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# ❖ The Legal Advocate ❖

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## New Study Underscores Importance of Screening for Firearms

By Christine McLeod Pate

In a recent study by the Violence Policy Center, Alaska ranked second in the nation in 1999 in per capita violence of female victims by male victims. In 1999, nine females were murdered by males in Alaska. For the homicides in which the victim to the offender relationship could be identified, all of the female victims (8 out of 8) were murdered by someone that they knew. For homicides in which the weapon used could be identified, 4 out of 9 were shot and killed with guns. Three victims were killed with a knife or another cutting instrument and 2 were killed by bodily force. *Violence Police Center Releases When Men Murder Women: An Analysis of 1999 Homicide Data, dated 10/17/01*

Given these statistics, advocates should be notifying every client about federal firearms restrictions. In 1994, Congress amended the Gun Control Act of 1968, to make it a federal crime for a person to possess a firearm or ammunition if they are subject to a "qualifying" protective order. 18 U.S.C. s. 922(g)(8). A "qualifying" protective order is a protective order issued after a hearing where the respondent had notice and an

opportunity to be heard. The order must state that the respondent represents a credible threat to the safety of the petitioner or it must restrain the respondent from using, attempting or threatening to use force that would cause injury to the petitioner. The order must also restrain the respondent from engaging in behavior that would place the petitioner in reasonable fear of bodily injury. Persons involved in dating relationships who have never cohabited or had a child together will not be subject to this provision. In addition, law enforcement personnel are exempt to the extent they are carrying weapons for professional use. A corollary provision of federal law, 18 U.S.C. 922(d)(8), makes it a crime to sell or transfer a firearm to a respondent who is subject to a qualifying protective order. The law mandates that the transferor must knowingly transfer the firearm.

In 1996, Congress again amended the Gun Control Act of 1968, with an amendment known as the Lautenberg Amendment. Senator Frank Lautenberg, the proponent of the amendment, cited a study that found that in homes with a history of battery, women

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*Views expressed in this newsletter do not necessarily represent ANDVSA opinions*

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# New York City Preliminary Injunction Favors Victims of Domestic Violence in Child Protection Cases

By Christine McLeod Pate

Federal Judge Jack B. Weinstein has ruled that New York City's Administration for Children's Services (ACS) is violating the constitutional rights of mothers and their children by removing children from mothers who are victims of domestic violence. The case could have sweeping implications for battered women and their children in NYC and around the country. The case, *Nicholson v. Scopetta*, is a federal class action lawsuit brought against ACS by a group of battered women. The plaintiffs claimed that ACS took their children away simply because the mothers were victims of domestic violence. The draft injunction orders ACS to stop its policy of separating battered women from their children and to adopt new policies and procedures to improve the agency's response to families experiencing domestic violence. It gives the agency six months to adjust its practices to comply with the ruling.

Judge Weinstein's injunction focuses on the ACS practice of "removing children of battered mothers for the reason that the mothers "engaged in" domestic violence by being victims of such violence and that the children had been witnesses." It validates the plaintiff's claim that this policy violates the constitutional right of parents and children not to be separated by the government unless the parent is unfit to care for the child. "Parents and children have a constitutional right to due process of law before they are separated. The defendants have violated these constitutional rights," the draft injunction

reads. The draft injunction is designed to protect the rights of children and ensure that "battered mothers who are fit to retain custody do not face prosecution or the removal of their children solely because the mothers are battered." It holds that the "government may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them the sins of their mother's batterer." It orders ACS to stop the policy of removing children from their battered mothers immediately and also includes detailed and specific instructions for ACS to improve its response to families experiencing domestic violence. Among other things, the injunction calls on ACS to:

1. Make "every reasonable effort" to separate a batterer from his victim and her children, and provide them with "reasonably adequate protection." This includes helping the family find shelter or other safe haven and obtain a protective order against the batterer.
2. Inform mothers of their rights and those of their children before taking any action to remove children from mothers who are victims. This includes developing a pamphlet in different languages.
3. Implement a training and supervision program to inform ACS employees and contractors of the provisions in the injunction and prepare them to implement the changes it outlines.
4. Establish a five person Review Committee to "assist in the enforcement of and compliance with" the terms of the injunction.

The preliminary injunction also finds that low rates paid to attorneys for representing battered women in ACS proceedings effectively violates the women's constitutional rights. The decision states that these low rates lead to inadequate representation for battered women, violating

*(Continued on page 3)*

## Employment Rights for Survivors of Abuse Domestic Violence and Work

Domestic violence can have a significant impact on the workplace. Abusers may attack, stalk or harass their partners at work. Employees who experience violence at work or at home may need time off from work to seek legal and medical assistance or may experience performance problems. Many employers are taking a leading role in addressing violence by adopting policies, promoting workplace education, and addressing security concerns. Unfortunately, some employers continue to penalize or retaliate against employees who have experienced domestic violence, sexual assault, or stalking.

NOW Legal Defense and Education Fund aims to help abused women escape the cycle of violence by advocating for their employment rights through its Employment Rights for Survivors of Abuse project. For further information, visit:  
[www.nowldef.org/html/issues/work](http://www.nowldef.org/html/issues/work)

### New E-Mail Address *...Correction*

Please excuse an error in the last newsletter that incorrectly listed our web site e-mail address.

The correct e-mail for the ANDVSA web site is:

[info@andvsa.org](mailto:info@andvsa.org)

The web site address has not changed, although it is updated regularly with training information, resource links and other current information for advocates working to end domestic violence and sexual assault.

Check it out!

[www.andvsa.org](http://www.andvsa.org)

*(“ . . Injunction Favors Victims . . . “ Continued from page 2)*

their rights to procedural due process, and recommends that all appointed attorneys be paid at least \$90 per hour for both in and out of court time.

Advocates should be clear that this NY case is not binding in Alaska courts. However, the underlying arguments made by the plaintiffs and accepted by the Court – that parents have a constitutional right to their children unless they are found to be unfit and that a victim of domestic violence should not be found to be unfit based solely upon their status as victims – could certainly be made in Alaska given the appropriate facts. Advocates with questions about this should call the LAP at 1-800-914-STOP or the Pro Bono Program at 1-888-520-BONO.

# ANDVSA Staff Changes



## Welcome to Patti Bland

The Network is very pleased to welcome Patti Bland to our staff as the Statewide Training Coordinator.

Patti Bland, MA. CCDC, received a Master's degree in Public Communications from Fordham University in 1979 and a Certificate in Addiction Studies from Seattle University in 1990. Patti has served both as an advocate and lead chemical dependency counselor at New Beginnings for Battered Women and their Children's shelter and community-based program in Seattle for eleven years. Patti developed the Domestic Violence/Chemical Dependency Outreach Project for King County at the Alcohol Drug Help Line in 1994. She also served as the Domestic Violence Trainer for Providence Health System Family Violence Program for five years. Patti is an Adjunct Professor at Antioch University and Seattle Central Community College. She has published several articles on chemical dependency and domestic violence and completed development of domestic violence curricula for the Washington State Medical Association and the Perinatal Partnership Against Domestic Violence.

Patti is aunt to 7 nieces and nephews who like to fish, play music, scuba dive, sing and dance. She is a fabulous presenter, and her knowledge, experience and humor will be a great addition to our statewide network.

## Welcome to Ann Rausch

Ann Rausch joins the Network staff as the Office Manager. Ann recently left employment at AWARE in Juneau to focus on graduate studies in counseling. She has over 20 years experience in the field of domestic violence and sexual assault prevention as an advocate and education specialist.

Ann lives with her 13 year old son Erin, their dog Titan and cat Deino. She is working at the Network part time while she completes her graduate studies, and we are thrilled to have her.



## Good-bye to Blaine Hollis

Blaine Hollis, Pro Bono Program Staff Attorney recently accepted the position of Assistant Attorney General in the Natural Resources Section on fisheries, forestry, land use and other natural resources issues.

Blaine will leave the Network at the end of January and his position will be advertised in spring 2002.

Blaine has worked full time since January 2001, representing clients when the Pro Bono Program cannot find a volunteer attorney to handle a case. He has represented victims of domestic violence and sexual assault in civil cases statewide, including Bethel, Palmer, Seward, Atkasuk, Barrow, Naknek, Juneau, Fairbanks, Sitka, Ketchikan and Anchorage.

We wish you a very fond farewell Blaine. Thank you for all of your hard work over the last year.

***Fourth Annual ANDVSA***  
**Impact of Domestic Violence on Your Legal Practice**

***“If you want peace, work for justice. . .”***

***-Pope John Paul VI***

**Monday & Tuesday, April 8-9, 2002**  
**8:30 AM – 5:00 PM**

**Sheraton Hotel**  
**Anchorage, Alaska**

*Opening Remarks by*  
**Chief Justice Dana Fabe**

*Keynote Speaker*  
**Barbara Hart**

The Fourth Annual ANDVSA CLE offers new information to attorneys about working with cases involving domestic violence and sexual assault.

- Cyberstalking, Email and Technology Issues
- Substance Abuse and Domestic Violence
- Dynamics of Domestic Violence & Working with Legal Advocates
- Divorce and Custody Litigation (*Basic and Advanced Workshops*)
- Mediation in Domestic Violence Cases
- The Effects of Domestic Violence on Children
- Evidentiary Issues in Domestic Violence Cases

*Free registration, travel, lodging and per diem for attorneys donating volunteer time to the ANDVSA Legal Advocacy Pro Bono Program.*

*A registration packet will be mailed to all active Alaska Bar Members and Network Legal Advocates in late February. For more information contact Pro Bono Program Director and Mentoring Attorney:*

***Christine McLeod Pate***

***1-888-520-BONO***

***christine.pate@worldnet.att.net***

**This program has been approved by the Alaska Bar for 12.5 general CLE credits, plus 1 ethics credit**  
***(.25 ethics credit April 8th & .75 ethics credit April 9th)***

## Victim of Domestic Violence Wins Suit Against Seaside Apartment Owners

The landlord of a woman evicted because she was a victim of domestic violence settled out of court in a case that has implications for landlord-tenant law nationwide.

Tiffani Alvera, was thrown out of her government-subsidized apartment in Seaside, Oregon in 1999 after being beaten by her husband.

The case may influence landlord “zero-tolerance” policies nationwide. These are policies that give landlords the right to evict tenants if there are any signs of violence on their rental properties. “This puts all landlords on notice that if you try to evict women because they are victims of domestic violence, they will face the consequences,” said Geoff Boehm, a staff attorney with the NOW Legal Defense and Education Fund.

He said NOW is looking into similar cases in Colorado, New York, North Carolina and Illinois.

Alvera’s landlord, CBM Group Inc. of Auburn, Calif., agreed in court to pay an undisclosed sum to Alvera, Boehm said.

The company also agreed not to evict tenants because they are victims of domestic violence at any of the company’s about 100 properties in five states, he said.

The government, NOW Legal Defense, the ACLU and two other legal organizations filed the lawsuit July 10 on behalf of Alvera.

“It will no longer force the victim into the dangerous position of keeping quiet or reporting the violence and risking eviction,” Boehm said.

Alvera said her husband beat her up at their apartment at the Creekside Village Apartments in Seaside, leaving her with a concussion and a fractured cheekbone. Her husband left after the fight, she said. She said management then served her with a 24-hour eviction notice.

“I was scared because I had nowhere else to go,” Alvera said in an interview last summer from her new home in North Carolina. She asked that her precise whereabouts not be disclosed because she is hiding from her former husband, whom she has since divorced.

CBM Group, which owns Creekside Village Apartments, could not be reached for comment. The group had maintained that the no-violence policy falls within Oregon law.

Many of the apartments at the complex are subsidized under federal programs, and the U.S. Department of Housing and Urban Development was among the parties that sued.

*From The Associated Press, 11/2/01*

(“Firearms...” continued from page 1)

are three times as likely to be killed if a gun is present. The amendment prohibits misdemeanor defendants from possessing a firearm or ammunition following conviction of a federal or state misdemeanor crime of domestic violence and shipping, transferring or receiving firearms or ammunition. 18 U.S.C. 922(g)(9) and (d)(9). The amendment is very broad in coverage: it applies to convictions on and after September 30, 1996 - the date of enactment, it applies retroactively to convictions prior to the date of the Act, law enforcement and military personnel are not exempt, and it forever precludes these defendants from possessing firearms or ammunition.

Across the country, defendants have raised several constitutional claims to the firearm provisions: including second amendment challenges (“right to bear arms”), commerce clause challenges (attacking Congress’ authority to enact these provisions) and due process challenges (defendants claiming that because they didn’t know that they were not allowed to possess a firearm the statute violates their rights). The majority of these challenges have been unsuccessful. In the Ninth Circuit, the federal appellate court for Alaska, the federal firearm provisions have withstood both commerce clause and due process challenges. *U.S. v. Jones*, 231 F.3d 508 (9th Cir. 2000); *U.S. v. Kafka*, 222 F.3d 1129 (9th

*Cir. 2000*).

Advocates should be screening every client about firearms. If either of these provisions would apply to an abuser, steps should be taken to have the federal provisions enforced including:

1. Safety plan with victims - make sure that removal of the firearms would make her *more safe rather than less safe*.

2. If you are helping her with a protective order, see if the Magistrate will take his firearm under state law (AS 18.66.100 (c) (7), if the defendant was *in the actual possession of or used a firearm* during the commission of the domestic violence). Make sure that she testifies about the types of weapons that he has, where they are and why she and/or children are afraid of them. If state law applies, make sure that she gets a writ of assistance for the troopers or police to get the firearms.

3. If state law does not apply, she should still put evidence about firearms in record, make sure that the magistrate notifies him about federal laws and then seek the district attorney’s assistance. The district attorney will contact the U.S. attorney general, Audrey Renschen, if federal criminal action is appropriate. If you are having problems,

**“True peace is not merely the absence of tension, it is the presence of justice.  
No justice, no peace.”**

*Martin Luther King Jr.*

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*The newsletter is edited by Mary Kay MacNaughton. Questions? (907) 586-5643, x23.*

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