

Subject: Victory for battered mothers

FYI – Following is an email from Carolyn Kubitschek (Lansner & Kubitschek) regarding yesterday's ruling in *Nicholson v. Williams*, a case that charged the New York City Administration for Children's Services with bringing neglect cases against battered mothers and placing the children of these victims of domestic violence into foster care. The New York Legal Assistance Group (NYLAG) was one of many agencies to support the case. (Press release on NYLAG's Amicus Brief: <http://womensissues.about.com/library/weekly/aa102602a.htm>).

For more information on yesterday's decision, please contact Carolyn Kubitschek at (212) 349-0900 or via email at [ckubitschek@lanskub.com](mailto:ckubitschek@lanskub.com). For more information on NYLAG's Amicus brief, please contact Mara Klein at (212) 750-0800 ext 124 or via email at [mklein@nylag.org](mailto:mklein@nylag.org).

Thank you for your time.  
Mara

-----

Subject: Decision from the Second Circuit  
Date: Tue, 16 Sep 2003 16:15:30 -0400  
From: "Carolyn Kubitschek" [ckubitschek@lanskub.com](mailto:ckubitschek@lanskub.com)

The United States Court of Appeals for the Second Circuit issued an important and favorable ruling today in *Nicholson v. Williams*. The court found that New York City Administration for Children's Services had a policy of charging victims of domestic violence with being neglectful as a result of "exposing" their children to domestic violence and removing their children. The court found that the problem was sufficiently widespread to require judicial intervention. The court also found that such policies could be unconstitutional. The court stated that New York law on the subject was not clear and referred three questions to the New York Court of Appeals in Albany: Whether allowing your child to witness domestic violence against yourself constitutes neglect under New York law; whether the injury, if any, to the child from witnessing the domestic violence constitutes imminent risk allowing ACS to remove the child without court order, and whether allowing the child to witness such domestic violence is sufficient to allow a Family Court order of removal without additional, particularized evidence.

The court left the preliminary injunction in effect and has held the appeal in abeyance pending the determination by the New York Court of Appeals. The court also found that plaintiffs had not waited too long to seek a preliminary injunction and that the court should not abstain. The decision was written by Judge Katzmman and joined by Judge Oakes. Judge Walker dissented. The court did not deal with the assigned counsel payment rate at this time.

The New York Court of Appeals will schedule arguments on the questions, and may accept further briefs on the issue. The decision is available at [www.ca2.uscourts.gov](http://www.ca2.uscourts.gov), under decisions-search all.

The Second Circuit clerk has been ordered to transmit the record on appeal and all of the briefs, except those of the Brennan Center and NYCLA, to the Court of Appeals.

The Court of Appeals will probably set up their own briefing schedule, and set the case down for oral argument.

Carolyn A. Kubitschek  
Lansner & Kubitschek  
325 Broadway, Suite 201  
New York, New York 10007  
(212) 349-0900  
ckubitschek@Lanskub.com

## ABOUT NYLAG

Founded in 1990, the New York Legal Assistance Group (NYLAG) is a not-for-profit law office providing free civil legal services to low income New Yorkers. A full service agency, NYLAG offers comprehensive assistance to clients with more than one legal issue. NYLAG provides direct legal services, advocacy through impact litigation, consultation, and numerous volunteer and pro bono opportunities. Last year, NYLAG handled 19,993 cases and impacted additional thousands through successful impact litigation and community legal education. For more information on NYLAG, go to [www.nylag.org](http://www.nylag.org). NYLAG is a beneficiary of UJA-Federation of New York and is supported by numerous foundations, organizations and individuals.

### LIST:

[kimd@staff.aba.net.org](mailto:kimd@staff.aba.net.org)  
[law.guide@about.com](mailto:law.guide@about.com)  
[womensissues.guide@about.com](mailto:womensissues.guide@about.com)  
[nikki\\_jason@yahoo.com](mailto:nikki_jason@yahoo.com)  
[observernews@excite.com](mailto:observernews@excite.com)  
[sokall@excite.com](mailto:sokall@excite.com)  
[editorial@amlaw.com](mailto:editorial@amlaw.com)  
[mngroproduction@aol.com](mailto:mngroproduction@aol.com)  
[lneumeister@ap.org](mailto:lneumeister@ap.org)  
[pr@ap.org](mailto:pr@ap.org)  
[liston@timesledger.com](mailto:liston@timesledger.com)  
[milton@blackstarnews.com](mailto:milton@blackstarnews.com)  
[bethany.li@nyu.edu](mailto:bethany.li@nyu.edu)  
[prod@hagnews.com](mailto:prod@hagnews.com)  
[bxny@aol.com](mailto:bxny@aol.com)  
[editor@riverdalereview.com](mailto:editor@riverdalereview.com)  
[Bronxtimes@aol.com](mailto:Bronxtimes@aol.com)  
[bronxtimes@aol.com](mailto:bronxtimes@aol.com)  
[aokin@brooklynbar.org](mailto:aokin@brooklynbar.org)  
[edit@brooklyneagle.net](mailto:edit@brooklyneagle.net)  
[david@candowoman.com](mailto:david@candowoman.com)  
[canarsie@aol.com](mailto:canarsie@aol.com)  
[nycitylaw@nyls.edu](mailto:nycitylaw@nyls.edu)  
[alyssa@citylimits.org](mailto:alyssa@citylimits.org)  
[cassi@citylimits.org](mailto:cassi@citylimits.org)  
[jgl@law.columbia.edu](mailto:jgl@law.columbia.edu)  
[pv130@columbia.edu](mailto:pv130@columbia.edu)  
[ivescovi@columbia.edu](mailto:ivescovi@columbia.edu) or [hmillel@columbia.edu](mailto:hmillel@columbia.edu)  
[congthrung@yahoo.com](mailto:congthrung@yahoo.com)  
[challengegroup@excite.com](mailto:challengegroup@excite.com)  
[blacknewswatch@aol.com](mailto:blacknewswatch@aol.com)

nora.jones@nydailyrecord.com  
[newspaper@diversecity.org](mailto:newspaper@diversecity.org)  
tomeaston@economist.com  
[editor@elaguilanews.com](mailto:editor@elaguilanews.com)  
[elnacional@nyc.rr.com](mailto:elnacional@nyc.rr.com)  
[filexpress@aol.com](mailto:filexpress@aol.com)  
[filipinoreporter@worldnet.att.net](mailto:filipinoreporter@worldnet.att.net)  
liston@timesledger.com  
lreibstein@forbes.com  
lawreview@fordham.edu  
ulj@forham.edu  
mac@ifeminists.com  
grobinson@citizensunion.org  
[mcamdo@hoylic.com](mailto:mcamdo@hoylic.com)  
[editorial@holahoy.com](mailto:editorial@holahoy.com)  
immjournal@aol.com  
[impacto@usa.com](mailto:impacto@usa.com)  
[kurier@earthlink.net](mailto:kurier@earthlink.net)  
[letters to the editor@corp.law.com](mailto:letters_to_the_editor@corp.law.com)  
mwinkleman@amlaw.com  
bcortina@latina.com  
lawshow@wamc.org  
[nmacinnes@butterworths.ca](mailto:nmacinnes@butterworths.ca)  
[manhattantimes@aol.com](mailto:manhattantimes@aol.com)  
edie.magnus@nbc.com  
[newvoiceny@aol.com](mailto:newvoiceny@aol.com)  
ny1news@ny1.com  
jeremy.bitz@ny1news.com  
[tara\\_alexander@ny1news.com](mailto:tara_alexander@ny1news.com)  
[nybeacon@hotmail.com](mailto:nybeacon@hotmail.com)  
[mclaffey@edit.nydailynews.com](mailto:mclaffey@edit.nydailynews.com)  
[rbashinsky@edit.nydailynews.com](mailto:rbashinsky@edit.nydailynews.com)  
law\_review@nyls.edu  
[jconason@salon.com](mailto:jconason@salon.com)  
dmangan@nypost.com  
[dgregorian@nypost.com](mailto:dgregorian@nypost.com)  
[dseifman@nypost.com](mailto:dseifman@nypost.com)  
[nytrend@aol.com](mailto:nytrend@aol.com)  
[curtistaylor@newsday.com](mailto:curtistaylor@newsday.com)  
glenn.thrush@newsday.com  
[redaktor@nrs.com](mailto:redaktor@nrs.com)  
[editors@ourtimepress.com](mailto:editors@ourtimepress.com)  
[poleznaya@hotmail.com](mailto:poleznaya@hotmail.com)  
[listy@dzienik.com](mailto:listy@dzienik.com)  
longisler@aol.com  
kathyl@qchron.com  
[editor@queenstribune.com](mailto:editor@queenstribune.com)  
[news@queenstribune.com](mailto:news@queenstribune.com)  
[rusbazaar@earthlink.net](mailto:rusbazaar@earthlink.net)  
[edonnelly@siadvance.com](mailto:edonnelly@siadvance.com)  
[hecchi@siadvance.com](mailto:hecchi@siadvance.com)  
[thevisionarynews@aol.com](mailto:thevisionarynews@aol.com)  
info@timesnewsweekly.com  
[vechny@aol.com](mailto:vechny@aol.com)  
dsimmons@villagevoice.com  
nywireroom@dowjones.com  
arand@mail.ivillage.com  
[pr@womensenews.org](mailto:pr@womensenews.org)

[editors@womensenews.org](mailto:editors@womensenews.org)