

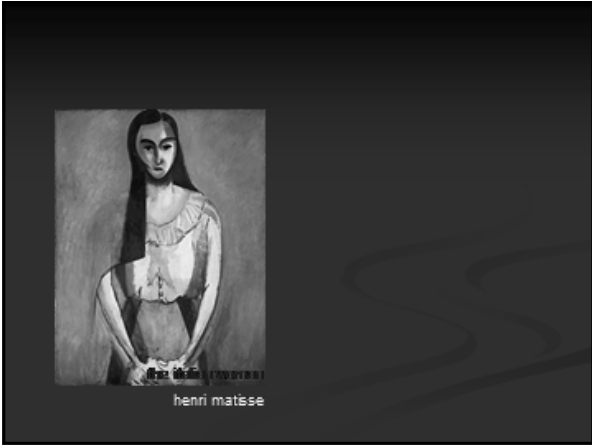


The Impact of Domestic Violence on Children and Families

Evan Stark

**Thursday, January 14, 2010—Buffalo
Friday, January 15, 2010—Syracuse**





Myths about DV and CA

- Children exposed to domestic violence are typically in a situation that requires an emergency response
- We can protect the child even if the mother remains unsafe
- Mothers who stay with an abuser are not providing safety
- Violence is the essence of partner abuse and poses the greatest threat to children

New Knowledge

- Huge gap exists between what battered women experience and how we understand and respond to this experience
- Typology of abuse
- Most important risk factors do not involve frequency or severity of violence

Model vs. Reality

- | | |
|-------------------|------------------------|
| Incident specific | ■ “Ongoing” |
| Injury focused | ■ Cumulative effect |
| Violence based | ■ Multiple tactics |
| Victim witness | ■ Witness intimidation |

Typology of force

- Fights
- DOMESTIC ASSAULT (20% -40%)
- COERCIVE CONTROL (60%- 80%)

**Dynamics of
Coercive Control**

- ◆ Assault
- ◆ Intimidation
- ◆ Isolation
- ◆ Control

10

**Woman battering is the
single most common
context in which child
abuse occurs**

If we start with battering....

- **Population Studies:** 77% of children in highest violence families had been abused (NFVS)
- **Shelter studies** – 40-70% report child involvement

Start with Child Abuse

- 45%-50% of mothers of Abused Children are battered women (Stark & Flitcraft)
- 50% abused by father; 35% by mother
- If mother is battered, father 3x more likely to abuse child than if not

Who commits child abuse?

- **Reported child welfare cases:** men 20-55% (NCCAN; Am. Humane Society)
- **When men are present:** 2/3rds of reported incidents (Gil)



the dead mother
edvard munch

Child Exposure

- NVAWS: 40.2% in US exposed as children
- CVAWS: 33.2% in Canada
- Singapore: 17% reported exposure as child
- Estimates: range from 10% to 20% annually, resulting in 7 to 14 million children exposed each year (Carlson, 2000)

Children's exposure

- Visual - *as "eyewitness"*
- Audio - *hearing the violence*
- Tool of Perpetrator - *used in event*
- Aftermath - *the impact of violence*
'Child abuse as tangential spouse abuse'

What children know

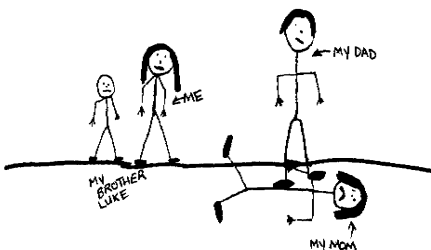
- Studies indicate children are exposed:
 - 100% in same or adjacent room (Hughes, 1988)
 - 81.3% of 1,799 incidents had children present (Leighton, 1989)
 - 21% of children reported witnessing despite contrary report by one or both parents (O'Brien et al., 1994)

Children are involved

- Nine times more likely to intervene (Adamson & Thompson, 1988).
- One to 2.5 year olds respond with negative emotions and intervention (Cummings et al. 1981, 1989).
- Children actively involve, distract parents or distance themselves (Garcia O'Hearn et al, 1997, Peled, 1998).

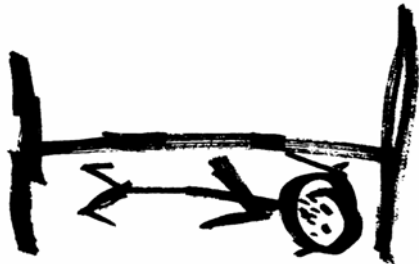
Dynamics of Child Abuse + DV

- Direct assault
- Indirect effects
- Witnessing
- Neglect
- Tangential spouse abuse



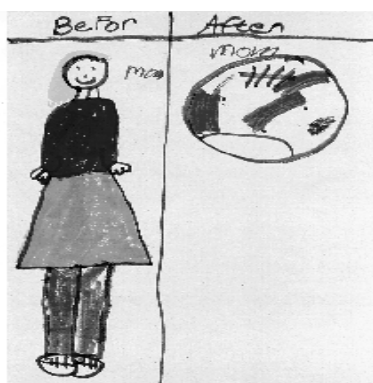
"My mom was lying on the floor and my dad was jumping on her head and kicking her in the back. Me and my brother were trying to stop him." *"Jennifer", age 11*

I hide under my bed when daddy hits mommy. I am scared.
- "Jonathan", age 5



Indirect Effects

- Function of mother's problems: divorce, homelessness, HIV, substance use, etc. (often secondary consequences of abuse)
- Trauma of separation due to these problems
- Compromised caretaking due to fear, depression or appropriation of resources



Health Consequences

- Alcohol Abuse
- Drug Abuse
- Suicide Attempts
- Mental Illness
- Child Abuse
- Homelessness

Consequences for children

- injury
- psychological problems
- behavioral problems
- neglect
- modeling

witnessing

- Reduced social competence
- Depression & anxiety
- Helplessness, powerlessness, anger
- Low esteem in girls
- Aggression in boy and girls

DEVELOPMENTAL ISSUES

- Preschool: fear, confusion, clinging, constant vigilance
- Elementary school: somatic problems, sleep disorders, failure to thrive, bed wetting
- Adolescents: runaways, substance use, sexual acting out

DV and Young Children

The importance of:

- Secure attachments
- Learning self-regulation
- Learning social and peer relations

(Gewirtz & Edleson, in press)

“Effects” of Exposure

- Almost 100 studies available
- About 1/3 separated abused from witnesses
- Generally show:
 - Behavioral and emotional problems
 - Cognitive functioning problems
 - Longer-term problems

<http://www.vawnet.org>

Longer-Term Problems

Adult problems of:

- Depression
- Trauma-related symptoms
- Low self-esteem
- More distress
- Lower social adjustment

Other Exposures with similar “effects”

- Parental alcohol/drug abuse
- Divorce
- Violent media and video games
- School and neighborhood violence exposure

Woman’s Resiliency

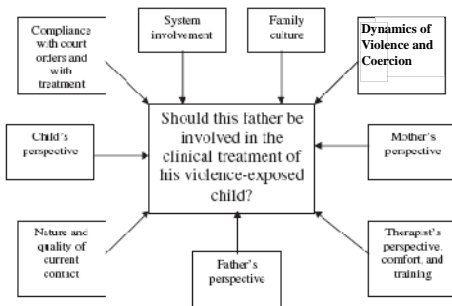
- “Ordinary magic”– competence in the face of adversity
- Mothering through domestic violence
- 98% Emotionally available to children
- 91%Appropriate Discipline

ABUSE vs. NEGLECT

- | | |
|-----------------------------|-------------------------------|
| Battered Mother | Not Battered |
| ■ Few Problems in Childhood | ■ Multi-Problem Childhood |
| ■ Few Secondary Problems | ■ “Overwhelmed” with problems |

Child’s Resiliency

- Shelter population – 50-83% few or no problems (Sullivan)
 - Exposure (type, frequency)
 - Child-parent(s) relationship
 - Environmental supports/stressors
 - Personality



The battered mother's dilemma

- "If I report, I will be hurt."
- If I protect my child, I will be hurt. If I don't protect my child, she will be hurt."
- If I don't do what he wants, my child will be hurt. If I do what he wants, I will be humiliated."
- If I don't hurt my child, I will be hurt. If I don't hurt my child, she will be hurt worse."

The battered mother's dilemma

- "If I don't do something, my child and I will be hurt"
- "If I report, my child will be removed and I will be hurt. To keep my child, I have to keep the secret."
- "If I do what family court wants, I put myself and my child at risk. If I don't, I lose my child."
- "If I do what child welfare wants, I put myself and my child at risk."

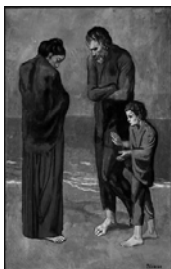
Child Abuse as Tangential spouse Abuse....

- When the batterer hurts, intimidates, isolates or controls the child to hurt/control/isolate or intimidate the mother

When Battered Women Hurt Their Children

- Victims can be abusive and neglectful mothers
- Scapegoating as a response to the BW Dilemma
- Control in the Context of No Control

assessment



OVERLAPPING, BUT NOT IDENTICAL

- RISK
- LETHALITY
- SAFETY

- Using the typology
- Abuse is not a psychological problem
- Abuse unlikely to surface without trust– one shot interview insufficient
- Reframe Children’s and mother’s response in the context of abuse

- ASSESSMENT**
- FEAR
 - INJURY
 - ENTRAPMENT

- LETHALITY**
- Presence of gun/threats to kill
 - Threatened or Real Separation
 - Sexual Assault
 - Level of Control
 - (e.g. control + estrangement = 5x grter risk)

dangerousness

- **-Separation or risk of separation** 1. Has the physical violence increased in frequency over the past year?
- ____ 2. Has the physical violence increased in severity over the past year and/or has a weapon or threat from a weapon ever been used?
- ____ 3. Does he ever try to choke you?
- ____ 4. Is there a gun in the house?
- ____ 5. Has he ever forced you to have sex when you did not wish to do so?
- ____ 6. Does he use drugs? By drugs, I mean "uppers" or amphetamines, speed, angel dust, cocaine, "crack," street drugs, or mixtures.
- ____ 7. Does he threaten to kill you and/or do you believe he is capable of killing you?
- ____ 8. Is he drunk every day or almost every day? (In terms of quantity of alcohol.)
- ____ 9. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, how much money you can take with you shopping, or when you can take the car? (If he tries, but you do not let him, check here: ____)
- ____ 10. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ____)
- ____ 11. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
- ____ 12. Have you ever threatened or tried to commit suicide?
- ____ 13. Has he ever threatened or tried to commit suicide?
- ____ 14. Is he violent toward your children?
- ____ 15. Is he violent outside of the home?

The Context for Decisions

Using the typology

Assessing Dynamics

Child Abuse as Tangential Spouse Abuse

The Battered Mother's Dilemma

Reframing mother's response

Safe Contact

- **Independent Assessment of Risk**
 - Past violence best predictor of future abuse
 - Frequency as well as severity
 - Fear of contact
 - Level of autonomy (is she free to make decisions?)
 - Support
 - Level of resources

REPORT

The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response

A Report originally developed for *Nicholson v. Williams*
*Evan Stark, PhD, MSW, Rutgers University-Newark and the UMDNJ School of Public Health**

BACKGROUND

This report was originally prepared to support Sharwline Nicholson,¹ Sharlene Tillet,²

their children, and other plaintiffs in a federal class action lawsuit.³ Brought in June 2000 on behalf of battered mothers, the suit sought to

*With a Ph.D in sociology and an MSW, Dr. Stark's areas of specialization include health and medical care, family and community violence, sociological and political theory, the urban environment, social service and nonprofit management, the criminal justice system, and policy. Dr. Stark's is a leading authority on woman battering and child abuse.

1. [Ms.] Nicholson [sic] first became a victim of domestic violence one winter afternoon while her infant daughter was asleep and her son was in school. Claude Barnett, the father of her daughter Destinee, arrived at [her] apartment in a jealous rage. While throwing objects throughout the house, Claude kicked, beat and severely assaulted Sharwline, leaving her with a broken arm. Sharwline [lay in a hospital bed] while her cousin cared for the children. Though separated from Claude, and never before a victim of domestic violence, . . . child welfare caseworkers removed six-year-old Kendall and baby Destinee from Sharwline's cousin. Sharwline was charged with neglect, even though her children had not witnessed domestic violence prior to or during [the] incident.

Melissa A. Trepiccione, *At the Crossroads of Law and Social Science: Is Charging a Battered Mother With Failure to Protect Her Child an Acceptable Solution When Her Child Witnesses Domestic Violence?* 69 *FORDHAM L. REV.* 1487, 1487 (2001) (citing Somini Sengupta, *Tough Justice: Taking a Child When One Parent is Battered*, *NY TIMES*, July 8, 2000 at A1); *Nicholson v. Williams*, 2002 U.S. Dist. LEXIS 4820, *17-*31 (E.D.N.Y. Mar. 11, 2002).

2. Sharlene Tillet was not a first time victim of domestic violence. While pregnant with her second child, she separated from her baby's father and purchased a plane ticket to relocate to California to protect herself from further abuse. Before she left, however, he beat her one night in her apartment. After Sharlene gave birth to her son Uganda, a hospital social worker routinely questioned her about any history of domestic violence.

Trepiccione, *supra* note 1, at 1487-88. Sharlene responded honestly and the case was reported to the Administration for Children's Services (ACS). When Ms. Tillet agreed to let her boyfriend drive her home from the hospital, hoping not to make a scene, child welfare caseworkers and police officers removed her two-day old son from her custody. Sengupta, *supra* note 1, at A1; *see also*, Trepiccione, *supra* note 1, at 1488; *Nicholson v. Williams*, 2002 U.S. Dist. LEXIS 4820, *51-*57 (E.D.N.Y. Mar. 11, 2002).

3. The case was filed in the Eastern District of New York by the law firm of Lansner & Kubitschek with the assistance of Jill Zuccardy, Coordinator of Legal Services for Sanctuary for Families in New York. *See Amended Complaint Class Action* at 2, 11-12, *Nicholson v. Williams*, (No. 00-CV-2229) (E.D.N.Y. June 15, 2000). Based on the caseload of ACS and the proportion of cases estimated to involve domestic violence, the complaint alleged that the class represents more than 5000 people in New York City and will increase by an additional 1000 people each year. *Id.*

prevent the Administration for Children's Services (ACS), New York City's child protection agency, from charging women with child neglect and removing their children solely because of the mother's abuse by her partner. On August 16, 2001, near the conclusion of two months of evidentiary hearings, Federal Court Judge Jack Weinstein certified the case as a class action, finding that the evidence to date, including testimony from scores of witnesses and hundreds of documents, lent "substantial support" to the claims of battered mothers and their children that their rights were being violated by ACS.⁴ On December 21, 2001, Judge Weinstein issued a preliminary injunction outlining procedures and policies for the agency to follow in child welfare cases involving domestic violence, but stayed the injunction for six months to give ACS time to implement promised reforms.⁵ Judge Weinstein issued a detailed decision, including a discussion of the evidence and the law, on March 11, 2002, and ordered that the injunction remain in effect.⁶

Based on my history of research and writing on the relationship between battered women and harms to their children, my expertise in public administration, and my experience in training Child Protective Services (CPS) personnel, and developing assessment tools and policy with CPS agencies in Connecticut, New Jersey and other states, the Plaintiffs asked me to critically weigh ACS procedures against the

evidence linking domestic violence to child welfare and best practice in the field. In forming my opinion, I reviewed the cases before the Court, depositions by ACS personnel and numerous documents provided by ACS to represent their practice. I have edited my report to minimize particulars with relevance only to the operations of ACS.

INTRODUCTION

The practices addressed in this report reflect three converging developments, a growing literature on the risks to children who are exposed to domestic violence, mounting political pressure for CPS to intervene in so-called "dual victim" families - where both a mother and child are put at risk by an abusive male - and a body of case law that applies the Failure to Protect Doctrine (under state neglect statutes) to non-offending parents in these families.⁷ Following the presumption that witnessing abuse harms children, CPS and the courts in many states, with New York as the leader, have instituted a policy of charging battered mothers with neglect and temporarily removing their children if it is alleged that the children witnessed the violence or were otherwise exposed to it.⁸ By re-victimizing battered women, these cases raise acute dilemmas to those of us who have publicized the harm domestic violence poses to children, urged CPS to provide safety enhancing

4. Nicholson vs. Williams, 202 F.R.D. 377, 379 (E.D.N.Y. 2001).

5. In re Nicholson, 181 F. Supp. 2d 182, 193 (E.D.N.Y. 2001).

6. Nicholson v. Williams, 2002 U.S. Dist. LEXIS 4820 (E.D.N.Y. Mar. 11, 2002).

7. For a review of this literature, see generally PETER G. JAFFE, ET AL, CHILDREN OF BATTERED WOMEN 20 (1990) (where it is estimated that 3.3 million American children are exposed to violent incidents between parents); Wanda K. Mohr, *Making the Invisible Victims of Domestic Violence Visible*, DVR 2:6, 81 (1997); Jeffery L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. OF INTERPERSONAL VIOLENCE 839 (1999). On-line resources summarizing the literature include: *Bibliography on Children Who Witness Battering*, from the National Women's Resource Center and, *Bibliography on Children Who Witness Violence: Research & Intervention*, by Jeffery L. Edleson, available at <http://www.mincava.umn.edu/bibs/bibkids.htm> [hereinafter *Bibliography*]; see also Nancy S. Erickson, *Battered Mothers of Battered Children: Using Our Knowledge of Battered Women to Defend Them Against Charges of Failure to Act*, in 1A CHILDREN AND FAMILIES, ABUSE AND ENDANGERMENT 197 (Sandra Anderson Garcia & Robert Batey eds. 1991) (indicating that estimates have ranged from three to ten million);

Anne T. Johnson, *Criminal Liability for Parents Who Fail to Protect*, 5 LAW & INEQ. 359, 377-381 (1987); *State v. Walden*, 293 S.E.2d 780 (N.C. 1982) and *Smith v. State*, 408 N.E.2d 614 (Ind. Ct. App. 1980) (where women were charged because they failed to act to prevent children from being hurt or killed); *Fabritz v. Traurig*, 583 F.2d 697, 699 (4th Cir. 1978).

8. Kristian Miccio, *In the Name of Mothers and Children: Deconstructing the Myth of the Passive Battered Mother and the "Protected Child" in Child Neglect Proceedings*, 58 ALB. L. REV. 1087, 1089 (1995); see also Evan Stark, *A Failure to Protect: Unraveling "The Battered Mother's Dilemma"*, 27 W. ST. U. L. REV. 29-110 (1999); The "Failure to Protect" Working Group, *Charging Battered Mothers With "Failure to Protect": Still Blaming the Victim*, 27 FORDHAM URB. L.J. 849 (2000). The best summary of this trend is Melissa A. Trepicione, *supra* note 1, at 1487-89. The critical case decisions in New York were *In re Glenn G.*, 587 N.Y.S.2d 464 (Fam. Ct. 1992) (where a non-abusing battered mother was found neglectful for failing to protect her children from sexual abuse by the father, even though the court acknowledged that she suffered from battered woman's syndrome) and *In re Lonell J.*, 673 N.Y.S.2d 116 (App. Div. 1998) (where the court ruled that by staying in the abusive relationship the mother had "failed to exercise a minimum degree of care").

services to victimized mothers and children, and helped to train CPS personnel.⁹

According to their legislative mandate, CPS is obligated to act decisively where children have been abused or neglected, and/or to remove children to foster care where there is imminent danger that abuse or neglect will continue in their homes. The immediate question is whether the mere exposure of a child to domestic violence constitutes an emergent condition of risk sufficient to justify an allegation of neglect against a non-offending mother and/or the child's removal to foster care. Answering this question entails reviewing the known risk of child abuse and/or neglect in domestic violence cases, the typical dynamics in these cases, the resulting service needs of clients, including the need for child protection, and best practice standards. A secondary concern is with the organizational obstacles that prevent CPS from adopting best practice standards, and the reforms needed to remove these obstacles. To illustrate these obstacles, I use examples from the nation's largest CPS agency, ACS in New York City.

I. Domestic Violence and Child Abuse: What is the Connection?

Domestic violence against the mother is a common, and may be the single most common, context for child abuse or neglect. Estimates of

the overlap based on reports by abused mothers range from 6.5% to 82%, and of the number of children affected from 3.3 million to 10 million.¹⁰ The importance of domestic violence as a contextual factor for child maltreatment is also demonstrated by studies of at-risk children. Based on a review of medical records, Stark and Flitcraft reported that the mother was battered in 45% of cases dartsed for child abuse or neglect at a major hospital in a single year.¹¹ This study also found that fathers or father substitutes were typically the child's abuser in these cases. Indeed, "father[s] or father substitute[s] [were] three times more likely to be [identified as] the child's abuser" if the mother was battered than in cases involving non-battered mothers.¹² A replication of this work at Boston City Hospital's Pediatric Department reported that the mother was battered in almost 60% of the cases.¹³

The proportion of CPS cases where domestic violence is identified depends on whether, and with what tools, screening for domestic violence occurs, whether organizational culture supports intervention, and whether the investigating agency is perceived as responsible for adult as well as child safety. An initial record review revealed that, over a seven-month period, approximately 32% of CPS cases in Massachusetts involved domestic violence. Yet, when caseworkers included a stated goal of protecting adult victims, the proportion of cases in

9. The mandate has been complicated by, among other developments, the so-called "foster care crisis." This crisis is usually described in terms of a dearth of quality placements, lack of appropriate supervision of foster care sites, and the risks to children in foster care. An alternative view highlights how the disjuncture between the ever widening jurisdiction of CPS and the narrow range of services offered has led to placement in a range of cases where actual physical or psychological risks are minimal. See Evan Stark & Anne Flitcraft, *Women and Children At Risk: A Feminist Perspective on Child Abuse*, 18 INT'L J. HEALTH SERVS. 97, 97-98 (1988).

10. For a recent review of this literature, see Anne E. Appel and George W. Holden, *The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*. 12 J. FAM. PSYCHOL. 578-599 (1998). The estimate of 6.5 percent is from a study of 933 cases of wife-assault in the United Kingdom by R.E. Dobash, *The Relationship between Violence Directed At Women and Violence Directed at Children Within the Family Setting*. Appendix 38, Parliamentary Select Committee on Violence in the Family. London:HMSO. The estimate of 82% is based on reports of battered women in counseling by Alan Rosenbaum and K. Daniel O'Leary, *Children: The Unintended Victims of Marital Violence*. 51 AM. J. ORTHOPSYCHIATRY, 692, 697 (1981). The estimate of 3.3 million is from Maura O'Keefe and Shirley Lebovics, *Intervention*

and Treatment Strategies with Adolescents from Maritally Violent Homes, in ALBERT R. ROBERTS, *BATTERED WOMEN AND THEIR FAMILIES* 175(1998). By contrast Straus estimated that "there may be as many as ten million teenagers exposed to domestic violence each year." Jeffrey Edleson, *Should Childhood Exposure to Adult Domestic Violence be Defined as Child Maltreatment Under the Law? available at <http://www.mincava.umn.edu/link/shouldch.asp>*, [hereinafter, *Childhood Exposure*], (citing MURRAY A. STRAUS & RICHARD J. GELLES, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES* 106-07 (1990)). Moreover, Straus estimates that "at least a third of American children have witnessed violence between their parents, and most have endured repeated instances." *Childhood Exposure, supra* note 10 (quoting STRAUS & GELLES, *supra* note 10 at 98)).

11. Stark & Flitcraft, *supra* note 9, at 104.

12. *Id.* at 106. A study by Giles-Sims also found that the rate at which men used abusive tactics on children was four times as high, as battered women who used abusive tactics. Jean Giles-Sims, *A Longitudinal Study of Battered Children of Battered Wives*, 34 J. FAM. REL. 205, 208 (1985).

13. Linda McKibben et al., *Victimization of Mothers of Abused Children: A Controlled Study*, 84 PEDIATRICS 531, 534 (1989).

which domestic violence was revealed increased by almost one-third (48.2%).¹⁴ A ninety-day review of focal reports identified domestic violence in 16.2 % of cases referred for investigation in New York City, but the proportion increased to 31% of cases when the sample was limited to women currently in relationships with men.¹⁵ When case-workers were instructed to utilize a domestic violence questionnaire in a New York City Pilot Project (Zone C), the proportion of cases in which domestic violence was identified was almost twice as high (28%) as the percentage identified in the initial referrals from the state.¹⁶ In another New York City Pilot Program designed to reduce foster placements among victims of domestic violence (the Zone A Pilot), domestic violence was identified in 14.5% of CPS cases; but when referral agencies employed a preventive questionnaire, they identified domestic violence as a problem in 49% of the cases.¹⁷ The variation in these findings suggests there is no current "gold standard" against which to assess whether rates of identification approximate the actual prevalence of domestic violence in the CPS caseload. If anything, CPS estimates are conservative. CPS workers are rarely accountable for identifying domestic violence, rarely ask about domestic violence, believe their primary mandate is child protection not intervention to protect domestic violence victims and, in any case, lack the support or resources to properly intervene in domestic violence cases.¹⁸ When domestic vi-

olence is identified, punitive labels and interventions are more likely to be applied than in cases involving comparable harms to children where no domestic violence has occurred. Thus, Stark and Flitcraft reported that placement was significantly more likely to be recommended for the children of battered than of non-battered mothers, even when the level of maltreatment of the child was controlled.¹⁹

Screeners in the Hennepin County Department of Children and Family Services identified the co-occurrence of child maltreatment and adult domestic violence in 19% of the cases reported in a single month. These cases were significantly more likely to be assigned for investigation and to cite "failure to protect" as a condition code than in cases where domestic violence was not reported.²⁰ While victims of domestic violence generally welcome frank and confidential questions about abuse,²¹ in the context of a CPS investigation, many women reasonably fear that revealing domestic violence will jeopardize their parenting status or cause their partners' abuse to escalate. Cases of domestic violence reported by or to CPS therefore, are likely to be limited to those in which the level of injury or some other factor makes identification unavoidable. Despite these caveats, even the lowest estimates of its prevalence indicate that domestic violence is more often an issue in child protection cases than is substance abuse, homelessness, mental illness or other comparable problems to which considerably

14. Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Woman Abuse*, available at <http://www.vaw.umn.edu/finaldocuments/Vawnet/overlap.htm> (citing Eric Hangen, *D.S.S. Interagency Team Pilot Project: Program Data Evaluation*, Office of Management, Planning and Analysis, (MASS. DEP'T. SOC. SERVS, 1994)).

15. Susan Mitchell-Harzfel, *The Adoption and Safe Families Act (AFSA) Study*, THE EVALUATION & RESEARCH UNIT OF NEW YORK STATE'S OFFICE OF CHILDREN AND FAMILY STUDIES (Unpublished Report Dated Dec. 14, 2000)[hereinafter AFSA Study].

16. Randy H. Magen, *Identifying Domestic Violence in Child Abuse and Neglect Investigations*, at http://cwoolf.uaa.alaska.edu/~afhrm1/FV_PAPERS.html (July 22, 1995); Ann Panciera, *EVALUATION OF ZONE C PILOT PROJECT: The Domestic Violence Coordinated Response Pilot* (Reported Published by ACS & NYCPD March 2001).

17. History of Recent Domestic Violence Efforts in ACS, ACS MEMORANDUM (April 2000) (on file with ACS).

18. Magen, *supra* note 16. Prior to the initiating of the Zone C Pilot Project caseworkers employed an available domestic violence questionnaire in only one percent of the cases. *Id.* In evaluating the caseworker response in the Zone

C Pilot Project, Magen concluded "Most respondents believed their number one mandate was to protect the child and questioned the role of identifying domestic violence in protecting children." *Id.*

19. Stark & Flitcraft, *supra* note 9, at 105-07.

20. Jeffrey L. Edleson & Sandra K. Beeman, *Responding to the Co-occurrence of Child Maltreatment and Adult Domestic Violence in Hennepin County*, available at <http://www.mincava.umn.edu/link/finreport.asp> (2000). In fact, "failure to protect" was noted in 61% of the cases where domestic violence was identified, but in only 22% of the cases where it was not. *Id.*

21. This is demonstrated by the large numbers who self-identify in response to research assessments, population surveys and when protocols are introduced in the hospital setting. When the single question "At any time has a partner hit you, kicked you, or otherwise physically hurt you?" was added to a self-administered health history form in a primary care setting, domestic violence identification rose from zero percent (with discretionary inquiry alone) to 11.6%. Karen M. Freund et al., *Identifying Domestic Violence in Primary Care Practice*, 11 J. GEN. INTERNAL MED., 44, 44-45 (1996).

greater resources are devoted.²² Thus, while existing evidence is insufficient to reach definitive conclusions about the characteristics or service needs of battered mothers in the CPS caseload, the importance of such a determination is clear. In addition to being widespread, domestic violence can have both indirect and direct effects on children's health and welfare.

(a) Indirect Effects

With a life-time prevalence at somewhere between twenty and thirty percent of the female population, domestic violence is the single most important cause of injury for which women seek medical attention, and a significant contributor to homicide, divorce, incarceration, homelessness, HIV disease, substance use, suicidality, depression, and a broad range of other behavioral and mental health problems among women.²³ All of these problems can harm children. While the effects of these harms to children are developmentally specific, they can result either from the traumatic effects of separation from the primary caretaker due to homicide, incarceration, divorce, mental illness or homelessness, or because the mother's capacity for caretaking is compromised by fear, depression or the batterer's misappropriation of her resources.²⁴

Current research allows us to assess the relative frequency and severity of these effects from two vantage points. First, we can consider evidence on whether the parenting capacity of battered mothers is impaired. Second, we can compare rates of problems often linked to im-

pairment among battered and non-battered mothers within the CPS caseload.

There is considerable evidence that battered women experience disproportionate rates of depression, post-traumatic stress disorders, suicidality, substance abuse and other mental health or behavioral problems.²⁵ However, there is no evidence that their capacity to parent is compromised as a result. To the contrary, even among the most severely abused women, only a small minority requires shelter, and the vast majority exhibits unimpaired capacities to parent. For example, a recent study, using multi-variant techniques, of battered women in shelters concluded "mothers' experience of physical and emotional abuse had no direct impact on their level of parenting stress or use of discipline with their children."²⁶ Both by their own and their children's reports, the vast majority of mothers in this study were emotionally available to their children (98%), continued to value parenting (91%), and provided appropriate supervision and discipline (91%), typically using timeouts, grounding and taking away privileges.²⁷ Seventy-three percent of the battered mothers reported spanking or slapping their children, yet only fifty-nine percent of the children reported ever being spanked or slapped.²⁸ Although the proportion of battered mothers who employ corporal punishment may seem relatively high, it is actually smaller than the comparable proportion among American parents generally.²⁹ Perhaps the most telling findings are that children of battered mothers in battered women shelters reported relatively

22. For the comparable rates of these problems, see AFSA Study, *supra* note 15.

23. On injury, homicide, suicidality and other health and mental health problems among battered as compared to non-battered women, see generally EVAN STARK & ANNE FLITCRAFT, *WOMEN AT RISK: DOMESTIC VIOLENCE AND WOMEN'S HEALTH* (1996). On arrest and other aspects of the criminal justice response, see EVE BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* (1990); see generally Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267 (1985). On divorce, see George Levinger, *Sources of Marital Dissatisfaction Among Applicants for Divorce*, 36 AM. J. OF ORTHOPSYCHIATRY 803-807 (1966).

24. See G.W. HOLDEN, R. GEFFNER & A. JOURILES, *CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH & APPLIED ISSUES*, APA (2001); see also Susan Schechter & Jeffrey L. Edleson, *In the Best Interest of Women and Children: A Call for Collaboration Between Child*

Welfare and Domestic Violence Constituencies, available at <http://www.mincava.umn.edu/papers/wingsp.htm>.

25. See STARK & FLITCRAFT, *supra* note 23, at 12. For a detailed review of these health problems, see *The Battering Syndrome: Social Knowledge, Social Therapy and the Abuse of Women*, STATE UNIV. NEW YORK (Vol. II, 1984)(Unpublished doctoral dissertation); see also E. Stark & A. Flitcraft, *Violence Among Intimates: An Epidemiological Review*, in V.B. VAN HASSELT ET AL., *HANDBOOK OF FAMILY VIOLENCE*, 293-319 (1988).

26. Chris M. Sullivan et al., *Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women are Nurturing Parents*, 2 J. EMOTIONAL ABUSE 51, 61 (2000).

27. *Id.* at 61-62.

28. *Id.* at 62.

29. Over 90% of American parents report spanking their children, and the overwhelming majority support the practice. Murray A. Straus, *Discipline and Deviance: Physical Punishment of Children and Violence and Other Crime in Adulthood*, 38 SOC. PROBS. 133, 136 (1991).

high and stable scores on their self-concept across time, and exhibited overall adjustment that fell within the range of what is considered normal.³⁰

There is limited data on the strengths of battered mothers because the literature on the subject generally emphasizes deficits associated with abuse. This issue can be assessed indirectly, however, by considering the relative rates of various problems often associated with child maltreatment among battered and non-battered mothers within the CPS caseload. Unfortunately, most studies fail to distinguish parental characteristics associated with child abuse from those associated with neglect. However, in the Yale Trauma Studies, Stark and Flitcraft reported that the children of battered mothers were significantly more likely than the children of non-battered mothers to be doted for child "abuse" (typically committed by the woman's partner) rather than neglect.³¹ Conversely, the battered mothers were much less likely than non-victimized mothers to present with the multi-problem histories of alcohol or drug abuse, mental illness, sexual abuse or violence in childhood usually associated with neglect.³² This conclusion is further illustrated by the AFSA study of CPS cases in New York City, where non-battered mothers were almost one hundred percent *more* likely than battered mothers to be identified with abusing drugs (19.4% versus 11.3%) or both alcohol and drugs (2.0% versus 1.4%).³³ By contrast, fully 84.5% of the domestic violence victims had no mental health problems.³⁴ When we combine evidence

of their parenting capacity with data on the relatively low rate of psychological or behavioral problems among battered mothers, it becomes clear that battered mothers enter the CPS caseload largely, if not exclusively, because of their partner's abusive behavior.

The fact that battered mothers within the CPS population are markedly high functioning and capable parents who are relatively problem free has important implications for intervention. The possibility that a mother's victimization may indirectly harm her children justifies offering voluntary services to families where domestic violence occurs even in lieu of evidence that a child has been harmed or mistreated.³⁵ On the basis of the psychosocial or behavioral profiles of battered mothers or evidence of how the effects of their abuse harms their children, however, there is no basis for finding these mothers neglectful or for assuming an emergent risk to children justifying placement as a first-line option. To the contrary, the evidence suggests that battered mothers in the CPS caseload be approached from a strengths perspective that uses supportive resources to enhance their demonstrated capacity for independent decision-making. Substance abuse treatment, emergent psychiatric care or mental health counseling for symptoms related to trauma may be occasionally required. More typical needs include economic assistance, shelter and other housing options, and enhanced advocacy - particularly with the criminal justice and court systems.³⁶ Unfortunately, the current CPS response relies heavily on referrals de-

30. Chris M. Sullivan et al., *supra* note 26, at 63.

31. Stark & Flitcraft, *supra* note 9, at 105.

32. *Id.* at 105. In other words, while battered women are more likely to experience these problems than non-battered women in the general population, they are less likely to present with these problems than other mothers in the CPS caseload.

33. See AFSA Study, *supra* note 15.

34. *Id.*

35. For a discussion of the service needs in families where woman battering and child abuse coincide, see generally Sandra K. Beeman et al., *Case Assessment and Service Receipt in Families Experiencing Both Child Maltreatment and Woman Battering*, 16 J. INTERPERSONAL VIOLENCE, 437 (2001); see also S. Schechter et al., *National Council of Juvenile and Family Court Judges: Effective Intervention in Domestic Violence and Child Maltreatment: Guidelines for Policy & Practice* (1998) [hereinafter *The Green Book*].

36. The importance of advocacy and social support in enhancing the battered mother's psychological well being, in-

creasing the likelihood that she will leave the batterer and reducing the severity of psychological problems elicited by abuse is supported by Cheribeth Tan et al., *The Role of Social Support in the Lives of Women Exiting Domestic Violence Shelters: An Experimental Study*, 10 J. INTERPERSONAL VIOLENCE 437, 438, 445-46 (1995); Roger E. Mitchell & Christine A. Hodson, *Coping with Domestic Violence: Social Support and Psychological Health Among Battered Women*, 11 AM. J. CMTY. PSYCHOL. 629-654 (1983); M. Syers-McNairy, *Women Who Leave Violent Relationships: Getting on with Life* (Univ. of Minn. 1990) (Unpublished doctoral dissertation) (finding that a woman's successful adaptation after leaving a violent partner was associated with receipt of financial, social service, legal help, informal social networks and a woman's personal skill). This work is summarized in S. Schechter & J.L. Edleson, *supra* note 24, and *Domestic Violence and Child Welfare: Integrating Policy and Practice for Families* (1994) available at http://cwolf.uaa.alaska.edu/~afhml1/FV_PAPER.html.

signed for multi-problem families.³⁷ However, given the evidence that their parenting skills are often unimpaired by battering, such referrals to parenting classes are rarely appropriate and may send the unintended message that the woman, not her abuser, is responsible for her victimization.

(b) Direct Effects

If the secondary consequences of domestic violence are unlikely to pose a substantial risk to children, their risk of abuse and neglect is nonetheless directly increased by domestic violence itself. This claim cannot be seriously questioned. Studies have consistently found that households where domestic violence occurs have a higher incidence of child abuse than households where domestic violence does not occur.³⁸ Although men are the offenders in the vast majority of cases involving severe or fatal injury to children,³⁹ battered women are also more likely to be implicated in child abuse than non-battered women.⁴⁰

Here again, the critical issue for CPS is not whether domestic violence overlaps with child maltreatment - it clearly does - but whether this link creates an emergent risk to children and/or justifies an automatic finding of "neglect" against the victimized mother and/or the selection of placement as a first-line option. One way to answer to this question is to consider the

proportion of children whose abuse or neglect results directly from domestic violence. Another dimension of the answer involves the dynamics in these cases and whether women's response to the risks posed to their children by domestic violence is generally appropriate or neglectful. If relatively few children are endangered by domestic violence, if victimized mothers typically take the steps needed to protect their children, or if the identified dangers are non-emergent and/or can be resolved with supportive services and advocacy, then a refined method of case assessment is preferable to an approach that equates domestic violence with an emergent need for placement.

The factors that place the child at risk in a domestic violence situation are not completely understood. This lack of understanding is a direct result of methodological and conceptual weaknesses in the literature that prevent practitioners from differentiating the types of domestic violence situations where children's risk is likely to be high. By generalizing from clinical samples that exaggerate the harmful effects of domestic violence to population samples that exaggerate the populations likely to be harmed, researchers have unwittingly encouraged courts, state policy makers and CPS agencies to mistakenly conclude that exposure to domestic violence is virtually identical to maltreatment and, therefore, requires emergent intervention, including sanctions for victimized caretakers.⁴¹

37. Stark & Flitcraft, *supra* note 9, at 105-08; Magen, *supra* note 16; Edleson & Beeman, *supra* note 20.

38. Edleson, *supra* note 7; see also Straus, *supra* note 29; Straus & Gelles, *supra* note 10; Edleson, *supra* note 14; JAFFE, *supra* note 7; Holden et al., *supra* note 24; on preadolescents, see Stark & Flitcraft, *supra* note 9.

39. Stark & Flitcraft, *supra* note 9, at 106-07. Director of the National Center for Child Abuse and Neglect (NCCAN) testified that males were the perpetrators in 40% of all officially reported child abuse and neglect cases. D. Bersherov, *Testimony Before the Committee on Science and Technology (DISPAC Subcommittee)*, U.S. House of Representatives (Feb. 14, 1978). Where men were present, however, they are responsible for as many as seventy percent of reported incidents. DAVID G. GIL, *VIOLENCE AGAINST CHILDREN: PHYSICAL CHILD ABUSE IN THE UNITED STATES* (1973). However, a study of hospital and medical examiners' records indicates that men bear the overwhelming responsibility for serious child abuse and fatality cases - up to eighty percent. Abraham B. Bergman et al., *Changing Spectrum of Serious Child Abuse*, 77(1) *PEDIATRICS* 113, 114-15 (1986). A review of the data concludes "most families involved in child fatalities were two-person caretaker situations where a majority of the perpetrators were the father of the child or the boyfriend of the mother." Schechter & Edleson, *supra* note 24.

40. See Murray A. Straus, *Ordinary Violence, Child Abuse, and Wife-Beating: What Do They Have in Common?* in *THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH*, 213-34 (David Finkelhor et al., eds. 1983). Straus' evidence is based on mother's unverified self-reports and on a definition of "abuse" that includes a range of physical acts (such as pushing, slapping, etc.) that are widely considered legitimate forms of punishment. *Id.* at 215.

41. There have been two main approaches to this issue. At least sixteen states and Puerto Rico have revised their criminal statutes to make exposure of a child to domestic violence a separate criminal offense, (e.g. UTAH CODE ANN. § 76-5-109.1 (1999)), enhance criminal penalties for the commission of an assault in the presence of a child, (e.g. CAL. PENAL CODE § 1170.76 (West Supp. 2002)), or elevate a misdemeanor assault to a felony if a child is present, (e.g. OR. REV. STAT. § 163.160 (1953)). Childhood Exposure, *supra* note 10. Another approach is to define exposure of a child to domestic violence as a specific type of neglect, an approach adopted by Minnesota, (e.g. MINN. STATE ANN. § 626.556 (West 1983)), then abandoned when it proved too costly. Childhood Exposure, *supra* note 10. For a discussion of CPS agencies and states that define domestic violence as maltreatment, see generally Beeman et al., *supra* note 35; Edleson,

Studies in the field are notoriously weak methodologically, use widely varying and imprecise definitions of child maltreatment, harms to children or domestic violence, and have consistently failed to delineate, let alone conceptualize, the typical dynamics where domestic violence and child maltreatment co-occur, making it extremely difficult to assess risk in individual cases.⁴²

The data on how domestic violence affects children is generally of very poor quality. Most studies rely on small or unrepresentative samples, such as mothers in shelters, or on sources such as population surveys where secondhand reports with no confirming evidence are used to estimate prevalence rates. Substantial differences between the context, dynamics and consequences of child abuse and child neglect have been widely noted.⁴³ Yet, the literature on how domestic violence harms children typically focuses either on child abuse or on psychological or behavioral outcomes attributed to domestic violence rather than on neglect. Conversely, while several studies consider whether children's risks increase with the number of domestic violence incidents, few use comparison groups of children from nonviolent homes, differentiate violent families from high conflict or distressed families in which there is no violence, assess children's strengths and coping responses, link test assessments to actual behavioral malfunctions, or specify the "dose" of exposure required to elicit psychological harms.⁴⁴ Virtually no studies in the field are controlled for such confounding factors as the disruptive effects of going to a shelter, developmental age, exposure to community violence or other potentially traumatic life-experiences that may

confound clinical measures of dysfunction. Moreover, in linking domestic violence to child maltreatment, almost no attention has been paid to the type, severity or frequency of abuse among adult partners, or to accompanying coercive strategies within the family that may be more harmful than physical abuse itself.⁴⁵ In identifying the source of harms to children, studies have typically failed to determine whether children who witnessed their mother's abuse were also abused themselves.⁴⁶ Longitudinal studies that track the effects of domestic violence on children's mental health over time are few and far between.⁴⁷

Even more consequential than the methodological weaknesses of research in this field is the consistent failure of researchers to conceptualize the "overlap" which they have documented. Research shows that domestic violence places children at risk, how commonly children are harmed and what types of harms they suffer. Still, little or nothing is typically said about the dynamics of abusive situations that lead to maltreatment, the "what?", "why?", and "how?" needed to help practitioners make coherent assessments in individual cases. Given this failure, the most conservative course is to treat any and all cases of domestic violence as emergent and to assume that any and all adult participants in domestic violence episodes, including victims, are equally culpable for children's "exposure." This approach, which tolerates the inclusion of "false positives" in the population targeted for intervention, might be benign were the interventions selected without negative consequences for the parties involved.

With these limits in mind, we can nonetheless consider harm to children caused by (a) de-

Bibliography, *supra* note 7; see also Trepiccione, *supra* note 1, at 1489-99.

42. For a critical view of research methods in this field, see Edleson, Bibliography, *supra* note 7; Schechter & Edleson, *supra* note 24; Trepiccione *supra* note 1, at 1501-07; Magen et al., *supra* note 16.

43. See Carol Cooney, *Child Maltreatment: Testing the Social Isolation Hypothesis*, 20 CHILD ABUSE & NEGLECT 241 (1996).

44. On the number of domestic violence incidents, see Straus & Gelles, *supra* note 10, at 407-23, (reporting that approximately seven percent of men who committed "ordinary violence" against their partners (pushing, slapping, etc.) also abused their children. But among men who battered their wives three or more times, child abuse approached fifty percent. Child abuse, however, was defined to include virtually

any type of physical punishment in this study). For studies which do employ comparison groups and look at relevant forms of dysfunction, see Michael Hershorn & Alan Rosenbaum, *Children of Marital Violence: A Closer Look at the Unintended Victims*, 55 AM. J. ORTHOPSYCHIATRY, 260 (1985); see also Peter Jaffe et al., *Similarities in Behavioral and Social Maladjustment Among Child Victims and Witnesses to Family Violence*, 56 AM. J. ORTHOPSYCHIATRY 142 (1986).

45. On the potential effects of non-physical forms of coercion and control on children, see generally Stark, *supra* note 8.

46. Schechter & Edleson, *supra* note 24; Edleson, *supra* note 7.

47. For an example of one such study, see Jean Giles-Sims, *supra* note 12, at 205.

liberate or inadvertent physical assault by either partner; (b) witnessing partner violence; (c) modeling or what is sometimes called "the intergenerational transmission of abuse"; and (d) coercive control, where the caretaker is disabled by a combination of violence, intimidation, isolation and control.⁴⁸

Deliberate or Inadvertent Child Abuse

Research indicates that children are injured in domestic violence encounters because one of the partners abuses the child, or the child intervenes or is inadvertently injured in the course of a partner's abuse of the primary caretaker.⁴⁹ While the seriousness of injury involved in these cases cannot be determined with certainty, existing evidence suggests it is minimal. For example, data provided by the State Police in Connecticut in 1999 revealed that children were "involved" in 17.6% of the cases where at least one partner was arrested.⁵⁰ Yet, offenders were charged with risk of injury in only 441 of 15,060 incidents (fewer than 3%), suggesting that relatively few rose to a level that might be considered "abuse."⁵¹

The relatively low level of harm to children in domestic violence incidents reflects the fact that the vast majority of these partner assaults involve pushing, shoving, slapping and similar minor acts.⁵² The most devastating effects of battering result from chronic, but low-level assaults that are best assessed by their frequency and cumulative impact rather than their severity.⁵³ This pattern is illustrated by evidence provided by the State Police in Connecticut, where victims require medical attention in about 3%

of cases where an arrest is made (about the same proportion of cases in which children are hurt).⁵⁴ By contrast, the AFSA study of cases in NYC found that 12.7% of the cases reviewed involved medically significant injuries to victims, and an identical percentage of children suffered injury as well.⁵⁵ Still, only three children (out of seventy-one) in the study required outpatient medical treatment, only slightly higher than the proportion of children identified as requiring medical treatment by the Connecticut police.⁵⁶ However, even if we make the extremely conservative assumption that the highest estimates of harm to children reflect the proportion of cases where removal should be considered, the fact that children are not harmed in somewhere between eighty-seven and ninety-seven percent of the most serious domestic violence incidents, (i.e. where police or CPS are involved), underlines the wisdom of a case-specific assessment rather than a blanket approach that equates domestic violence with child abuse or neglect.⁵⁷

Another way to contextualize these findings is to compare them with child abuse rates in the general population and among children in foster care. In fact, the rate of harm to children that rises to the level of "abuse" in domestic violence cases (between 3% and 4%) is only slightly higher than the rate in the general population, (about 2.5% or one case in forty), and less than the comparable risk in foster families (about 5% or one in twenty).⁵⁸

It has been widely reported that battered women are more likely to abuse their children than non-battered mothers.⁵⁹ This conclusion is

48. For a discussion of these as the four pathways linking domestic violence and harms to children, see Stark, *supra* note 8, at 35-36; 54-59.

49. JAFFE ET AL., *supra* note 7, at 26.

50. Data is taken from CONNECTICUT DEP'T PUB. SAFETY, FAMILY VIOLENCE ARRESTS ANNUAL REPORT (1999) [hereinafter Conn. 1999 Report]. In the Zone C Pilot in New York City, children were physically present in twenty-eight percent of the cases identified (approximately nine of thirty-five) and intervened in two. Magen, *supra* note 16.

51. Conn. 1999 Report, *supra* note 50.

52. Thus, over ninety percent of domestic assaults that come to the attention of hospitals and/or police involve little or no injury. Conn. 1999 Report, *supra* note 50. Medical data is summarized in Evan Stark, *Health Intervention with Battered Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 345-71 (2001).

53. *Id.*

54. Conn. 1999 Report, *supra* note 50.

55. See AFSA Study, *supra* note 15.

56. *Id.*

57. A very different view of the dangers of physical abuse to children in domestic violence cases is presented in Edleson, *supra* note 7.

58. Thus, a report by the Public Advocate's Office in New York City identifies the overall risk of child abuse in New York City as one in forty, about the same or only slightly less than the risk where domestic violence occurs, and the risk in foster care as one in twenty, almost half again as high as the risk posed by domestic violence. COMMENTS ON THE FIVE YEAR ANNIVERSARY OF THE ADMINISTRATION FOR CHILDREN'S SERVICES BY THE OFFICE OF THE NEW YORK CITY PUBLIC ADVOCATE AND C-PLAN: CHILD PLANNING AND ADVOCACY NOW 3-4 (May 2001).

59. Edleson, *supra* note 7; STRAUS & GELLES, *supra* note 10 (reporting that the rate of child abuse by battered mothers is twice as high as by non-battered mothers, but they include a range of acts in their definition of abuse that many parents

based almost entirely on population surveys, volunteer samples and self reports, however, where definitions of child abuse are highly subjective and imprecise. As seen earlier, male partners are responsible for the overwhelming proportion of incidents where serious harms result.⁶⁰ Moreover, the behavioral problems identified among children in domestic violence cases have been directly traced to behavior by the male offender.⁶¹ Accountability in these cases is hopelessly confounded when ACS or other CPS agencies fail to identify the source of the violence, or claim, as in the New York City cases that are the focus of this report, that abused mothers are culpable of "engaging in domestic violence."

Witnessing

At one time or another, the majority of children in households where battering occurs witness the abuse either directly, because they are physically present during an incident, or indirectly, because they are aware that their

mother is being abused.⁶² Witnessing has been linked to a range of physical, psychological, and behavioral problems, depending on the developmental stage at which exposure occurs.⁶³ Despite these claims, several carefully designed studies have shown that children who witness violence are at no greater risk than children in distressed relationships where no violence occurs.⁶⁴ Other studies, meanwhile, suggest that the vast majority of children who witness domestic violence show no mental health or behavioral effects whatsoever or, conversely, that over 80% of children exposed retain their overall psychological integrity.⁶⁵ Moreover, the effects of witnessing appear to dissipate significantly over time.⁶⁶ On the other hand, path analysis reveals that the offender's abuse has a direct effect on the children's behavioral problems.⁶⁷

Estimates of the percentage of children who experience some behavioral problems as a result of witnessing domestic violence range as high as 75%.⁶⁸ However, there is no evidence

consider normal discipline); see also Giles-Sims, *supra* note 12, at 205. LENORE E. WALKER, *THE BATTERED WOMAN* 7, 149 (1979); RICHARD J. GELLES & MURRAY A. STRAUS, *INTIMATE VIOLENCE: THE DEFINITIVE STUDY OF THE CAUSES AND CONSEQUENCES OF ABUSE IN THE AMERICAN FAMILY* 121 (1988).

60. Giles-Sims, *supra* note 12, at 207 (reporting the men in domestic violence cases are six times more likely than their adult victims to commit child abuse); see also Stark & Flitcraft, *supra* note 39, at 106, for the claim that severe violence is committed almost exclusively by men.

61. Chris M. Sullivan et al., *How Children's Adjustment is Affected by their Relationships to Their Mothers' Abusers*, 15 J. INTERPERSONAL VIOLENCE 587, 596-98(2000).

62. For estimates, see JAFFE ET AL., *supra* note 7; Edleson, *Bibliography*, *supra* note 7. Straus estimates that "at least a third" of American children have witnessed violence between their parents. MURRAY A. STRAUS, *Children as Witnesses to Marital Violence: A Risk Factor for Lifelong Problems Among a Nationally Representative Sample of American Men and Women*, Twenty-Third Ross Roundtable on "Children and Violence" Washington D.C. (Sept. 1991).

63. Witnessing has been associated with low self-esteem in girls, aggression and behavioral problems in boys and girls, and with reduced social competence, depression and anxiety, feelings of helplessness, powerlessness, fragmentation, and anger. JAFFE ET AL., *supra* note 7, at 28-29. Reactions tend to be developmentally specific. Preschool children in particular are frightened and sometimes terrified, are almost always confused by the violence, and express their insecurity through clinging, crying, nervousness and a constant vigilance over where their mothers are. They display a range of somatic problems including insomnia and other sleep disorders, eating disorders, bed-wetting, ulcers and chronic colds. Preschool children have also been found to suffer from a failure to thrive, developmental delays and socialization deficits. *Id.*

at 26, 40-41. By contrast, adolescent witnesses may become runaways, act out sexually or with violence, or, as in several instances in my caseload, transfer their fear of the batterer to their mother (because she causes the problem) and "identify with the aggressor," (e.g. by adapting his view of their mother, seeking his protection or by playing the "good child" to magically protect themselves or their mother from abuse). *Id.* at 27-31, 40-41.

64. See Michael Hershorn & Alan Rosenbaum, *Children of Marital Violence: A Closer Look at the Unintended Victims* 55 AM. J. ORTHOPSYCHIATRY 264-65 (1985) (finding that children who witness domestic violence have no more problems than children in distressed families where no violence has occurred).

65. Sullivan et al., *supra* note 61, at 596 (reporting that of the 80 seven- to eleven-year-old children interviewed in a shelter, who had been recently exposed to domestic violence, over eighty percent exhibited a positive self-image and no significant pathology); see also Sandra A. Graham-Bermann, *Designing Intervention Evaluations for Children Exposed to Domestic Violence: Applications of Research and Theory*, in SANDRA A. GRAHAM-BERMANN & JEFFREY L. EDLESON, *DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN: THE FUTURE OF RESEARCH, INTERVENTION, AND SOCIAL POLICY* 237 (American Psychological Association, (2001)).

66. David A. Wolfe et al., *Child Witnesses to Violence Between Parents: Critical Issues in Behavioral and Social Adjustment*, 14 J. ABNORMAL CHILD PSYCHOL. 95, 102 (1986).

67. Sullivan et al., *supra* note 26, at 65.

68. See Jaffe et al., *Similarities in Behavioral and Social Maladjustment Among Child Victims and Witnesses to Family Violence*, 56(1) AM. J. ORTHOPSYCHIATRY 143, 145 (1986) (reporting that 75% of the children in their study who were exposed to domestic violence exhibited clinically significant behavioral problems, compared to just 13% in the control group).

that serious problems are typical. The boldest claims to the contrary have come from the National Family Violence Surveys, where it is estimated that as many as one child in three in the United States is harmed by exposure to domestic violence.⁶⁹ This conclusion is spurious, however, because it combines relatively infrequent acts of serious violence with widely accepted forms of punishment. Even so, the highest rates of behavioral problems uncovered by the National Family Violence Surveys are for "temper tantrums," reported for 17% of children exposed to domestic violence (as compared to 10% for non-exposed children). By contrast, the percentages of children experiencing the behavioral consequences that might concern CPS - drinking, drugs or arrests - ranged between .2% and 2.9%.⁷⁰ These rates were higher than the rates of non-exposed children, represent a large number of children nationwide, and may merit intervention. The point, however, is that the rate of incidence neither justifies an assumption of imminent risk, nor a generic policy that considers exposure equivalent to abuse or neglect. To the contrary, since the National Family Violence Surveys made no attempt to separate witnessing from physical abuse and since these problem rates approximate the rates of child injury in domestic violence cases derived from police reports and the AFSA study, it is likely that the behavioral problems reflect the combined effects of child abuse and witnessing, not witnessing alone.⁷¹ In these instances, the finding of physical abuse would normally prompt consideration of placement. In any case, although the literature abounds with broad claims to the contrary, the serious effects of witnessing parental violence that would merit

a finding of maltreatment are limited to an extremely small proportion of exposed children.

Modeling

Modeling is the third frequently identified source of risk posed to children by domestic violence. It is widely believed that exposure to violence in childhood predisposes children to subsequent misbehavior or violence as adults.⁷² There is compelling evidence that male children exposed to the severest forms of violence - involving knives or guns - are significantly more likely to become abusive adults.⁷³ The National Family Violence Surveys report, for instance, that exposed children are ten times more likely to become abusive adults than children not so exposed.⁷⁴ The trouble with using this statistic to generalize the effects of exposure on children is that only 1% of men were raised in the "most violent" families from which the ratio of ten to one is drawn. Even among this one percent of children exposed to the severest forms of violence, 80% do not become violent adults; among children exposed to lower levels of violence, meanwhile, fully 90% do not become violent as adults.⁷⁵ The proportion of children who "act out" as teens due to domestic violence is only slightly higher.⁷⁶ The few longitudinal studies that have assessed the importance of social heredity in transmitting violence across generations have failed to consider a range of intermediary environmental influences such as exposure to violent media or violence in the surrounding community. Even so, a review of this work concluded that the vast majority (over 70%) of children exposed, even to severe violence, became normally functioning parents.⁷⁷ Undoubtedly, parents are among the most sig-

69. See STRAUS & GELLES, *supra* note 10, at 97; see also MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS 115(1980).

70. STRAUS & GELLES, *supra* note 10, at 456 - 58.

71. See Honore M. Hughes et al., *Witnessing Spouse Abuse and Experiencing Physical Abuse: A "Double Whammy"?* 4 J. FAM. VIOLENCE 197 (1989).

72. Edleson, *Bibliography*, *supra* note 7; see also Louise Silvern et al., *Retrospective Reports of Parental Partner Abuse: Relationships to Depression, Trauma Symptoms and Self-esteem among College Students* 10 J. FAM. VIOLENCE 177 (1995); STRAUS ET AL., *supra* note 69, at 115.

73. See Evan Stark and Anne Flitcraft, *Woman-battering, Child Abuse and Social Heredity: What is the Relationship?* in MARITAL VIOLENCE, 147 (Norman Johnson ed., 1985).

74. STRAUS ET AL., *supra* note 69, at 100-01. In their sample, only two percent of the men raised in nonviolent homes

hit their wives, compared to twenty percent of the men raised in the "most violent" homes. Stark & Flitcraft, *supra* note 73, at 156.

75. Conversely, a current batterer is two times more likely to come from a nonviolent home than a home in which some violence was used by adults, and seven times more likely to come from a home where no violence was used than a home characterized as "most violent." *Id.* at 157. If one child in one hundred is exposed to the severest forms of domestic violence (where knives and guns are used, e.g.) and one in five of these children becomes a violent adult as a result, this means that "modeling" explains adult domestic violence in approximately one case in five hundred.

76. See generally STARK & GELLES, *supra* note 10.

77. Joan Kaufman & Edward Zigler, *Do Abused Children Become Abusive Parents?*, 57(2) AM. J. ORTHOPSYCHIATRY 186, 190 (1987).

nificant role models children have and should be counseled accordingly. Yet no policy of punitive intervention can be grounded in the evidence that domestic violence leads children to abuse their own children or their partners.

The Particular Risks of Placement to Young Children Exposed to Domestic Violence

Some researchers believe that the stress induced fear associated with witnessing violence is sufficient in itself to evoke psychological and behavioral problems in children, particularly of preschool age, largely because of separation fears.⁷⁸ Conversely, the healthy development of preschool children requires a sense of security in a continuous bond with a caretaking parent who exercises reasonable control over the child's immediate universe, including control over the boundaries separating the caretaking relationship from the outside world.⁷⁹ Yet, in many abusive relationships, the assaulting partner repeatedly violates the psychological, physical and social boundaries of the primary caretaker by usurping her autonomy and right to independent decision-making in basic arenas of everyday life.⁸⁰ As a result, young children exposed to domestic violence often experience their immediate universe as unpredictable and unsafe. This can generate a frightening sense of the world which they may project outwards onto others, producing nightmares for instance, or internalize in the form of low self-esteem.

Separating the abusive parent from his victims and denying him access may be the first

step in addressing the special vulnerability of children in these cases. Removing the offending partner can confirm the child's sense of security in a primary caretaker, while it increases the mother's safety, permitting her to re-establish needed boundaries. In fact, most victims of domestic violence eventually end their relationships with violent men, often because they recognize the threats it poses to their children.⁸¹ However, neither separation nor the issuance of a court order of protection guarantees safety, since one-half to two-thirds of all abuse occurs when women are single, separated or divorced.⁸² Best practice dictates that victimized mothers be offered the resources and enhanced advocacy with the courts and criminal justice system needed to live independently of an abusive partner. Since the adult victim typically knows the relative risks involved in separation better than a case-worker, decisions about when and how to separate from an abusive partner should typically be left to her or made collaboratively.⁸³ Even under the best of circumstances, removal of a child to foster care can be a traumatic experience, but in domestic violence cases where the bond to the primary caretaker has already been made fragile by abuse, the trauma of placement can be particularly harsh, evoking powerful feelings of guilt and self-loathing that can leave lasting scars. Thus, placement in such cases should be used only as a last resort and in the face of compelling evidence that a mother's judgment is impaired (by chronic substance use or mental illness, for instance) or the child faces imminent harm.

78. See E. Mark Cummings et al., *Young Children's Responses to Expressions of Anger and Affection by Others in the Family*, 52 *CHILD DEVELOPMENT*, 1274 (1981); see also Edleson, *supra* note 14; Edleson, *supra* note 7.

79. A classic statement of this relationship with the caretaker can be found in JOHN BOWLBY, *MATERNAL CARE AND MENTAL HEALTH* 11-13 (1952); see also Joseph Goldstein, *Medical Care for the Child at Risk: On State Supervention of Parental Autonomy*, 86 *YALE L.J.* 645, 649 (1977) (stating that "[a]lthough breaking or weakening the ties to the responsible and responsive adults may have different consequences for children of different ages, there is little doubt that such breaches in the familial bond will be detrimental to the child's well-being").

80. See Stark, *supra* note 8, at 52-58 for a discussion of these violations and a case example involving children.

81. For example, Strube and Balfour estimate that more than 70% leave. Michael J. Strube & Linda S. Barbour, *Factors Related to the Decision to Leave an Abusive Relationship*, 46 *J. MARRIAGE & FAM.* 837, 840 (1984); see also N. Zoe

Hilton, *Battered Women's Concerns About Their Children Witnessing Wife Assault*, 7 *J. INTERPERSONAL VIOLENCE* 77, 78-79 (1992) (discussing the likelihood that battered mothers recognize the threats to their children and often leave because of these threats).

82. Schechter & Edleson, *supra* note 24 (presenting data from the Minneapolis police indicating that 47% of battered women were victimized by ex-spouses or friends, exceeding the percent of those married to their partner). Emergency room studies have estimated the proportion of abuse committed by estranged partners at two-thirds or more. See Bruce Rounsaville & Myrna M. Weissman, *Battered Women: A Medical Problem Requiring Detection*, 8 *INT'L J. PSYCHIATRY MED.* 191, 194 (1978).

83. The Green Book, *supra* note 35, at 19 (indicating, "The battered woman cannot change or stop the perpetrator's violence by herself. If she does not have adequate support, resources, and protection, leaving him may simply make it worse for her children").

Richard Gelles, a widely recognized authority on domestic violence and child abuse, acknowledges the special trauma associated with placement.⁸⁴ He writes:

Removing children from their natural homes, even in cases of maltreatment, continues to be a controversial form of intervention. The protection offered victims is balanced against the disruption and potential destruction of their families. Children may also suffer from the treatment more than the abuse itself. The psychologist James Kent and his colleagues found that children removed from their natural homes and placed in a series of foster homes suffered long-term psychological problems. Ironically, physically abused children who remained with their parents continued to be at-risk for abuse, but did not evidence the same psychological deficits exhibited by the children placed in a series of foster homes. . . . [T]hey may be at greater risk in the foster homes than in their own homes. . . . Protecting children by removing them from their natural parents and placing them with relatives, foster families, or institutions, has long been considered an undesirable method of treating maltreatment.⁸⁵

Fortunately, there are a range of CPS-based, court-based and community-based intervention programs in cases involving dual victims that offer credible alternatives to placement, though few of these have been evaluated.⁸⁶ In Connecticut, the Division of Children and Families funds a network of community-based service programs that specifically

target dual victim families, often treating battered women and children in separate but parallel tracks.⁸⁷ Although these have yet to be described or evaluated, a number of jurisdictions host school-based programs for children exposed to domestic violence. These programs vary in their design and emphases, but typically combine advocacy on behalf of the mother and children with independent safety planning for all family members placed at risk, an approach pioneered by AWAKE, a program for dual victims based at Children's Hospital in Boston.⁸⁸

II. Risk Assessment and the Dynamics that Place Children in Battering Situations at Risk

Existing evidence does not support the blanket assumption that children exposed to domestic violence are at risk for maltreatment or neglect. To the contrary, most children exposed to domestic violence continue to function normally. Literature also suggests that the parenting capacities of battered women are typically unaffected by abuse. A minority of exposed children may face imminent risk of maltreatment and a somewhat larger group could undoubtedly benefit from services, including counseling, delivered in the family context and planned collaboratively with the victimized adult. Appropriate service plans require case-specific assessments predicated on the dynamics that place children at risk where battering is an issue.

The Limits of the CPS Response

As we have seen, the link between domestic violence and a risk to children in the CPS caseload has been widely documented. Unfor-

84. Ironically, Gelles was the lead expert for NYC in the suit against ACS. In essence, he argued that since there were no scientifically valid measures of the risk domestic violence posed to children, there was no basis to determine that the ACS policy of removal was any worse (or presumably any better) than any other approach.

85. GELLES & STRAUS, *supra* note 59, at 173-74.

86. For a CPS based program, see Hangen, *supra* note 14; see also Pamela Whitney & Lonna Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?* 4 CHILD MALTREATMENT 158 (1999); for a community-based model, see generally Janet E. Findlater & Susan Kelly, *Reframing Child Safety in Michigan: Building Collaboration Among Domestic Violence, Family Preservation and Child Protection Services*, 4 CHILD MALTREATMENT 167 (1999); for a court-based program, see

generally Gregory L. Lecklitner et al., *Promoting Safety for Abused Children and Battered Mothers: Miami-Dade County's Model Dependency Court Intervention Program*, 4 CHILD MALTREATMENT 175 (1999). Dozens of battered women's shelters also counsel children as well as their mothers. THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES has summarized twenty-nine programs in their publication FAMILY VIOLENCE: EMERGING PROGRAMS FOR BATTERED MOTHERS AND THEIR CHILDREN (1998). Some of these programs are also summarized in Edleson & Beeman, *supra* note 20, at Appendix B.

87. See generally EVAN STARK, *THE FAMILY VIOLENCE INTERVENTION PROGRAM: AN EVALUATION* (1995).

88. For a brief description of AWAKE, see The Green Book, *supra* note 35, at 20; see also Edleson & Beeman, *supra* note 20.

tunately, the CPS response to these cases has been anything but ideal, frequently aggravating the situation, including the risks to mothers and children, rather than ending or lessening the possibility of further abuse.⁸⁹ In a review of CPS records in Hennepin County, Minnesota, Edleson & Beeman reported that cases where domestic violence was identified were twice as likely as cases where it was not identified to be "opened" (45.6% compared to 24.4%), and half as likely to be "closed" (20.3% versus 38.5%) after investigation.⁹⁰ Although physical child abuse, sexual abuse or a specific form of neglect were identified in some of these cases, the mother was cited for "failure to protect" in over a third (34.2%) of the cases.⁹¹ Perhaps more telling: three of every four cases where "failure to protect" was identified involved domestic violence.⁹² This response is identical to the response to the women by ACS in New York City that prompted the law-suit for which the current report was prepared.⁹³

A major explanation for the inappropriate CPS response is that, although there has been widespread pressure for intervention in these cases, there are few conceptual maps to help professionals statutorily responsible for children's safety unravel the chain of causation, or shape the information they receive into an intelligible and evidence based story to guide assessment, judgment or intervention.⁹⁴ As a defensive adaptation to this situation, CPS agencies, like ACS and the agency studied in Hennepin County, have relied heavily on blanket policies that include placement and accusations of "failure to protect" against abuse victims as first-line interventions.

The absence of a conceptual framework is equally evident in the research literature and in the protocols, training guides and assessment instruments available for CPS.⁹⁵ The best of these materials provides a range of statistics gleaned from the literature, offers a credible definition of domestic violence (that encompasses power and control, as well as physical abuse), enumerates principles to guide intervention (such as joint safety planning or clear accountability with the offender), provides caseworkers with a series of questions that probe one or another dimension of the definition, and lists possible interventions.⁹⁶ In very few cases, CPS workers are even told how to weigh answers when determining the degree of risk.⁹⁷

Unfortunately, the tools caseworkers are given lack coherence and are often contradictory. For example, modeling its written materials after the protocol used in Massachusetts, ACS in New York City defines domestic violence as a pattern of coercive and controlling tactics, what has been called "coercive control."⁹⁸ This definition is in accord with the latest thinking in the field, where acts of domination over a victim's life are considered as consequential for her safety as physical abuse.⁹⁹ However, the Domestic Violence Protocol designed to guide caseworkers in applying this definition to specific cases fails to identify these acts, describe how they affect women or children, or depict the dynamics that workers can expect to observe if they confront coercive control. Moreover, the training curricula for ACS make no mention of coercive tactics, nor do they explain how such tactics should be assessed. By contrast with the definition and pro-

89. See Miccio, *supra* note 8; see generally Stark, *supra* note 8.

90. Edleson & Beeman, *supra* note 20, at 3.

91. *Id.*

92. *Id.*

93. By contrast with the more than one in three cases identified with failure to protect in Minneapolis, the proportion of cases so identified dropped to fewer than one in seven in the Zone C Pilot in New York City, when domestic violence training was combined with the provision of domestic violence expertise and the implementation of a carefully supervised protocol. Magen, *supra* note 16, at 8-10.

94. See Stark, *supra* note 8; Magen, *supra* note 16; Edleson, *supra* note 14.

95. Schechter & Edleson, *supra* note 24; Magen, *supra* note 16. But I would also include in this indictment the vast

literature on domestic violence and child maltreatment. This generalization is also based on a review of the training materials, protocols and assessment guides reviewed for this legal action as well as similar protocols and guidelines used in Massachusetts. Hangen, *supra* note 14; Whitney & Davis, *supra* note 86. This has also been proposed by the NCJFCJ. See, e.g., The Green Book, *supra* note 35.

96. Edleson & Beeman, *supra* note 20.

97. For a review of *The Domestic Violence Protocol* used in the Zone C project, see Panciera, *supra* note 16.

98. Hangen, *supra* note 14; Whitney & Davis, *supra* note 86; Panciera, *supra* note 16. For a definition and discussion of coercive control, see Stark, *supra* note 8.

99. See Stark, *supra* note 8.

tol, where issues of power and control are stressed, the training materials emphasize psychological dimensions of abuse and focus on the role that victim isolation plays in battering, an important issue, but one which is not mentioned in the protocol or assessment questions. Without a consistent or over-riding conceptual framework, it is impossible for caseworkers to integrate the training they receive, the definition of domestic violence they are given, and the protocol they are expected to follow in assessment and intervention. Moreover, none of the materials used to prepare caseworkers to deal with domestic violence differentiates the dynamics present in abusive situations, let alone how different dynamics are likely to differently affect children. When caseworkers use a domestic violence questionnaire while interviewing, the proportion of CPS cases where it is identified increases sharply.¹⁰⁰ Because they get little guidance in interpreting the answers to their probe, however, improved identification merely aggravates the dilemmas caseworkers face, dilemmas which they then pass on to client families through inappropriate interventions (such as parenting classes), victim-blaming labels (such as "neglectful" or "uncooperative" mother) and punitive interventions.¹⁰¹

What little guidance typical CPS protocols offer caseworkers is ill conceived. For instance, the ACS Domestic Violence Protocol used in New York City - following the model developed in Massachusetts - identifies children as "at risk" if the partner has ever threatened or hit the primary caretaker.¹⁰² Such cases may comprise fifty percent or more of the CPS caseload, as we saw earlier.¹⁰³ The risk designation is also inaccurate. In fact, as we also saw, the vast majority of children exposed to domestic violence remain psychologically intact and only small proportions suffer physical abuse or develop

behavioral problems as a consequence of exposure.¹⁰⁴ Instead, the vast majority of children in these situations face little or no risk. Indeed, the level of violence against the mother may contribute less directly to the child's risk than other constraints, which disable her capacity to protect herself, escape, or seek support.¹⁰⁵ Prominent among such coercive tactics is denying a mother access to money, or putting her under a level of surveillance that prevents contacting informal or formal helpers.¹⁰⁶ This reality is acknowledged in Question 3 on the ACA Domestic Violence Protocol, where caseworkers are instructed to ask clients whether their partner is controlling the money or monitoring her activity.¹⁰⁷ However, the Protocol does not list an affirmative answer to this question as a sign of risk. An ACS caseworker might legitimately wonder why s(he) is supposed to ask the question if it is not associated with risk.

These examples from ACS merely illustrate the larger problem that has been created because CPS agencies across the country have responded to political pressure to take domestic violence into account without doing the groundwork needed to devise an informed or coherent approach. The rhetoric contained in guidelines and protocols is often praise-worthy, including much talk about accountability for offenders, partnership in decision-making with victims, and safety plans.¹⁰⁸ In practice, however, as testimony during the lawsuit against ACS repeatedly revealed, mothers rather than their abusive partners are the primary objects of sanctions, there is little or no advocacy with prosecution, police or the courts on behalf of victims or their children, safety plans are equated with traditional service mandates, and non-compliance (usually as a consequence of an administrative dilemma rather than demonstrated harms to children) results in a petition of neglect against

100. See Magen, *supra* note 16, at 2.

101. For a more detailed discussion, see Stark, *supra* note 8; Stark & Flitcraft, *supra* note 9. When Ms. Tillet was choked by her husband, for example, CPS described the victimized mother as "engaging in domestic violence" in front of the child. Despite the caseworker's assessment that she was an "excellent" mother, Ms. Tillet was referred to parenting classes. There was no evidence that Ms. Tillet suffered from mental health problems. Nevertheless, CPS referred her for a psychiatric evaluation. See Trepicione, *supra* note 1, at 1487-88.

102. Panciera, *supra* note 16.

103. See Hangen, *supra* note 14 (for an estimate of forty-eight percent); Magen, *supra* note 16 (for an estimate of forty-nine percent).

104. Sullivan et al., *supra* note 61, at 587-92; Straus & Gelles, *supra* note 10, at 97.

105. See generally, Stark, *supra* note 8.

106. See *id.* at 56-57.

107. See text at footnote 93 (citing Magen, *supra* note 16, at 11).

108. See e.g., Hangen, *supra* note 14; see also The Green Book, *supra* note 35; Panciera, *supra* note 16.

the victim and placement of her children.¹⁰⁹ The ACS Domestic Violence Protocol emphasizes offender accountability as a key tenet of an appropriate CPS response. However, in his testimony for this case, the ACS liaison to the District Attorney's Office, Peter Alexander, stated unequivocally that it is "not ACS practice to refer for prosecution cases in which an adult has assaulted another adult in the presence of children."¹¹⁰

In contrast to its Domestic Violence Protocol, the ACS training curricula relies on a psychological model of victimization that emphasizes maternal deficits rather than strengths. This model prepares caseworkers for clients who are ambivalent towards the abusive partner, and relatively passive or helpless with respect to their fate.¹¹¹ In the Tillet case, for example, after the boyfriend had moved out, the mother allowed him to give her a ride home from the hospital rather than create a scene that might have culminated in violence. The child had never been hurt and, the boyfriend never re-entered the apartment. Nevertheless, misinterpreting Ms. Tillet's strategic and protective decision as an expression of her ambivalence, the supervisor ordered the child removed.¹¹² The credibility and motives of clients who do not fit this stereotype are immediately suspect. Since battered women are not seen as capable parents and aggressive help-seekers with a powerful self-interest in their own, and their children's safety, there is little attempt at mutual planning.¹¹³ To the contrary, in the cases involved in *Nicholson v. Williamson*, caseworkers frequently misinterpreted legitimate attempts

by the battered mothers to devise independent strategies based on their actual situation as resistance to or a lack of cooperation with a service plan, and proceeded to removal.¹¹⁴

In sum, the information about domestic violence provided to CPS workers in their protocol and training leaves them with a sense of heightened, perhaps even exaggerated concern. Yet, they are not given the tools to translate this concern into case-specific risk assessment and intervention. Since workers are told that domestic violence can harm children, and because they are unclear about when it does so, how it does so, and how to determine if it is doing so, domestic violence creates an administrative nightmare for CPS. Against this background, it is hardly surprising that they and their supervisors rely heavily on placement in domestic violence cases, an intervention towards which their operating principles directs them, whenever there is "ambiguity" about risk.

If there were no credible alternatives to assessing the likely outcome in domestic violence cases, the current CPS response to domestic violence cases would be intelligible, even if unjust. An alternative approach begins with an understanding of the components and dynamics of domestic violence in a particular case.

For the CPS caseworker, two interrelated questions are critical: what are the dynamics surrounding the use of force in a given relationship, and how are these dynamics likely to affect women and children? Until recently, domestic violence was differentiated primarily by the means employed and their consequences, real or imagined.¹¹⁵ In fact, the risks posed to

109. This conclusion is based on the documents provided to the author by ACS and reviewed for *Nicholson v. Williams*.

110. Transcribed Testimony of Peter Alexander in the case of *Nicholson v. Williams*, 2002 U.S. Dist. LEXIS 4820 (E.D.N.Y. Mar. 11, 2002).

111. This stereotype is based on the now discredited view that battered women suffer from "battered woman's syndrome" consisting of "learned helplessness" and a "cycle of violence" which causes victims to be ambivalent about leaving. Stark, *supra* note 8, at 46. See generally LENORE WALKER, *THE BATTERED WOMAN* (1979); LENORE WALKER, *THE BATTERED WOMAN SYNDROME* (1984); LENORE WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989) (identifying learned helplessness and a cycle of violence as characteristics of "Battered Women's Syndrome"). For a critique of this view, see Mary Ann Dutton, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: A Report*

to Congress Under the Violence Against Women Act, Research Report, Washington, D.C.: U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE AND THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE OF MENTAL HEALTH (NCJ 160972 1996); see also DONALD DOWNS, *MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY AND THE LAW* (1996); Mary Ann Dutton, *Understanding Women's Response to Domestic Violence: A Redefinition of Battered Woman's Syndrome* 21 *HOFSTRA L. REV.* 1191 (1993).

112. Trepiccione, *supra* note 1, at 1487-88.

113. Lip-service may be given to a "safety plan." Testimony in the ACS lawsuit indicated, however, that caseworkers equate safety planning with an offer of services (such as shelter) irrespective of a woman's particular circumstances or experience with seeking help.

114. Hilton, *supra* note 81.

115. Thus, many of the guides from which information is gleaned by ACS and other CPS agencies use a calculus of

victims and their children are largely a function of the frequency with which force is used and its duration, even when individual episodes are minor, and the extent to which the abusive adult supplements the use of force with strategies which can disable a victim's capacity for independence and to garner support.¹¹⁶

(a) Common Couple Violence

In many relationships, one or both adults use force in ways that they view as legitimate to address perceived differences in power or to resolve conflicts. If children are hurt by so-called "common couple violence," this is almost always inadvertent, and the risk of their experiencing psychological trauma is small, though modeling is a concern.¹¹⁷ Typically, both partners involved in this dynamic benefit from culturally sensitive counseling focused on anger management, conflict resolution, and information on potential risks to children.¹¹⁸ Although much of what is currently called "domestic violence" in the research literature falls into this category, cases involving common couple violence are unlikely to comprise a major subgroup within the CPS caseload.

(b) Simple Domestic Violence

A very different dynamic involves the unilateral use of force to hurt a partner or their children, often in response to jealousy, in the context of drug or alcohol use, and/or as part of a broad pattern of criminal activity. Simple domestic violence frequently results in injury to adult victims and may extend to child abuse, inadvertently hurt children, or be psychologically traumatic. Since this form of domestic violence is rarely accompanied by strategies designed to subordinate the partner, however, victims who are assaulted in this context typically retain

their psychological integrity, primarily require criminal justice intervention, and are ready allies in safety planning for children. The risks associated with simple domestic violence can typically be determined by the frequency and severity of abuse, the presence and/or use of weapons and the credibility of threats. Because of its relationship to injury and substance use, a significant proportion of the domestic violence cases confronted by CPS are likely to be of this type.

(c) Coercive Control

The most devastating context in which domestic violence occurs involves an ongoing pattern of "coercive control," where force is supplemented by systematic attempts to isolate, intimidate and control a partner.¹¹⁹ Here, the major risks to children involve attempts to deprive the primary caretaker of support and resources needed for basic survival, including food, money or access to transportation.¹²⁰ In extreme cases like Hedda Nussbaum's,¹²¹ a hostage-like situation may completely disable a mother's capacity to provide for or protect herself or her children, creating a situation of neglect that requires dramatic and emergent intervention. While the mother may experience a range of medical, behavioral and psychological problems, the risk of neglect in these cases is typically a direct result of the constraints under which she is living, not an incapacity or inability to provide or protect. Assessment probes the various dimensions of coercion and control in the relationship and any prior exposure of children to the abusive pattern. Intervention focuses on removing the offender and holding him accountable through enhanced advocacy, ending the mother's isolation through social supports, re-establishing her access to re-

physical harms to the mother to distinguish risks to children. See Edleson, *supra* note 14; Schechter & Edleson, *supra* note 24.

116. I have derived the following schema from the research literature on domestic violence. I develop it at greater length in EVAN STARK, *COERCIVE CONTROL: RE-PRESENTING BATTERED WOMEN*, (forthcoming, 2002).

117. The concept of common couple violence was introduced in Michael P. Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women*, 57 J. MARRIAGE & FAM. 283, 283-94 (1995).

118. Often, neither partner views the use of force in these relationships as illegitimate and may even consider it an essential ingredient of marital satisfaction. See generally K.

Daniel O'Leary et al., *Physical Aggression in Early Marriage: Pre-relationship and Relationship Effects*, 62 J. CONSULTING & CLINICAL PSYCH. 594 (1994).

119. See generally, LEWIS OKUN, *WOMAN ABUSE: FACTS REPLACING MYTHS* 113-14 (1986) (describing coercive control); ANN JONES, *NEXT TIME, SHE'LL BE DEAD* (1994); compare Stark, *supra* note 8 with Johnson, *supra* note 118.

120. See Stark, *supra* note 8, at 55, 70 (discussing Connecticut v. Lazarra, where a mother was charged with multiple counts of risk of injury to her five children).

121. For a discussion of Hedda Nussbaum's case, see generally Nancy S. Erickson, *supra* note 7, at 197-98; see also Ronald Sullivan, *Stifling Tears, Nussbaum Recounts Lisa's Last Days*, N.Y. TIMES, Dec. 2, 1988, at B1.

sources, and reinforcing her capacity for independent decision-making through collaborative safety planning. This schema is admittedly preliminary, though it illustrates the sorts of distinctions needed to ensure that CPS interventions respond appropriately to client needs and risks.

In addition to the direct risks children face in cases involving simple domestic violence or coercive control, they are also endangered by two common patterns; "the battered mother's dilemma," and when child abuse occurs as "tangential spouse abuse."¹²²

"The battered mother's dilemma" refers to the choices the offender forces the victim to make between their own safety and the safety of their children. A particular incident may bring this dilemma into sharp focus, as when a woman realizes that she may be hurt or killed if she attempts to protect her child from an offender's abuse. In a recent case in which I testified, for example, a woman whose life had been threatened returned to her house and was killed when her husband took their eighteen month old child "hostage."¹²³ Typically, however, the battered mother's dilemma describes an ongoing facet of abusive relationships where the offending partner repeatedly forces a victimized caretaker to choose between taking some action she believes is wrong (such as physically disciplining her child), being hurt herself, or standing by while he hurts the child.¹²⁴ Threatening to hurt the primary caretaker if she reports domestic violence or child abuse is a classic instance of the battered mother's dilemma.¹²⁵ Confronted with these dilemmas, victims attempt to preserve their rationality and humanity by selecting the least dangerous option - a decision-making process I term "control in the context of no control."¹²⁶ It is the responsibility of either CPS or the police to redress the imbalance in power from which this dilemma arises, thereby increasing the choices available to the victim. Ignorance of the external constraints to which a caretaker is responding, however, often leads agencies to mistakenly hold her culpable

and respond punitively, thereby aggravating rather than relieving the dilemma.

A related but separate dynamic occurs when child abuse occurs as, or takes the form of, "tangential spouse abuse."¹²⁷ Here, the offender treats the child as an extension of the mother, and threatens or harms the child to increase the mother's dependence, compliance and/or fear. Child abuse as tangential spouse abuse is particularly common during separation and divorce, when the offender's access to his partner, but not to the children, may be limited.¹²⁸ The frequency of this dynamic is an important reason why a mother's hesitation to separate, or seek a protection order should be taken seriously during safety planning.¹²⁹ Examples of this dynamic in intact couples include threats to report the mother to CPS, using children to spy on their mother, punishing a mother by denying her access to the children, hurting the children whenever the mother does something that makes him jealous, or being passive-aggressive by consenting to care for the children so the mother can work and then neglecting them. Mothers caught in this dynamic are particularly susceptible to guilt, whether induced by the offender's accusations or by institutional victim blaming.

The child's risk in these scenarios is a function of the type of abuse employed (common couple violence, simple domestic violence or coercive control), and the extent to which children are implicated in the pattern (e.g. by 'the battered mother's dilemma' or 'tangential spouse abuse'). In each of these cases, the abusive partner is the immediate source of the threat to the child and should, therefore, be the target of criminal justice intervention. At the same time, the child's vulnerability may condition the mother's, as when the mother is held hostage by her partner's threats to the children (an example of child abuse as tangential spouse abuse). The reverse may also be true, namely that the child may become vulnerable because the offender has effectively disabled the mother's capacity to protect. In these situations, the safety

122. See generally, Stark, *supra* note 8, at 91, 97 for an in depth discussion of these dynamics.

123. State v. Traficonda, 612 A.2d 45 (Conn. 1992).

124. Stark, *supra* note 8, at 55-56.

125. *Id.* at 55.

126. See *id.* at 56.

127. *Id.* at 56 & 97.

128. *Id.* at 58.

129. In one Hilton study, fully one-third of the battered women remained with their abusive partners because they feared harm to their children if they left. See Schechter & Edleson, *supra* note 24 (citing Hilton, *supra* note 81, at 81).

of either requires a global assessment of the overall levels of violence and entrapment in the relationship regardless of whether actual child abuse or neglect has occurred. Child maltreatment can be prevented only when it is addressed in tandem with interventions that empower and protect the victimized caretaker. To devise such interventions requires frank sharing of information, a realistic picture of the constraints on the victim's choices, mutual and independent planning for safety of mother and child based on the child's age and the victim's prior experience, and a reliance on the victim to make protective decisions if given the opportunity to do so safely.¹³⁰ This is inconceivable unless the CPS worker builds a relationship of trust and partnership with the primary caretaker based on mutual respect. On the basis of this relationship, it is possible to determine whether the issue is common couple violence (requiring counseling), simple domestic violence (requiring enhanced advocacy with criminal justice), or coercive control (where a complex array of services may be required). If battering has taken the form of coercive control, identifying which feature is most prominent becomes critical to designing an appropriate service plan.¹³¹ Thus, caseworkers should provide empowerment resources where control is dominant, facilitate police and court intervention where violence or threats are critical, and help reconstruct support networks in response to isolation. Partnership is even more important in those rare cases where a hostage-like situation puts children at imminent risk. Here, reframing the mother's responses by making the dilemmas she faces explicit, and helping her appreciate that the constraints imposed by her partner are responsible for poor decisions for which she may blame herself, sets the context within which temporary placement can be a mutually agreed first step. While placement remains an important option in such cases, intervention is premised on collaboration and respect, battered mothers often recognize its

importance as an intermediate step towards reunification and family survival.

Current policies and practices by ACS aggravate 'the battered mother's dilemma' and the probability that child abuse will take the form of tangential spouse abuse. While the offending partner is the principal source of the mother's dilemmas, these are often exacerbated by the agencies to which the victim turns for help, particularly those agencies responsible for child protection - CPS and the courts. In the Yale Trauma Studies, for example, we found that children doted for child abuse or neglect were more likely to be placed if their mother was battered than if she was not, even when we controlled for the level of injury alleged to the child, a frankly punitive response.¹³² Current CPS policy and practice aggravate the battered mother's dilemma in a number of ways. For instance, the increasing propensity for CPS agencies and courts to equate domestic violence with abuse or neglect means that if a mother reports domestic violence to ACS she risks losing her child, an example of the battered mother's dilemma.¹³³ If she does not report, however, she risks further harm to herself or her child. Moreover, because the mother cannot talk forthrightly with the caseworker, given the policy implications, she may misrepresent her situation, further increasing her vulnerability to punitive interventions and reinforcing the mistaken perception that she is ambivalent or resisting services. ACS practice also lends credibility to the batterer's threat that if the victim disobeys him, she will lose her children - an example of child abuse as tangential spouse abuse. Meanwhile, caseworkers routinely deliver so-called "safety" plans (e.g. going to a shelter, leaving the abuser, or moving) as what, given the punitive consequences of noncompliance, amounts to a mandated service, without consultation with the client or domestic violence expertise. By undermining a battered woman's sense of control, this process reinforces the batterer's attempts to deprive her of power and control over her life.¹³⁴ Again, the victimized

130. See generally Schechter & Edleson, *supra* note 24, for a guide to such interventions.

131. For a discussion of these issues, see EVAN STARK & ANNE FLITCRAFT, *DISCHARGE PLANNING WITH BATTERED WOMEN* 201-08 (1996).

132. Stark & Flitcraft, *supra* note 9, at 103-05.

133. See Edleson & Beeman, *supra* note 20, at 3 (documented for Hennepin County, Minnesota).

134. See V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 245-48 (1996) (explain-

caretaker faces a devil's choice: either leave the abuser (a situation which may dramatically increase the risk to herself and her child), or lose the child. Indeed, this approach is disproportionately emphasized in training materials and protocols, and reinforced by the instilled expectation that victims are ambivalent. Against the intimidating context in which safety concerns are unilaterally addressed, the CPS response is self-fulfilling: women are reluctant to report domestic violence until it escalates to a point where children face imminent danger.

Case Examples

Two case examples taken from the files of *Nicholson v. Williamson* illustrate the dynamics I have described.¹³⁵ In the case of Ms. Udoh, a plaintiff in the New York City lawsuit, the husband had a twenty-year history of domestic violence against the mother, and a parallel history (of which ACS was aware) of hitting the children with sticks. Moreover, the mother had been to court twenty-three times seeking protection from the abuse, and financial support for the children. When Family Court finally issued a protection order, it refused to extend it to the children or to order the husband out of the house. Moreover, ACS failed to assist the mother in securing child support. Without the resources to secure a home of her own or any legal means to keep the father from seeing or hurting the children, the woman returned to the husband, taking the calculated risk of endangering herself in order to minimize harm to the children. In response to her decision, however, but without probing its logic or motivation, ACS filed a neglect petition against the mother and removed the youngest children. The allegation of maternal neglect was both unjust and unfounded, particularly given the contribution of ACS and Family Court to the children's risk. Still, the father's propensity for violence created an emergent situation, and instead of acknowledging the mother's dilemma and working with her to resolve it through a jointly developed safety plan, (that might have included tempo-

rary placement for the children, emergency housing assistance, etc.), ACS chose to re-victimize the mother and her children.

The degree to which a mother's efforts to protect her children are met with punitive responses from CPS is also illustrated by the case of Ms. Garcia, another client in the ACS lawsuit. Ms. Garcia had repeatedly called police and obtained a protection order against her former partner. Nevertheless, based largely on her zealous self-advocacy, the supervisor critically noted "mother. . . doesn't see herself as a victim."¹³⁶ Ms. Garcia's fourteen-year old daughter had witnessed the domestic violence, though she was not harmed. ACS demanded access to the girl. Aware of the emotional trauma associated with witnessing, and concerned that the daughter might be re-traumatized by an insensitive interview, Ms. Garcia asked to review the questions beforehand. When CPS refused, claiming the mother might then prompt the girl to answer, Ms. Garcia severed contact with the agency. Although Ms. Garcia had entered counseling, moved and met all of ACS' other expressed concerns, the caseworker removed the girl to foster care, explaining to the girl that the placement was necessary because "your mother refused to return a telephone call."¹³⁷

Removing the children of battered women from their homes for no other ostensible reason than the occurrence of domestic violence, given the occurrence, because she remains in the relationship with the offending partner, is unjust, victim-blaming practice that cannot be supported by research, provides unnecessary trauma to children and may aggravate the danger of serious abuse to mother and/or children.¹³⁸

III. Improving the CPS Response

Best practice standards in child welfare cases involving domestic violence rely on joint and ongoing safety planning with the non-offending caretaker, including court-protected independent safety planning for the child's sensitivity to strategies that re-victimize

ing that accusing battered mothers of neglect deprives them of control and further aggravates their problems).

135. *Nicholson v. Williams*, 2002 U.S. Dist. LEXIS 4820, *41-*65 (E.D.N.Y. Mar. 11, 2002) (discussing background of plaintiffs' cases, including but not limited to Plaintiff Udoh and Plaintiff Garcia).

136. *Id.* at *63.

137. *Id.* at *64.

138. For an elaboration of a similar view, see generally A. Phillips, Comment, *Re-Victimized Battered Women: Tension of Parental Rights for Failure to Protect Children from Child Abuse*, 38 WAYNE L. REV. 1549 (1992).

tered mothers; aggressive advocacy with criminal justice to hold offending partners accountable; liaison with domestic violence expertise; case-specific assessment based on the dynamics of coercion and control; the offer of services designed to enhance the autonomy and safety of mother and children; and a coordinated community response.¹³⁹

In contrast to other types of abuse or neglect cases considered emergent, domestic violence rarely presents the sort of immediate threats to children that require dramatic intervention. In lieu of evidence that a child is in imminent physical danger, best practice dictates that caseworkers proceed from a strengths perspective grounded in the understanding that victimized caretakers are typically capable parents whose experience and perceptions are the most accurate source of information on the situation.¹⁴⁰ Even where the child is the identified client, successful intervention requires empathy for the victim status of the primary caretaker, and the dilemmas posed when her own safety and autonomy are pitted against her child's. How victimized caretakers are approached, and the manner in which support is provided are as critical for safety in the family as the substance of that support.

Joint planning with the battered caretaker, for her and her children's safety, is an essential component of best practice. Studies consistently demonstrate that battered women typically take multiple actions to prevent, limit and end abuse. In the ACS Pilot Project in Zone C, for instance, among the domestic violence victims identified, half had already called police and/or acquired a protection order from the court, and thirty-five percent had taken the children and/or left home to elude the abusive partner.¹⁴¹ Indeed, there is no better basis for temporary placement, in the cases where this is indicated, than the shared interest of the battered mother and the caseworker in the children's safety. In this context, placement can help the mother take the steps she needs to be safe as well as provide temporary safety for her child. We may also expect the psychological effects of placement on mother and child to be

mollified when it is presented as part of a "family" safety plan rather than an agency-initiated sanction. Approaching the mother as a trusted partner also has a pragmatic function for CPS, to maximize full and accurate information about a child's risk and build on the steps she has already taken to protect herself and her children. To accomplish the sort of alliance needed in these cases, agency policies and accountability structures will have to be modified to include responsibility for all victims in indicated families, to acknowledge the risks associated with re-victimization, and to garner a new package of services that responds to the economic, health, safety, housing and advocacy needs of domestic violence clients rather than the needs of the traditional CPS clientele for counseling and support with parenting.

CPS agencies often provide supportive programs where joint planning with clients proceeds in the best interests of the children. For example, in New York City, ACS mandates a seventy-two hour Child Safety Conference that involves extended family members, a range of child welfare professionals and outside expertise. Unfortunately, however, the Conference, like similar interventions offered by other CPS agencies, is convened only after placement, and its typical focus is reunification, an emphasis that constrains the caretaker to follow the dictates of the agency whatever the pretense at partnership and obstructs frank exchange.

Structural Change

Even where CPS adapts guidelines or protocols that are appropriate for cases involving domestic violence, their credibility is outweighed and undermined by a mission-driven accountability structure that directs intervention away from appropriate practice and towards victim-blaming strategies, including placement.

The Mission

CPS agencies are mission-driven organizations that are held publicly accountable, and so hold staff accountable, for child safety and well being, but not for the safety of adult victims in

139. Schechter & Edleson, *supra* note 24.

140. See Julie Blackman, *Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women*

Who Kill, 9 WOMEN'S RTS. L. REP. 227, 229 (1986) (arguing that battered women have a heightened reasonableness).

141. Magen, *supra* note 16, at 11.

their caseload nor for the preservation of the households in which they intervene. The proximate rationales for this approach are that child protection requires such a singular focus, that other agencies (such as police) are responsible for adult safety, and that the state has a legal responsibility to oversee caretaking for vulnerable populations. Additionally, given public accountability for child safety, child protection and family preservation often seem irreconcilable in cases judged high risk, a fact that was illustrated by the widespread confusion (even demoralization) among CPS workers when both values were briefly given equal emphasis during the Clinton administration. Conflicts of value and approach are particularly evident in child protection cases involving a mother's victimization. In contrast to the emphasis on children's dependence, protectionism and emergent decision-making required in many child maltreatment cases, best practices with battered women emphasize autonomy, collaborative decision-making and empowerment.¹⁴²

In New York City the death of Elisa Izquierdo, while nominally under ACS protection, led Mayor Giuliani to separate the agency from the city's Human Resource Administration, replace the dominant emphasis on preservation with an emphasis on placement, and to appoint Nicholas Scoppetta as Commissioner, a prosecutor who had personally benefited from a childhood in foster care. Scoppetta moved quickly to implement the Mayor's mandate, issuing new ACS "Operating Principles" that directed any and all staff to resolve "any ambiguity regarding the safety of the child . . . in favor of removing the child from harm's way."¹⁴³ Given the confusing information caseworkers received about domestic violence, and the history of court decisions supporting charges of neglect against non-offending victims of domestic violence, it was inevitable that placement would be a primary response to the ambiguity in these cases.¹⁴⁴

In fact, a self-fulfilling dynamic is set in motion when, solely because of their victimization, battered mothers are cited for neglect, charged with failure to protect their children, or

referred for counseling, psychiatric care, parenting classes or similar services which are insensitive to the core dimensions of power and control that underlay their entrapment. Where such policies and interventions prevail, as they do in hundreds of CPS networks, domestic violence is likely to surface only when the violence persists or becomes emergent, when it elicits complex psychosocial or behavioral sequelae, or when clients take initiatives that CPS views as resistant or uncooperative. In response, others are likely to be re-victimized by intervention rather than supported; children are more likely to be re-traumatized because of placement rather than protected; the risk of repeated abuse of mothers and children is increased; and the primary resources for child protection in domestic violence cases - the mother's knowledge of the situation, her strategic prowess and her parenting capacity - are undermined rather than exploited. By contrast, broadening the mission to include agency responsibility for the safety of *all* family members provides an appropriate context for devising effective intervention.

The Organizational Structure

The CPS mission is expressed in an organizational design and accountability structure that marginalizes any functions other than child protection, even where domestic violence expertise is on board. The ACS structure is illustrative. ACS employs a senior person with domestic violence expertise whose title is "Director of Domestic Violence Policy and Planning." This person has only an advisory role, reports directly to the Commissioner, and presumably has an influence on policy. Moreover, the Director has no direct relation to other policy making, planning, management or line-staff, including those few agency staff employed as "domestic violence specialists" in local offices, and has no field staff who report to her. CPS agencies have also addressed domestic violence by hiring domestic violence specialists (as in Massachusetts) who are available for referrals, incorporating or contracting with multi-disciplinary teams that include expertise in domestic violence alongside other problem areas, sub-contracting services

142. See generally Stark, *supra* note 131; The Green Book, *supra* note 35.

143. ACS, "Operating Principles."

144. The critical cases in New York are reviewed by Jill Zuccardy, Practicing Law Institute.

for "dual victim" families to community-based agencies (as in Connecticut), appointing advisory panels to oversee domestic violence (as in New York City), or creating a separate track of services (as in Michigan) for these families.

The relative merit of these innovations has not been subjected to rigorous evaluation. Results of these changes appear to be uneven, however, largely because without official accountability for women's safety, caseworkers utilize domestic violence services or expertise only when circumstances compel them to do so. In Connecticut, although the state's Division of Children, Youth and Families (DCYF) agreed to provide at least fifty percent of the referrals for the community-based dual victim programs it began funding in 1986, after five years of operation, it had referred only a handful of cases.¹⁴⁵ By contrast, ACS personnel testified in the Nicholson case that a domestic violence specialist in one of the Pilot Projects in New York City was able to provide caseworkers with an alternative in fully ten percent of domestic violence cases where workers recommended removal. The problem in both instances is that there are no developed criteria for the involvement of domestic violence expertise and that there is no accountability when involvement does not occur. While research shows that domestic violence is probably the single most common context in which child maltreatment may occur, CPS agencies approach it as a background factor or a problem in behavioral health, much like substance abuse, with all the victim-blaming stigma this implies. Since, from an administrative standpoint, the current use of placement is working as a frontline option, expertise consultation is only used when a case presents a "problem." Should attempts to use consultation become widespread, without an internal commitment of resources roughly equivalent to the prevalence of domestic violence in the caseload, the specialists will be quickly overwhelmed and become virtually inaccessible to caseworkers, a problem that has plagued Massachusetts.

An alternative to using outside consultation involves contracting out for domestic violence services, either by referring clients directly to shelters and advocacy services (Connecticut), or by providing existing prevention agencies with domestic violence education (New York City). Again, however, to work properly, these arrangements require an incentive to identify domestic violence clients and refer them appropriately at the source, something that is typically lacking in CPS. In Connecticut, for instance, the lack of referrals from CPS forced contracting domestic violence agencies to generate their own population of dual victims, increasing rather than relieving the CPS caseload. Meanwhile, sensitizing existing contractors to the problem leaves the traditional mental health emphasis of prevention agencies unchallenged. Reliance on outside supports of whatever kind makes it even more unlikely that a uniform response to domestic violence cases subject to quality review or improvement will develop at CPS. Moreover, to out-source effectively, an agency must have a predetermined inventory of service needs (e.g. domestic violence victims to shelter, offenders to counseling). Such an inventory of domestic violence clients does not currently exist at most CPS' and, if it did, would almost certainly rest on the inappropriate but currently dominant psychological model.

Perhaps the most successful approach has linked CPS in local communities to the range of community-based health, mental-health and justice services in what is called a "Coordinated Community Response" (CCR). This model relies on on-going collaborative planning with front-line providers who can hold one another accountable for outcomes along a range of needed service delivery points.¹⁴⁶ Perhaps the model's most dramatic effects arise from collaborative relationships on behalf of family safety and offender accountability between CPS agencies, battered women's programs, police and prosecutors. In New York City, for example, the arrests of batterers rose dramatically during pilot programs in the Bronx and Manhattan

145. Evan Stark, *The Family Violence Outreach Program (FVOP): An Evaluation* (unpublished).

146. See Stark, *supra* note 52, at 363-66 (discussing the importance of the coordinated community response); see generally *The Green Book*, *supra* note 35.

which included routine liaison between CPS and police. Arrests fell again, when the liaison arrangement was abandoned.¹⁴⁷ CPS involvement in such service networks can be legitimated by legislation.¹⁴⁸ Still, it is unlikely to be an effective antidote to placement unless and until there is a corresponding broadening of mission and a realignment of commitment, accountability and resources to reflect the growing recognition of a truth that underlies the community-based response, that the empowerment of battered women is the best way to keep children who are exposed to domestic violence safe and healthy.

CONCLUSION

Domestic violence poses a significant risk to child safety in some cases, and a potential risk in many others. We have seen, however, that both the indirect and direct risks to children in domestic violence cases are typically non-emergent and rarely rise to the level normally associated with child abuse or neglect. Indeed, compared to the mothers in CPS cases where abuse or neglect has occurred, battered mothers are relatively free of psychological or behavioral problems and are highly motivated to parent. By contrast, the behavioral problems identified among children exposed to domestic violence are closely related to behavior by the offending parent. Moreover, these children are particularly vulnerable to the trauma associated with foster placement. Building on the strengths of battered mothers, the most effective strategy of child protection is based on mutual safety planning, including independent safety planning with children, aggressive liaison, and advocacy with criminal justice agencies and the courts to ensure accountability for the offending parent, and the provision of services that restore and reinforce the caretaker's capacity to make independent decisions for herself and her children.

Nothing I have said is meant to deprive CPS of the option of removing a child from a

family where domestic violence is an issue. Removal in such cases, however, is only justified to prevent future risks when three conditions have been met. First, a case specific assessment has suggested that the abuse or neglect of the child is an on-going risk that outweighs the risks associated with foster placement. Second, CPS has engaged in joint safety planning with the victim, including an offer of services geared to the dynamics and risks identified in a specific case. Finally, criminal justice intervention has been aggressively pursued. At a minimum, this would include support for the victim in obtaining a protective order, arrest of the batterer where appropriate, and an offer of services to the offender, including batterer's education.

Like other CPS agencies around the country, ACS has taken numerous steps to reform its approach to domestic violence, implementing two pilot programs that greatly enhanced staff performance, developing domestic violence training and a domestic violence protocol, introducing domestic violence expertise at policy-making and local levels, and cultivating domestic violence awareness among agencies with which it contracts for preventive services. The Zone C pilot demonstrated the effectiveness of sensitive questioning in enhancing identification. Meanwhile, the Zone A pilot showed that combining aggressive liaison with criminal justice and involvement by domestic violence advocates can dramatically increase offender accountability and reduce foster placement. However impressive these initiatives, they remain ad hoc and marginal to the main thrust of the organization as defined by its mission, or to the internal system of outcomes for which staff are held accountable. As a result, the lessons learned from the pilot program have not been disseminated to the rest of the agency. Domestic violence expertise within the agency is isolated and without substantive authority; enhanced advocacy with criminal justice on behalf of victims remains the exception rather than the rule; and training is unrelated to protocols and

147. INTERNAL MEMORANDUM FROM ADMINISTRATION OF CHILDREN SERVICES, HISTORY OF RECENT DOMESTIC VIOLENCE EFFORTS IN A.C.S., April 2000.

148. For example, CONN. GEN. STAT. ANN. § 17a-106b (West 2001) includes the following language:

(a) The state of Connecticut finds that family violence can result in abuse and neglect of the children living in the house-

hold where such violence occurs and that the prevention of child abuse and neglect depends on coordination of domestic violence and child protective services. (b) The Commissioner of Children and Families may consider the existence and the impact of family violence in any child abuse investigation and may assist family members in obtaining protection from family violence.

the protocols fail to provide needed guidance in individual case assessment. In the short run, these problems can be addressed by integrating training that emphasizes safety and empowerment for victims and accountability for offenders, prohibiting victim-blaming strategies of intervention and referral, routinely involving domestic violence expertise before an investigation, offering voluntary services to all victims regardless of whether a case has been indicated, expediting access to justice through aggressive liaison with police, prosecution and courts, and

highlighting individual case assessments that explore a range of coercive and controlling tactics in addition to present and past domestic violence. Even with these changes current problems are likely to persist unless or until, ACS broadens its mission to include the provision of safety and empowerment for *all* victimized family members, establishes accountability for this mission at the management and organizational levels, and devotes resources to domestic violence intervention equivalent to its importance.