a parent who fears abuse. Such protection was not necessary in this case according to the trial court.

The Court of Appeals of Washington reversed and remanded, holding that the phrase "grievous bodily harm" modifies only "an assault or sexual assault" and noting that the domestic violence prong requires a history of acts, not simply one incident resulting in injury. **In re Marriage Of C.M.C.**, 940 P.2d 669 (Wash. 1997). Because the statute requires sole decision making once there is a finding of a history of domestic violence, the trial court abused its discretion in awarding mutual decision making.

WISCONSIN: Employee Has No Tort Action Against Employer for Loss of Confidentiality. After Holly Lynn Weiss obtained a restraining order against her abusive husband and commenced a divorce action, he began a campaign of harassing phone calls and visits in which he threatened the lives of Weiss and their two children. The calls to Weiss' employer were of such frequency that they resulted in her termination. She then obtained employment with the City of Milwaukee and established a new residence there. She reported her address and telephone number to the payroll department with assurances that such information would remain confidential from her husband. Her husband, falsely representing himself as a bank employee running a credit check, obtained her home address and telephone number and resumed his harassment and threats.

Weiss sued the city for negligent infliction of emotional distress; the action resulted in summary judgment for the city, and the court of appeals affirmed. The Supreme Court of Wisconsin also affirmed, concluding that Weiss stated a claim under the Workers' Compensation Act (WCA), and her negligence action against the city was barred by the statute's exclusive remedy provision. **Weiss v. City of Milwaukee**, 559 N.W.2d 588 (Wis. 1997). Under the WCA, the court held that the accident arose out of her employment because the conditions of her employment facilitated her eventual injury. Weiss's common law negligence claim was properly dismissed as the WCA precluded her from maintaining a negligence action against her employer. ■

VAWA, from page 34

the United States District Court of Iowa in Sioux City ruled that a woman alleging sexual misconduct by her parish priest could proceed with her VAWA civil rights claim. He upheld the law as a valid exercise of Congress' authority under the Commerce Clause. Judge Bennett ruled that Congress had a rational basis for finding that gender-motivated violence has a substantial effect on interstate commerce and that the means that Congress adopted by enacting the VAWA civil rights remedy was reasonable. The court noted that Congressional findings should continue to be given deference after **Lopez** and that the **Brzonkala** decision (which was subsequently reversed as discussed above) was "fatally flawed" for failing to do so.

Seaton v. Seaton, 971 F. Supp. 1188 (D. Tenn. 1997). On July 7, 1997, Judge James H. Jarvis of the United States District Court for the Eastern District of Tennessee upheld the VAWA Civil Rights Remedy as constitutional and allowed a woman suing for divorce and civil damages based on domestic violence to proceed with her VAWA civil rights claim. The court "reluctantly" concluded that Congress had a rational basis for determining that violence against women "sufficiently affects" interstate commerce. Moreover, it noted that the **Brzonkala** court, which was subsequently reversed, "adopted a far too restrictive view of **Lopez**." It held that the legislative findings underlying the Civil Rights Remedy were sufficient to uphold Congress' judgment in passing the law.

Other Legal Developments Involving VAWA

In addition to these decisions addressing the Civil Rights Remedy's constitutionality, several courts have addressed other aspects of VAWA. For example, all three reported decisions addressing the issue have upheld the constitutionality of VAWA's criminal provisions, **United States v. Wright**, 1997 U.S. App. LEXIS 32058 (8th Cir. Nov. 14, 1997), *rev'g*, 965 F. Supp. 1307 (D. Neb. 1997); **United States v. Bailey**, 112 F.3d 758 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 240 (1997); **United States v. Gluzman**, 953 F. Supp. 84 (S.D.N.Y. 1996). A federal appellate court applied the VAWA provision criminalizing interstate violation of a protection order and upheld a jury verdict convicting a man who stalked his ex-girlfriend from Massachusetts to New York. **United States v. Casciano,** 124 F.3d 106 (2d Cir. 1997) (discussed in the article above). Addressing the important full faith and credit provision, a New York state court ruled that an out-of-state order could be enforced provided that the prosecution established a *prima facie* case. **People v. Hadley**, 658 N.Y.S. 2d 814 (Crim. Ct. 1997).

Procedural Aspects of VAWA. A few courts have addressed procedural aspects of litigating VAWA Civil Rights Remedy claims. A Supreme Court decision, which affirmed the applicability of the federal catch-all statute of limitations to all federal statutes passed after December 1, 1990, supports the application of the catch-all's four year limitations period to VAWA Civil Rights Remedy claims. **North Star Steel Co. v. Charles A. Thomas**, 115 S. Ct. 1927, 1930 (1995). In two unreported decisions, courts have ruled that the VAWA Civil Rights Remedy may be applied retroactively, **Ratchford v. Saint Vincent's Health Sys., Inc.**, No. 95- 704-Civ-J-99(H) (M.D. Fla. Jun. 20, 1996); **Gillespie v. Northpointe Retirement Community, Inc**., No. 95-1757-CA-01B (Escambia County, Fla. Jul. 21, 1997), although another decision refused to apply the remedy retroactively. **Doe v. Abbott Labs.**, 892 F. Supp. 811, 813 (E.D. La. 1995). On the question of whether VAWA civil rights claims may be removed to federal court, one court permitted the claim to be removed, despite the statutory language prohibiting removal, because the VAWA claim was brought along with a removable Title VII claim. **Newton v. Coca- Cola Bottling Co.**, 958 F. Supp. 248, 250-51 (W.D.N.C. 1997).

For more information and updates concerning ongoing legal developments, contact Julie Goldscheid or Andrea Williams at NOW Legal Defense and Education Fund, 99 Hudson Street, New York, NY 10013.

Julie Goldscheid is a staff attorney at the NOW Legal

VAWA Protection Order Violation Conviction Upheld by Second Circuit

The defendant, Michael Casciano, met Susan Keezer in a nightclub and the two dated for several weeks until Keezer attempted to break off the relationship because of Casciano's possessiveness. Casciano then began to engage in a pattern of intrusive, harassing and threatening behavior. Keezer obtained a protective order in Massachusetts which was personally served on Casciano. Casciano continued his harassing behavior so Keezer obtained a second order, identical to the first. Police were unable to personally serve him, but Keezer informed him of the second order and the date of the hearing during one of his continued phone calls. Casciano failed to appear at two scheduled hearings, and following numerous unsuccessful attempts at personal service, police left the order at his last known address. Casciano's harassment continued, including threats and an average of 100 phone calls a week to the victim's workplace. Keezer moved to New York, where Casciano's behavior continued and he was finally arrested. He was found guilty under the Interstate Violation of an Order of Protection section of the Violence Against Women Act (VAWA), 18 USC 2262.

On appeal, Casciano contended that he was denied due process because he did not receive reasonable notice and an opportunity to be heard with respect to the second Massachusetts protection order. **U.S. v. Casciano** 124 F.3d 106 (2nd Cir. 1997). The U.S. Court of Appeals for the Second Circuit first held that the question of whether a protection order was validly issued was for the judge, not a jury, to resolve. The court then turned to the due process arguments, noting that imperfect service does not necessarily invalidate a judicial order when the defendant has had actual notice of the pending legal action and no prejudice has accrued. There was ample evidence that Casciano had actual notice of the protection order in advance of the hearing and that his absence from his apartment was deliberately contrived to avoid service of process. Moreover, there was no showing that Casciano suffered any prejudice from the imperfect service. Finding the due process argument without merit, the court affirmed the conviction.■

BOOKSHELF, from page 40

Prosecutor and Other More Modest Proposals," Linda Mills, a U.C.L.A. Assistant Professor of Social Welfare and Law, worries about the 85% of battered women who never report their abuse fearing that they will lose all control over the response, particularly when a mandatory prosecution policy cannot insure them protection. She notes that prosecutors are overworked and trained to use a strategy of increasing prosecutorial penalties that rarely results in more than a few days of jail time for batterers. They are taught to be emotionally detached from the women they are seeking to help, further alienating them. To counter this she advocates that prosecutors need "to feel what the victim evokes in them … and to understand why they might emotionally resist engaging the victim." This would enable them "to engage the survivor to really begin the process of helping her help herself." Prosecutors should be trained in social work or psychoanalytic techniques so that they can represent both the state and the victim in a way that empowers the victim and allows her to be free of violence.

Abuse by Athletes

Public Heroes, Private Felons: Athletes and Crimes Against Women
by Jeff Benedict
Northeastern University Press, 1997

Benedict, the former Director of Research at the Center for the Study of Sport in Society, presents research and inside information revealing the disproportionate amount of abusive behavior by athletes against women. Rapes, gang rapes and domestic violence are all far too common. He also tells how coaches, school administrators, members of the professional sport industries, and the defense bar conspire to deny and minimize the abuse and to discredit the women they abuse. Any women who fight back in the courts are targeted for further abuse, this time to their reputations. The courts are an accomplice in allowing settlements that silence the victims, while often leaving the perpetrators and their lawyers free to continue slandering the victims.

The picture painted is disturbing, though the book is easy, if not trouble-free reading. It is troubling to learn that 33% of sexual assaults by college or professional athletes involve multiple perpetrators. With the gang rapes and indiscriminate sex, Benedict points out that the transmission of sexually transmissible diseases, including AIDS, is common from athletes. He is understandably appalled that the focus has been on protecting other athletes from HIV+ teammates, rather than the hundreds of women with whom they almost certainly engage in unprotected sex.

While most of the book is very sympathetic to the women, Benedict does partially blame women for encouraging the athletes by joining the groupie scene, including indulging in the excessive use of alcohol. He notes that athletes target vulnerable women (especially those mentally impaired, including by drugs or alcohol, or employed in the male entertainment industry such as prostitution and exotic dancing) who society generally discredits or believes deserve no better.

Unfortunately, Benedict avoids exploring the homosexual and homophobic scene among athletes, except in explaining how much of the group behavior (including gang rapes) by athletes is rooted in their need to sustain their standing among their peers. Benedict could also have done far more to propose remedies and ethics codes for the outrageous, blatantly irresponsible practices.

Undoubtedly knowing how ruthless athletes and their supporters can be, he is careful to document almost all of his accusations. ■

NEW VIDEOS, from page 41

than a thumb because he was responsible for her behavior as he is responsible for all of his other property/chattel) still dominates aspects of our current thinking and practices. This excellent video is available from Women Make Movies, 462 Broadway, Suite 500, New York, NY 10013, (212) 925-0606, fax 212-925-2052.

Viewing for Religious Audiences

Wings Like a Dove: Healing for the Abused Christian Woman
(34 min. $79 purchase, $30 rental)

To Save a Life: Ending Domestic Violence in Jewish Families
(35 Min. $79 purchase, $30 rental)

The Center for Prevention of Sexual and Domestic Violence (CPSDV) has released two new videos on domestic violence that are especially well suited for religious audiences. Both come with 32 page study guides and brochures. The Center's earlier video, *Broken Vows: Religious Perspectives on Domestic Violence* (in 2 parts, $139 purchase, $50 rental) told the stories of six Jewish, Protestant and Catholic battered women, showed how scripture has been used to encourage the abuse of women, and explained the positive ways that congregations can support women to end the violence.

Wings Like a Dove is an excellent follow-up, discussing how the abuse is not the fault of the victim, how domestic violence harms children, how women can heal from the violence, and when forgiveness is appropriate (only a possibility when the abuser has changed and repented). It also explains the marriage covenant as a mutual union using scriptures. It is very reassuring but thorough, and the study guide is helpful for all Christian sects.

To Save a Life is far more basic, documenting that domestic violence exists in many Jewish families, that the abuse is not the victim's fault, and that there is help for battered women. The section on domestic violence and children may be confusing to some viewers since one victim explains that the children were safer when she was not around (implying that her husband only hurt the children to hurt her). Without further explanation, a battered woman viewing this video might mistakenly feel she should leave her children with her abuser. The religious tone is nicely set from the beginning by Jewish music. While there are many references to Jewish teachings, the video and study guide may not provide enough detail for some Jewish communities steeped in a Jewish legal tradition.

DVR is very pleased to see that the CPSDV has produced these videos, and recommends their usage with appropriate audiences. Contact CPSDV at 936 North 34th Street, Suite 200, Seattle, WA 98103, tel. 206-634-1903. ■

SUBSCRIPTION INFORMATION

Domestic Violence Report ("DVR") is published six times annually. A basic one-year subscription to DVR is $125 plus postage and handling. Non-exempt New Jersey and New York residents please add appropriate sales tax.

TO ORDER
Complete the information below and mail to:
Civic Research Institute
4490 U.S. Route 27
P.O. Box 585
Kingston, NJ 08528

- ❑ Enter my one-year subscription to **Domestic Violence Report** at $125 plus $4.95 postage and handling.
- ❑ Enter my one-year subscription to **Sexual Assault Report** at $125 plus $4.95 postage and handling.
- ❑ Enter my one-year subscription to **The Crime Victims Report** at $125 plus $4.95 postage and handling.

Name

Firm/Agency/Institution

Address

City

State Zip Code

Phone Number

Purchase Order #

NEW BOOK, from page 41

er, she does discuss some conditions that clearly indicate sexual abuse.

Her discussion of Child Sexual Abuse Accommodation Syndrome is excellent, noting that it is useful for explaining why a child recants, but not for proving the abuse. She also discusses why Parental Alienation Syndrome (PAS) lacks any credibility. She notes that even Richard Gardner, who created PAS, acknowledges that his Sexual Abuse Legitimacy Scale cannot predict whether child sexual abuse occurred.

Other chapters deal with health care decision making in the family, same-sex marriages, and many aspects of divorce, including an excellent treatment of religion in custody considerations and what to do when the adverse party has lost, concealed or destroyed evidence. Mark J. and Melissa C. Ackerman largely duplicate the results of their article on Child Custody Evaluation Practices at 30 FAM. L.Q. 565–587 (1996), reviewed at 2 DVR 65 (1997), showing that custody evaluators seldom consider domestic violence as a criteria in their custody determinations, even though more than 40 states require courts to consider it.

Presumptive Shared Custody

A real disappointment in the book is Robert E. Fay's chapter, "The American Way of Divorce: Destruction of Parents, Disaster for Children." Fay advocates a presumption of mutual physical responsibility in custody cases. His premise is that because children do better in well functioning, two parent families, that forced joint physical custody or shared parenting will result in well adjusted, mutually cooperative parents and children. He cites very little authority to back up his premise. He cites repudiated research (e.g., Judith Wallerstein, who now acknowledges that joint custody arrangements are actually harder for children, particularly when they are imposed over the objection of a parent) and research that ignored the financial effects of divorce. Showing his real bias, Fay advocates for the elimination of child support orders because "child support includes emotional, psychological, nurturant and physical support" as well as financial; the "other" parent already pays plenty of financial support "at the child's other home"; and the family court players "stubbornly continue to believe that the tragic and multifaceted problem of child support centers around money [although i]t is lack of parents, not money, from which children of divorce most egregiously suffer."

Editor's note: *Fay's chapter appears to be part of the recent, frightening trend whereby fathers' rights advocates are managing to get their works published in responsible legal and medical publications. See, e.g., Ira Daniel Turkat, "Management of Visitation Interference," that appeared in The Judges' Journal 17 (Spring 1997).*

A copy of the book can be obtained from Wiley Law Publications at 605 Third Avenue, New York, NY 10158–0012. ■

DOMESTIC VIOLENCE REPORT
Civic Research Institute, Inc.
4490 Route 27 P.O.Box 585
Kingston, NJ 08528

PERIODICALS
U.S. POSTAGE
PAID