AGENTS FOR CHANGE

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Agents for Change
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Minnesota Supreme Court Applies *Washington v. Davis* to *Wright II*

In *Crawford* the court found that the Confrontation Clause of the Constitution forbids the admission of all testimonial statements made by a witness who is absent from the trial. This conclusion by the *Crawford* Court raised a big question, what is a testimonial statement? In an attempt to help clarify the 2004 *Crawford* case, in 2006 the US Supreme Court decided *Davis v. Washington*. In general testimonial statements are those made in contemplation of a court action. In *Davis*, the Court defined a non-testimonial statement as "made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Davis v. Washington*, 126 S. Ct. 2266, 2273 (2006). In *State v. Wright*, 726 N.W.2d 464 (Minn. 2007) (*Wright II*), the Minnesota Supreme Court applied *Davis* to determine what is an "ongoing emergency."

In 2002, 911 received a hang up phone call from, what was soon to be determined, R.R.'s apartment. R.R. then called 911 again and reported that Eugene Wright had pulled a gun on R.R. and her little sister. The 911 operator obtained some information from R.R. including a description of Mr. Wright and how the police could enter the apartment building. R.R. made a number of statements to the 911 operator that she was frightened of Mr. Wright. The operator informed R.R. when the police were on their way, when the police arrived and when the police had apprehended Mr. Wright. After Mr. Wright was apprehended, the police interviewed R.R. and her sister at her home. Police noted that R.R. was very upset, crying and taking deep breaths in an attempt to calm herself. The police also noted that R.R.'s sister was crying. Mr. Wright was charged with two counts of second degree assault and a prohibited person in possession of a firearm. R.R. nor her sister testified at the hearing, telling a domestic violence advocate, that R.R. was afraid for her and her sister's safety, felt that Mr. Wright might still have keys to her apartment and said Mr. Wright had been calling R.R. from jail.

The district court found that R.R. and her sister were unavailable to testify. The tape and the transcript of the 911 call and the statements R.R. and her sister made the police were admitted into evidence based on the excited utterance exception to the hearsay rule. Wright was found guilty on all counts. Wright appealed the decision to the Minnesota Court of Appeals arguing, among other things, that the court improperly admitted the 911 call and the statements from R.R. and her sister. While the case

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Upcoming Events

Mark your Calendars

New Laws two-day Training is approaching!

See host Agencies and dates below:

Virginia, August 2-3
Range Women's Advocates

Crookston, August 9-10
Migrant Health Services

Montevideo, August 16-17
Shelter House

Rochester, August 23-24
Women's Shelter

Brainerd, September 6-7
Women's Center Mid-Minnesota

Bloomington, September 10-11
Cornerstone

Shortly you will be able to check training locations, registration forms, etc, in our web site www.bwlap.org

Michelle Hall has joined the staff of BWLAP as Program Manager!

Michelle comes with an impressive experience of over 12 years in the movement working to stop violence against women. Michelle was the Program Coordinator for the Sexual Violence Justice Institute. Throughout this work, she provided technical assistance and oversight to 8 multidisciplinary response teams to promote a collaborative victim-centered approach within the criminal justice system. She also created and conducted Legal Advocacy trainings throughout the state to enhance the knowledge base for sexual assault advocates working with victims within the criminal justice system. Michelle also collaborated with the creation of the Legal Advocacy Manual, which is utilized within sexual assault programs. While Michelle is looking forward to continuing her work by organizing community and collaborative efforts that engage advocates and battered women in improving the legal system's response to domestic violence, we have no doubt that adding her expertise to our Agency's, will make for a big improvement in the range of services we provide.
We are thrilled to have her with us. Please help us to give a big and warm WELCOME to Michelle!

Stop the violence, break the silence!

Join MPIRG at its 10th annual Take Back the Night, a march and rally to end violence in the Twin Cities community that focuses on issues of gender equality, sexual and domestic abuse and public safety. The event will begin with a rally at 6:00 pm, followed by a march at 7:00 and a speakout with live music at 8:30. If you have any questions, please contact Ani at 612 627 4035 or e-mail aloizzo@mpirg.org.

JOIN BWLAP'S LIST-SERVE FOR LEGAL ADVOCATES

BWLAP has re-launched its list-serve for Minnesota legal advocates! The goal of this new email list is to connect advocates to each other, share new resources, and strategize about solutions to common problems. For more info call Michelle at (612) 343-9845 or email to michelle@bwlap.org

TO SIGN UP: Contact Michelle at michelle@bwlap.org with your preferred email address.

Immigration Corner

The Costs of DNA Tests

Genetic testing has become a common tool used by the State Department and the Homeland Security Department to prove family links in cases in which a new United States citizen wants to bring into this country family members living abroad and lacks sufficient documentary evidence.

The lack of unquestionable documentary evidence is frequent in developing countries or those that are or have been on war.

A DNA testing expert working with the American Association of Blood Banks estimates that about 75,000 of the 390,000 DNA cases that involved families in 2004 were immigration cases. Of those, fifteen to twenty percent of the cases don't produce a match.

In those cases, the negative result does not eliminate the possibility of reunification. New citizens can adopt children under 16 and bring them to the United States. People can also petition for stepchildren or stepparents in certain circumstances.

However, that information is rarely communicated by immigration officers to those receiving negatives DNA matches. Commonly they are left without answers, bearing a big emotional toll.

The situation is particularly delicate in countries being or having been in war, in which women are/were often raped by the invasion's troops. In one recent case, a new citizen, after initiating the petition to bring here his three motherless children living back in Africa, found out that the youngest of the three children was not his. After a painful turmoil he knew, through his deceased wife sister, that the mother of his children had been raped several times and never said anything out of fear of retaliation or being socially re-victimized.

Those cases are incredibly painful, adding to the new citizen stress of living here alone, waiting long months to be able to have his/her family reunited.

Besides, the DNA tests need to be paid by the petitioner, and they are not cheap. They cost about $ 500 dollars each.

There are also other cases in which the DNA test is actually ordered to discard family links. Those are the cases of some Somali and other countries citizens that want to bring into the U.S. husbands of wives still living back in Somalia. In those cases, if they cannot bring clear documentation that they were not linked by family bonds when they got married, they would be asked to provide a DNA test.

Recently we received a consultation from a young Somali woman who had petitioned to bring to the U.S. his husband living in Kenya. Immigration officials asked for a DNA test which resulted ambiguous. The test stated that there were about 50% of possibilities that the petitioner had family links with her husband. That type of test results is frequent in cases of cousins. She was not aware of being cousins with her husband but she didn't discard the possibility because both of them were form the same region/clan.

While we recognize that DNA tests can be the only way to a joyful family reunion, we strongly advocate for informing those receiving negative match, the legal ways they still have to get the wanted reunification of their families.

was on appeal, *Crawford* was decided by the US Supreme Court. In light of *Crawford*, the Court of Appeals found that the 911 call was properly admitted and found that if the lower court committed any error in admitting the statements to the police, the error was harmless. Wright was granted review by the Minnesota Supreme Court and that court found that the 911 call was not testimonial and was properly admitted. The Court also found that the statements to the police were also non-testimonial. Wright then petitioned to the US Supreme Court for review. The US Supreme Court decided *Davis v. Washington*, granted review to Wright and vacated the Minnesota Supreme Court's decision and sent it back to the Minnesota Supreme Court to reconsider in light of *Davis*.

The Minnesota Supreme Court again found that all the 911 call was non-testimonial in nature. Wright conceded that any part of the 911 call before he was apprehended was non-testimonial because it was a "call for help." Wright argued, however, any statements made to 911 after he was apprehended were testimonial and as such should be excluded because R.R. did not testify. The Court found that R.R. and her sister's statements were non-testimonial because of the specific conversation between R.R. and the operator. After Mr. Wright was apprehended, the operator tried to end the phone call, however R.R. needed assurance that in fact Mr. Wright had been caught. The operator then verified information with R.R. and her sister that she had already gathered in an attempted to calm R.R. The Court reasoned that the sole purpose of these questions was to verify that the emergency was "indeed over" and not to "establish or prove a past fact."

The Court found R.R. and her sister's statements were testimonial. The Court stated that R.R.'s statements were made well after Wright was apprehended, the emergency was over and the questioning by the police was to collect information about the past event for possible prosecution. The Court then analyzed whether the district's error in admitting the statements to the police was a harmless error. The Court concluded that the admittance of the statements to the police were not harmless error and order a new trial for Wright, unless Wright forfeited his right to Confrontation by "wrongfully procuring the unavailability of R.R. and her sister."

Both the US and the Minnesota Supreme Courts have strongly stated:

> "While defendants have no duty to assist the State in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system. We reiterate what we said in *Crawford*: that "the rule of forfeiture by wrongdoing…extinguishes confrontation claims on essentially equitable grounds."

In Wright's case there were allegations that Mr. Wright had tried to keep R.R. and her sister from testifying either through threats of harm to R.R. or though his behavior. The lower court did not hold a hearing specifically on the issue of whether or not Mr. Wright had forfeited his right to confrontation; therefore the Minnesota Supreme Court remanded the case back to the lower court for a ruling on forfeiture. If the lower court finds that Mr. Wright did not forfeit his right to confrontation, then a new trial is to be held.

Wright II does give guidance on when statements by a victim who does not testify can be admitted without violating the Confrontation Clause. It seems clear that statements made to 911 before the defendant is apprehended can be admitted into evidence. It also seems clear that statements made to the police after the defendant is in custody cannot be admitted, unless the victim testifies. What continues to be murky is statements made to the police when the defendant is "gone on arrival" or statements made to 911 after the defendant is apprehended.

For any question about *Crawford* and its lineage, please call Rana Fuller at 612-343-9844 or 800-313-2666.

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

U.S. Supreme Court Up-Holds Partial-Birth Abortion Ban Act of 2003

On Wednesday April 18th 2007 the Supreme Court, ruled upholding the Federal Abortion Ban case, based in that *"Respondents have not demonstrated that the Act, as a facial matter, is void for vagueness, or that it imposes an undue burden on a woman's right to abortion based on its overbreadth or lack of a health exception. For these reasons the judgments of the Courts of Appeals for the Eighth and Ninth Circuits are reversed." "It is so ordered."* The sentence, which overturned the rulings of three appeals courts, was reached with five votes in favor and four against.

Justice Kennedy, supporting the Supreme Court Rule wrote: "The law need not give abortion doctors unfettered choice in the course of their medical practice." Adding that the "medical uncertainty over whether the act's prohibition creates significant health risks provides a sufficient basis to conclude…that the act does not impose an undue burden."

Kennedy also wrote that "the government has a legitimate and substantial interest in preserving and promoting fetal life," adding that the ban is in fact good for women, protecting them against terminating their pregnancies by a method they might not fully understand in advance and could regret later.

On the other side, Supreme Court Justice Ginsburg in his dissenting opinion – with which we totally agree - wrote that the majority was being paternalistic when expressing concerns about women's regret over an abortion, adding that the "solution the court approves" is "not to require doctors to inform women adequately of the different procedures they might choose and the risks each entails."

The reactions to his rule have been immediate. According to the Center for Reproductive Rights, with this rule the Supreme Court sustains that "Members of Congress – not doctors – are in the best position to make medical decisions, for their patients." "In direct contradiction to earlier rulings and established law, today the Court announced that there are some aspects of women's health it is willing to sacrifice."

"This is a terrifying development, one with implications far beyond the abortion debate.
Every American who cares about women's health, and doctors' ability to treat their patients appropriately, should be alarmed by this ruling" said Nancy Northup, president of the Center for Reproductive Rights.

This ruling marks the first time since the 1973 *Roe v. Wade* ruling, which effectively barred state abortions bans, including any abortion procedures "with no exception safeguarding a woman's health."

The Up-held Law: The Partial-Birth Abortion Ban Act of 2003

On November 5, 2003 President George W. Bush signed into law the first-ever federal ban on abortion, despite a June 2000 Supreme Court ruling that found a similar state ban to be unconstitutional because it did not include an exception to protect women's health.

The Act bans "an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child's body until either the entire baby's head is outside the body of the mother, or any part of the baby's trunk past the navel is outside the body of the mother and only the head remains inside the womb, for the purpose of performing an overt act that will kill the partially delivered infant. The law states that a physician who performs the banned procedures could face criminal prosecution, fines and up to two years in jail.

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The American College of Obstetricians and Gynecologists has said that the procedures banned are increasingly regarded as the safest abortion procedures during the second trimester of pregnancy.

The Act had been declared unconstitutional by three appellate courts

The American Civil Liberties Union, the Center for Reproductive Rights, and Planned Parenthood Federation of American challenged this Federal Abortion Ban in separate lawsuits. In 2004, all courts involved declared the law unconstitutional, concluding that "…the overwhelming weight of the trial evidence proves that the banned procedure is safe and medically necessary in order to preserve the health of women under certain circumstances. In the absence of an exception for the health of a woman, banning the procedure constitutes a significant health hazard to women." Moreover, the courts stated that the ban would outlaw some procedures that are among the safest and most common methods of abortion, starting early in the second trimester.

The government filed appeals in each case. *Gonzales v. Carhart*, was the first to be decided when the U.S. Court of Appeals for the Eighth Circuit held the ban unconstitutional in July 2005. In September 2005, the federal government asked the Supreme Court to review that decision, and the Court accepted the case for review in February 2006. The other two appellate courts, in separate decisions, also declared the law unconstitutional in January 2006, and the Supreme Court agreed to review the Planned Parenthood case on June 2006.

The decision of a different Supreme Court on this issue on the year 2000 and the history of the Partial-Birth Abortion Ban Act of 2003 and the present Supreme Court rule.

It is interesting to highlight that in the year 2000, a different Supreme Court found that a state ban on the partial-birth abortion procedure, placed an undue burden on women because it did not allow for cases in which a pregnancy might imperil the mother's health. *[Stenberg v. Carhart, 530 U.S. 914, 932 (2000)]*

On that ruling, in the year 2000, the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not "clearly erroneous." A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Under this standard, if the district or appellate court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.

The Supreme Court now has said that this precedent is not applicable, as the "Partial-Birth Abortion Ban Act of 2003" was tailored to meet the objections stated by the Supreme Court on *Stenberg v. Carhart* on year 2000.

Of course, indeed, in its findings the Partial-Birth Abortion Ban Act of 2003, Section 2 (8) stated: "Under well settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in *Stenberg* under the "clearly erroneous" standard. Rather, the United States Congress is entitled to reach its own factual findings –findings that the Supreme Court accords great deference – and to enact legislation based upon these findings so long as it

seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence."

This argument oversees partially the 2000 Supreme Court precedent, which also stated that "...significant medical authority supports the proposition that in some circumstances, partial birth abortion would be the safest procedure…" for pregnant women who wish to undergo abortion.

Most importantly, the medical procedures need to be decided by the doctors, not by politicians. The Act and the Supreme Court ruling is clearly a first step in an effort to chip away the abortion right declared on *Roe v. Wade* ruling, and all of us who are fighting for women's rights, must be alert.

Punto de Vista Latino

Los nuevos círculos de mujeres: Una nueva herramienta contra la opresión de género*

Mucho se ha hablado y se ha legislado – con sólo relativo éxito – con el fin de eliminar o atenuar la discriminación de género, pero recientemente están surgiendo en diferentes regiones del planeta, círculos de mujeres respaldados por sistemas de micro préstamos, que parecen estar dando en el clavo de obtener la tan anhelada igualdad de derechos de género.

Ha sido en Bangladesh e India donde primero han aparecido estos círculos de mujeres y donde primero se ha demostrado el éxito de los micro créditos surgidos del sueño de erradicar la pobreza, fundamentalmente entre las mujeres.

Muhammad Yunnus en 1976, en contra de la enorme resistencia gubernamental y del rechazo de la entidades bancarias en Bangladesh, creó el Graneen Bank (Banco Rural) que en 1983 se vuelve autónomo.

A través de esa entidad bancaria Yunnus desarrolló su idea de impulsar la creación de grupos empresariales femeninos prestando pequeñas cantidades de dinero a mujeres bajo la condición de que formen un grupo o círculo de por lo menos cinco mujeres. Dos de ellas pueden acceder primero al préstamo, mientras las otras tres deben ayudar a que el negocio funcione y que el dinero se empleee bien. Los préstamos son de un año de duración y se deben devolver semanalmente. Después de seis semanas, si el proyecto comienza a rendir frutos y se han pagado las cuotas, otras dos mujeres del grupo pueden conseguir otro micro crédito y, si la pequeña empresa continúa bien, la última del grupo de cinco también accede al crédito.

Junto con un breve pero intenso programa de capacitación en administración y negocios, las mujeres también aprenden a administrar la familia, a cultivar su propio huerto, y otros aspectos que contribuyen no solamente al desarrollo personal, sino al desarrollo social de su comunidad.

El Graneen Bank ha proporcionado más de 2,500 millones de dólares en micro préstamos a más de dos millones de familias del Bangladesh rural. El 95% de los clientes de Yunnus son mujeres y el índice de reembolso de los préstamos es prácticamete el 100%.

Este modelo - que se está reproduciendo en todo el mundo - es sin duda una muy buena herramienta para lograr la igualdad de derechos de género. Estas mujeres no sólo están saliendo de la pobreza, se están convirtiendo en líderes de una transformación social y están ganando independencia económica y social.

Ellas saben que nada pueden esperar que no sea de ellas mismas. Saben que la mayoría de las veces las leyes que se dictan terminan o siendo inoperantes o no se cumplen, sin contar con que los presupuestos destinados a cubrir sus necesidades son ridículamente escasos.

Por eso, estos círculos de mujeres pueden muy bien convertirse en la pieza del rompe cabeza que nos estuvo faltando desde que allá por la década del 1960 surgieron los primeros movimientos feministas. Las invito a reflexionar sobre este modelo. No valdría la pena intentarlo?.

* Fuente, "Mensaje Urgente a las Mujeres", Jean Shinoda Bolen, Editorial Cairós, 2005.

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

Cell Phone Donations

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

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

Thank you!

BWLAP extends its heartfelt gratitude to our funders:

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

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