

COURT OF APPEALS RULES IN FAVOR OF PRECEDENT-SETTING CASE ARGUED BY NYCLA MEMBER

On September 7, David J. Lansner of Lansner & Kubitschek and Chair of NYCLA's Committee on Committees, argued *Nicholson v. Scoppetta*, a precedent-setting case before the New York State Court of Appeals. The New York City government was accused of violating the constitutional rights of domestic violence victims and their children by systematically removing children from households because they had witnessed the abuse of their mother. On October 26, New York's highest court ruled that victims of domestic violence who are beaten in the presence of their children are not neglectful parents. The Court also ruled that a practice of removing children from battered mothers without court order violates state law.

Nicholson v. Scoppetta is the first lawsuit in the country challenging government practices that victimize battered mothers and their children. The plaintiff mothers ("Nicholson"), represented by Lansner & Kubitschek and the Sanctuary for Families' Center for Battered Women's Legal Services, alleged that NYC's Administration for Children's Services (ACS) needlessly and illegally removes children from domestic violence victims and places them in foster care. The Legal Aid Society and Lawyers for Children represented the children in the lawsuit and joined in the mothers' position.

After seeing scores of witnesses and reading hundreds of documents in a federal trial in the summer of 2001, Eastern District Judge Jack B. Weinstein found "widespread and unnecessary cruelty by agencies of the City of New York towards

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mothers abused by their consorts, through forced unnecessary separation of the mothers from their children on the excuse that this sundering is necessary to protect the children." The judge ordered ACS to stop removing children from their mothers solely because they are victims of domestic violence. The preliminary injunction also barred ACS from prosecuting battered women for child neglect in Family Court.

The City appealed and the Second Circuit Court of Appeals upheld Judge Weinstein's findings about the practices but certified three questions on New York law to the New York Court of Appeals on the grounds for finding child neglect and removal of children.

Commenting on the case, Mr. Lansner said, "Judge Weinstein has given protection to the women and children in New York City. We are pleased that the New York State Court of Appeals had extended these same protections throughout the state." ❖