

January, 2006

9. Domestic violence and child protection: Confronting the dilemmas in moving from family court to dependency court.

Thomas D. Lyon, *University of Southern California*

Mindy B. Mechanic, *California State University, Fullerton*

Domestic Violence and child protection:
Confronting the dilemmas in moving from
family court to dependency court

Thomas D. Lyon

University of Southern
California

Mindy B. Mechanic

California State University,
Fullerton

Running Head: Domestic Violence

To appear in: In N. Dowd, D. Singer, & R.F. Wilson (Eds.), Handbook on Children, Culture and Violence. Newbury Park, CA: Sage. Authors' emails: tlyon@law.usc.edu, mmechanic@fullerton.edu

Domestic Violence and child protection: Confronting the dilemmas in moving from family court to dependency court

The overlap between domestic violence and child maltreatment has received an enormous amount of attention from domestic violence advocates, child advocates, policymakers, and researchers. The goals of empowering victims of domestic violence, usually women, and protecting children from abuse and neglect, usually by men, are theoretically compatible and mutually reinforcing. However, advocacy for battered mothers and protection for maltreated children have developed along different paths, leading to conflict and distrust (Edleson, 1999).

In dependency court, in which children may be removed from their parents' custody due to child maltreatment, battered women sometimes find themselves accused of child neglect because of their alleged failure to protect their children from exposure to domestic violence. At the extreme are child protection policies that remove children from their abused mother's custody with little consideration of the efforts the mother has made to remove herself and her children from her abusive partner, and no case-by-case analysis of the costs and benefits of family preservation versus removal (Magen, 1999; *Nicholson v. Williams*, 2002). Much has been written about the failure of child protective services and dependency courts to understand the difficulties faced by battered mothers, and the mother-blaming that commonly occurs (Lyon, 1999; Weithorn, 2001).

In this chapter we explore another cause of battered women's difficulties in dependency court. Ironically, the belief that domestic violence constitutes child neglect stems in part from arguments made by family court advocates on behalf of battered women. Confronted with judicial blindness to the effects of domestic violence on children, advocates successfully lobbied for legislative reforms limiting the custodial and visitation rights of batterers. Advocates succeeded by painting a hopeless picture of battering in which violence almost inevitably escalates, spreads to the children, and does not cease upon separation. In such a scenario, a home in which the mother is battered is also dangerous for children, and the prospects for escape are remote. From this perspective, removal and foster placement does not seem so extreme.

On the other hand, in New York, the federal courts have held that social service agencies cannot remove children from battered mothers solely on the basis of domestic violence (*Nicholson v. Williams*, 2002). The decision is generally regarded as a victory for battered women (Dunlap, 2003). The reasoning underlying the decision is double-edged. The decision downplays the negative effects of domestic violence on children and the difficulties battered women have in escaping from abusive relationships. Just as family court arguments about the harms of domestic violence have influenced child protection, this latest development may undermine the efforts made by advocates in family court. Family courts may conclude that exposure to domestic violence is really not that detrimental to children. Moreover, the highest state

court's reaction to the decision hints that in the long run, the number of children removed from violent homes may not decline.

In this chapter we review the tensions between the treatment of battered women in family court and in dependency court. We first explore the arguments made on behalf of battered women in family court, namely, that the harms of domestic violence justify limiting batterers' custody and visitation rights. We then describe how these arguments justify concerns among child protection workers that children cannot be left in homes in which there is domestic violence. We analyze the federal litigation challenging the removal of children in New York due to domestic violence, and discuss how the federal district court opinion minimizes the negative effects of domestic violence on children and understates the difficulties in providing safety to mothers and their children. Finally, we consider the New York Court of Appeals' reaction to the federal litigation, and demonstrate that it leaves open the possibility that removal can be justified in many cases. Our conclusion is that the tensions between family court and dependency court have not been resolved, requiring further work to sort out the conditions under which removal of children from abusive homes is necessary to ensure their safety.

Advocacy for Battered Women and Children in Family Court

With the advent of no-fault divorce, family courts generally viewed spouse abuse as irrelevant in custody decisions. The purpose of child custody was not to punish or reward parents for their behavior during the marriage, but to ensure the future health and happiness of the child. Custody decisions are based on the

“best interests of the child,” and made without regard to the reasons for the divorce, unless those reasons can be linked to the child’s welfare (Kurtz, 1997). Applying these general principles, batterers argue that their poor relationship with the child’s mother is separable from their relationship with the child. Consequently, batterers have successfully won custody of their children even after murdering the mother, on the grounds that their motherless children need them more than ever (Jaffe, Lemon, & Poisson, 2003).

Domestic violence advocates, on the other hand, emphasize that exposure to domestic violence is harmful to children. Children may be physically injured in the course of domestic violence. Younger children may be injured because they are in the mother’s arms during an assault. Older children may actively intervene during abuse and be injured in the process (Goodmark, 1999). Because batterers sometimes argue that their children were never physically harmed, advocates also emphasize the psychological harms from witnessing domestic violence (Cahn, this volume; Kurtz, 1997; Lemon, 2001, Meier, 2003). Witnessing any kind of violence can be traumatic; it is even more traumatic to see one’s caretakers—upon whom one relies for one’s safety and security—acting violently toward each other. Children see and hear far more than their parents realize (Goodmark, 1999). Moreover, even witnessing the after-effects of abuse can traumatize children. Advocates for victims of domestic violence also emphasize the risk of harm to children, pointing to the high rates of overlap among domestic violence, physical abuse, and sexual abuse (Kurtz, 1997; Goodmark, 1999; Meier, 2003).

Batterers also argue that the harms of domestic violence are overstated because the abuse was only temporary or not severe, and in any event, that separation and divorce ends the violence. Advocates for victims, on the other hand, emphasize that minimization and denial are common among abuse victims (Meier, 2003), and that abuse tends to escalate over time, even after separation (Jaffe, Lemon, & Poisson, 2003; Kurtz, 1997; Weiner, 1999). Moreover, advocates argue that batterers tend to be poor parents whose parenting deficiencies will continue (Cahn, this volume; Lemon, 2001). Batterers may claim their problems have been cured by participating in a batterers' intervention program, whereas victims' advocates emphasize the programs' lack of efficacy (Evans, 2004; Meier, 2003).

Family court advocates have thus pushed for expanding the notion of what is detrimental to children in two ways. First, they have argued that the courts should take into account psychological harms, and not just physical injury. Second, they have emphasized the importance of considering risks of harm, including both undetected abuse and injury and the likelihood of future harm.

As a result of family court advocates' hard work, most states now require family courts to consider spousal abuse when making custody decisions (Lemon, 2001). Despite these statutory reforms, however, courts may defeat their purpose by paying lip service to the statute while awarding custody to a batterer (Meier, 2003). Moreover, batterers may argue that even if their spousal abuse is relevant, it ought not trump the non-abusive spouse's failings, such as substance abuse or harsh parenting practices.

In order to ensure that the courts take domestic violence seriously, advocates for victims have lobbied for two further changes in the law. First, advocates have argued that there should be a presumption against giving the batterer joint or sole custody of the children, a change enacted by some states (Lemon, 2001). A presumption implies that battering should be given more weight than other parental deficiencies, and is justified by the seriousness of the effects, the substantial risk that children are being harmed even if there are no apparent ill-effects, and the belief that many parental failings of battered mothers—such as depression and substance abuse—are attributable to abuse (Meier, 2003). Second, advocates have lobbied successfully for legislative determinations that domestic violence is “detrimental” to the child, which increases its importance in custody decision-making (e.g., Cal. Family Code Section 3020(a)). A finding of “detriment” enables the state to interfere with a parent’s custodial rights. Hence, it empowers non-parents (such as grandparents) to take custody away from batterers when the mother has died or is unable to take the child (Baron, 2003).

Advocates for victims of domestic violence have also argued for stronger criminal action against batterers. Many states have adopted mandatory arrest provisions for domestic violence and for violations of protective orders (Zorza, 1992). Some states have sought to prosecute batterers for child endangerment (Whitcomb, 2002). The effects of domestic violence on children are thus used to justify criminal liability. In order to do so, prosecutors must overcome two obstacles. The first is similar to that confronted by the family courts. Batterers will

argue that they are not liable for child endangerment because they injured their wives, not their children. Second, batterers will argue that they should not be criminally responsible for harm when their intent was solely to harm their spouses. Prosecutors counter that parents have moral and legal responsibilities to prevent harm to their children. A parent who harms the other parent, and knows or should know that this will also harm the child, can be held criminally responsible.

In sum, advocates for victims of domestic violence have presented a strong argument for presuming that domestic violence is detrimental to children. Children are at risk of being injured in the cross-fire between adults, and of being physically and sexually abused. They are subjected to the psychological harms of witnessing violence between adults they love and upon whom they depend for safety and security. They are also sometimes subjected to poor parenting, because men who beat their wives tend not to be sensitive caretakers, and because women abused by their husbands often suffer psychologically and may turn to drugs and alcohol as a means of coping with the consequences of abuse.

How Advocacy Can Backfire: Domestic Violence in Dependency Court

Domestic violence issues come up as frequently (if not more frequently) in dependency court, which is designed to protect abused and neglected children. In dependency proceedings, the state takes action against the parents on behalf of the child. If only one parent is abusing the child, that parent may be ordered out of the home as a precondition for allowing the other child to remain with the non-abusive parent (Wilson, this volume). If both parents are abusing or

neglecting the child, however, the state may remove the child and place him or her with a relative or in foster care. In order to regain custody, the parents may be ordered to complete treatment while demonstrating their interest in maintaining a relationship with the child. In less extreme cases, the state may allow the child to remain in the home while ordering the parents into treatment (e.g. Cal. Welf. & Inst. Code Sections 360-361).

A finding that domestic violence exposure is detrimental to children need not interfere with a woman's rights to her children, because the preferred solution in many cases is to separate the batterer from the children. Unfortunately, this is more easily said than done. The batterer may not cooperate. He may ignore restraining orders and other legal threats. He may resist all attempts at removal, making it necessary to arrest and incarcerate him. He may come looking for his spouse and children when he gets out of jail. Indeed, efforts to remove him may simply incite him to work harder to keep control, triggering separation assault. Second, the victim may not cooperate. She may not want the batterer to leave. She may deny that the abuse is occurring at all, minimize its severity or frequency, or state that the man is getting better. Minimization is likely accentuated by her fears that the social worker is there to take her children. She may believe that the benefits of the relationship outweigh the costs of abuse. These benefits include her love for the man, his other positive qualities (including the economic support he provides), and her lack of alternatives (Rusbult & Martz, 1995; Strube, 1988). Alternatively, she might like the idea of separation in the abstract, but understand that it is impractical in her case, and may only make

matters worse. She is likely to understand the risks of separation assault, and the inability of the police, her family, and other players to protect her.

Perhaps the victim wants the batterer to leave, but cannot keep him out of the home. Suggesting she leave with the child raises new problems only too familiar to advocates working with battered women (Browne, 1987). First, she may feel unable to leave. Where is she going to go? Battered women shelters, assuming they have room, are not viable long-term solutions. Staying with friends and relatives is inconvenient at best and unsafe at worse, because the batterer is likely to know where to find them, and staying with others puts others at risk. Finding a new place takes time and money. Even if she secures new housing, he can look for her at her workplace or her child's school. To be truly safe, she may need to change her job and pull her child out of school. Second, she may not want to leave. She may legitimately ask, "Why shouldn't he leave?"

Even if the victim has left the batterer, it is likely that he will catch up with her or that she will return to him. It frequently takes several attempts before permanent separation is possible (Picker, 1993). Although few women who leave a shelter expect to reunite with their abuser, almost half do so within one year (Rusbult & Martz, 1995; Strube, 1988). This statistic is particularly powerful evidence of the pulls that abusive relationships exert on victims. Even taking refuge in a shelter does not usually signal the end of the relationship.

Assume that a social worker who understands the dynamics of domestic violence assesses a home in which the mother has been abused. Assume also that the children show minor signs of abuse and neglect that, by themselves, do

not justify removal. Should the worker be concerned for the safety of the children? Recall the arguments put forward by domestic violence advocates in family court about the minimization of abuse, its escalation over time, and its overlap with other, often undetectable abuse. Should the worker offer services short of removal? If the batterer refuses services, the mother may be unwilling or afraid to accept them because acknowledging a need for help may be perceived as a confession of inadequacy. Without services, removal seems the only viable option. Ironically, even if services are accepted, the worker may worry that separation often incites more serious violence and that batterers' treatment is likely to be ineffective, making removal seem nonetheless necessary.

Case Study: New York Dependency Intervention Due to Domestic Violence

The case of *Lonell J.* illustrates how removal of children from their mothers has been justified by arguments originally advanced by advocates seeking to limit the custodial rights of batterers (*In re Lonell J.*, 1998; *Matter of Latisha J. and Lonell J.*, 1997). In *Lonell J.*, the parents were living in a state-funded studio apartment with their two children, Latisha, 2 ½ years old, and Lonell junior, 6 months, when their children were removed by social services and placed in foster care. Social services filed a dependency petition alleging medical neglect and neglect based on exposure to domestic violence. The petition also alleged that the parents had failed to attend recommended counseling.

The first social worker to assess the family testified that “the children smelled of urine, Lonell Jr. was feverish and vomiting and Latisha was wearing a diaper that needed changing” (*In re Lonell J.*, 1998, p. 116). The second social

worker, having learned that the parents had taken Lonell Jr. to the hospital, visited the home and found Lonell Jr. “lying in his crib covered with vomit” (*In re Lonell J.*, 1998, p. 117). The parents explained that the first social worker visited early in the morning, before they had a chance to change Latisha’s diaper, and that they had taken Lonell Jr. to the doctor several times for an illness that made it hard for him to keep food down.

The trial court dismissed the allegations of medical neglect as unfounded. It referred to the first caseworker, the agencies’ main witness, as “officious, confused, and misinformed,” noting that the worker had falsely asserted in the petition that the mother had attempted suicide “based on the flimsiest of hearsay” (*Matter of Latisha J. & Lonell J.*, 1997, p. 28). The appellate court did not discuss these allegations, nor the credibility of the caseworker. It did not state whether it believed the parents’ assertions that they had been taking Lonell Jr. to the doctor. It is unclear whether it believed that the allegations based on medical neglect should be sustained.

Both the trial court and the appellate court, however, believed that removal was justified when the children’s physical condition was considered in light of the domestic violence in the home. The mother complained to the first social worker of physical abuse and rape, but refused to follow the worker’s advice to go to a battered woman’s shelter. The social worker then “ceased working with the family due to the father’s objections” (*In re Lonell J.*, 1998, p. 117). The second social worker learned that the father had been arrested for abusing the mother, that a protective order had been issued against him, and that the police had been

called on five previous occasions. Moreover, the mother at one point left the family to live with her mother, but later returned. Whereas the trial court refrained from finding neglect on this basis, believing that expert testimony was necessary to establish a risk of emotional harm under the dependency statute, the appellate court reversed. It held that even without expert testimony, the children's ill-kempt condition justified a finding of emotional neglect due to the effects of domestic violence on the children.

The sources to which the trial court and appellate court refer illustrate the way in which arguments on behalf of battered women in family court turn into arguments in dependency court for taking children away from battered mothers. Believing it could not take jurisdiction on the basis of domestic violence, but wishing it could, the trial court asked the legislature to proclaim that domestic violence, standing alone, constitutes neglect due to the risk of emotional harm. It cited legislative findings that "[a]buse of a parent is detrimental to children whether or not they are physically abused themselves" (*Matter of Latisha J., & Lonell J.*, 1997, p. 28). These findings had been used to justify a mandate that domestic violence be considered in making custody decisions in *family* court, as well as to justify creation of a statewide registry for protective orders issued in *family* court and criminal court but, ironically, not in *dependency* court.

The trial court stated that "[I]t is tragic that many persons who are victims of domestic violence are unable or unwilling to make any attempt to break its invidious cycle. Nonetheless, they should be found neglectful if they fail to take some initiative, however meager or ineffectual to protect their children" (*Matter of*

Latisha J. & Lonell J., 1997, p. 28). The quotation is important because it contrasts women in family court, who are taking action to end the abuse through a divorce or custody proceeding, and women in dependency court who have not successfully separated from their abusers. The appellate court emphasized this distinction even more strongly, citing a family law case denying custody to an abuser but adding that “[u]nlike the respondent mother here, the mother in [the custody case] was willing to take the child away from the abusive father” (*In re Lonell J.*, 1998, p. 118).

The trial court’s reference to victims who are “unable or unwilling” to take action makes a second, and equally important, point. Dependency jurisdiction is premised on the inability, and not just the unwillingness, of a parent to protect his or her child. It is in this respect that dependency jurisdiction can properly be called “no-fault,” focusing on the harms to the child rather than the fault of the parent. Of course, practically speaking, the parent experiences the state’s intervention as punitive, and social workers routinely behave in a punitive fashion. The point is, however, that a parent’s defense that she suffers from disabilities or incapacities beyond her control does not eliminate the grounds for intervening to protect the child. Thus, quibbling with the appellate court’s assertion that the mother was truly unwilling, rather than unable, to escape the abuser does not undermine the legal basis for a finding of neglect.

Relying on two law review notes describing the effects of domestic violence on children, the appellate court concluded that Lonell Jr.’s “fever, repeated vomiting and soiled bedding” (*In re Lonell J.*, 1998 p. 118) was

attributable to the violence in the home. The court thus rejected the trial court's holding that expert testimony on the effects of domestic violence was required. Kurtz (1997), calling for a presumption against awarding custody to batterers, was cited for the proposition that younger children exposed to domestic violence are likely to suffer from somatic complaints, such as diarrhea and enuresis (*In re Lonell J.*, 1998). Haddix (1996), advocating the termination of batterers' parental rights, was cited for the proposition that "infants exposed to domestic violence often experience poor health and eating problems" (*In re Lonell J.*, 1998, p. 118). A review of other cases citing Kurtz (1997) and Haddix (1996) reveals that they have been most influential in cases limiting the parental rights of battered women, and less persuasive in cases seeking to limit the rights of abusive men (*In re Daphne J.*, 2003 (dissent); *In re Estate of Thomas*, 2004 (dissent); *McEvoy v. Brewer*, 2003).

The Federal Courts Step In: The *Nicholson* Opinions

Two years after *Lonell J.* was decided, a group of mothers brought a federal civil rights class action challenging New York City's Administration for Children's Services' ("ACS") policy of intervening in homes experiencing domestic violence (*Nicholson v. Williams*, 2002). Sharline Nicholson, the lead named-plaintiff, had a young son and an infant daughter. Her daughter's father, who lived in another state, visited on a monthly basis. On one visit, Ms. Nicholson told the father that she was breaking off their relationship and he attacked her, breaking her arm, fracturing her ribs, and bloodying her head. Although ACS had once substantiated an allegation against him for hitting his

son, he had never assaulted Ms. Nicholson before. While Ms. Nicholson was in the hospital recovering from her injuries, ACS informed her that they had placed her children in foster care. They refused to tell her where the children were located and did not file a dependency petition for another five days because “after a few days of the children being in foster care, the mother will usually agree to ACS’s conditions for their return without the matter ever going to court” (*Nicholson v. Williams*, 2002, p. 170).

The ACS worker was misinformed regarding the children’s safety. Not knowing that the father lived in another state and did not have a key to the apartment, he believed that Ms. Nicholson could not safely return to her apartment with her children. He also believed that Ms. Nicholson had failed to request a restraining order, when in fact she had attempted to do so without success because the father lived out of state and she did not know his address.

One week after their removal, the dependency court ordered that the children could be returned to her, but only if she found a different place to stay. When Ms. Nicholson saw her children for the first time, eight days after their removal, her son had a swollen eye from being slapped by the foster mother and her daughter had a rash, a runny nose, and scratches. The children were not returned until twenty-one days after their removal because ACS did not think that the children had adequate bedding at Ms. Nicholson’s cousin’s home, where Ms. Nicholson was forced to stay. The other named plaintiffs experienced similar situations, losing their children to foster care because of exaggerated fears that they were unable to protect their children against abusive men.

Judge Weinstein of the federal district court granted a preliminary injunction prohibiting ACS from removing children “solely because the mother is a victim of domestic violence” (*Nicholson v. Williams*, 2002, p. 250). The Second Circuit Court of Appeal agreed that the removals raised serious questions of federal constitutional law, but hesitated to address those questions, instead asking the highest state court in New York whether, under state law, exposure to domestic violence is sufficient to presume that the risk of emotional injury justifies dependency jurisdiction (*Nicholson v. Scopetta*, 2003). The federal district court cited no New York state cases on dependency jurisdiction. New York’s highest court, the New York Court of Appeals, answered that “[p]lainly more is required for a showing of neglect under New York law than the fact that a child was exposed to domestic abuse against the caretaker” (*Nicholson v. Scopetta*, 2004, p. 368). Consequently, the mothers and their children settled the case, agreeing that the case would be dismissed unless the mothers and their children could demonstrate, within one year, that ACS had “failed to act, on a systemic basis, consistent with the decision of the Court of Appeals in *Nicholson*” (Stipulation and Order of Settlement, 2004, at 3).

Nicholson’s Rationale: “Domestic Violence Isn’t So Bad After All”

The *Nicholson* litigation has been portrayed as a victory for battered women (Dunlap, 2003), and it is likely that it will reduce the number of removals of children from abusive homes, both in New York and in other jurisdictions influenced by the potential for future lawsuits. However, the possible effects of the litigation on custody decision-making in family court have not been explored.

Ironically, the decision was founded largely on a conclusion that the harms of domestic violence on children have been exaggerated, in contrast to the arguments advocates have made on behalf of battered mothers in family court.

The Effects of Witnessing on Children

In the *Nicholson* opinion Judge Weinstein heavily relied on Professor Evan Stark's "lengthy and well-substantiated opinion that children rarely experience long-term effects from witnessing domestic violence" (*Nicholson v. Williams*, 2002, p. 198). Dr. Stark is an Associate Professor in the Department of Public Administration at Rutgers University and has written extensively on domestic violence. In his testimony for the plaintiffs, Stark "cited studies which demonstrated that, among children exposed to the most severe domestic violence, well over 80 percent, and sometimes over 90 percent, tested psychologically normal, were self-confident, had positive images of themselves, and were emotionally well off" (*Nicholson v. Williams*, 2002, p. 198). Stark's written report to the court (Stark, 2002) acknowledged that exposure "has been linked to a range of physical, psychological, and behavioral problems," but argued that

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. 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 (p. 116).

For the claim that 80 to 90% of exposed children are psychologically normal, Stark cited two sources. One study of eighty 7-12 year olds in a battered woman's shelter (Sullivan, Hguyen, Allen, Bybee, & Juras, 2000) found that "children reported being happy with themselves (83%), liking their physical appearance (83%), and feeling as if they often do the right thing (73%)" (p. 593). However, the other paper, a review of interventions for children exposed to domestic violence (Graham-Bermann, 2001), cited studies finding that "heightened levels of internalizing problems, such as depression and anxiety, characterize 33-75% of the children of batterers" (p. 253), and that 38% of children in one study exhibited symptoms in the "clinical range" on the Child Behavior Checklist (Hughes & Luke, 1998).

There is burgeoning research on the effects of domestic violence on children, which includes both qualitative reviews of the literature (e.g., Margolin & Gordis, 2000; Mohr, Lutz, Fantuzzo, & Perry, 2000) and quantitative meta-analyses (Kitzmann, Gaylord, Holt, & Kenny, 2003; Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003). Suffice it to say that the negative effects on children are likely more far-reaching than the *Nicholson* court recognized. For example, Kitzmann and colleagues (2003) conducted a meta-analysis of 118 studies examining the psychosocial outcomes of children exposed to domestic violence, including studies comparing such children to children exposed to other forms of interparental conduct (such as the one study cited by Stark: Hershon &

Rosenbaum, 1985). They estimated that “63% of child witnesses were faring more poorly than the average child who had not been exposed to interparental violence” (Kitzmann et al., 2003, p. 345). Moreover, witnesses to domestic violence were experiencing “significantly worse outcomes than those who witness other forms of destructive interparental conflict” (Kitzmann et al., 2003, p. 346). Children exposed to domestic violence experienced effects as serious as children who were physically abused. Hence, although it may be accurate to say that in most research a majority of children exposed to domestic violence do not exhibit symptoms triggering a need for professional intervention, a substantial minority do exhibit such symptoms and, based on the most thorough meta-analysis to date, most fare worse than non-exposed children or children in distressed relationships.

The Overlap Between Domestic Violence and Child Abuse

The fact that domestic violence often co-occurs with physical and sexual child abuse is also well-documented. One review of 31 studies spanning over two decades found a median co-occurrence of 40% between domestic violence and child physical abuse (Appel & Holden, 1998, see also Edleson, 1999). There is also some research finding a high rate of overlap between domestic violence and child sexual abuse (Sas & Cunningham, 1995; Rumm, Cummings, Krauss, Bell, & Rivara, 2000). Children who are physically or sexually abused typically delay reporting, if they report at all, and often deny abuse when questioned (Lyon, 2002; Lyon, in press). Hence, domestic violence in a family is a risk factor for undetected child abuse.

The *Nicholson* decision recognized the overlap between domestic violence and child abuse, citing the Appel and Holden (1998) paper, but quoted Dr. Stark for the proposition that “in the vast majority of cases” the “man who battered the mother was also the source of child abuse or neglect. In other words, the ‘man hits wife, wife hits child’ scenario is rare; abuse tends to flow from a single source” (*Nicholson v. Williams*, 2002, p. 198). The problem with this proposition, as Stark (2002) acknowledged in his written report, is that “it has been widely reported that battered women are more likely to abuse their children than non-battered mothers” (p.115; citing Giles-Sims, 1985; Straus & Gelles, 1990; Walker, 1979). Other research has similarly found elevated rates of physical abuse of children among battered women (Kruttschnitt & Dornfeld, 1992; O’Keefe, 1994; Walker, 1984). Moreover, there is evidence that battered mothers suffer from deficits in parenting (Jouriles & LeCompte, 1991; Levendosky & Graham-Bermann, 1998; McCloskey, Figueredo, & Koss, 1995; Margolin, Gordis, Medina and Oliver, 2003) although the results are mixed (e.g., Holden & Ritchie, 1991; Holden, Stein, Ritchie, Harris, & Jouriles, 1998; Sullivan et al., 2000).

Identifying parenting deficiencies in battered mothers may sound like victim-blaming. However, it merely reflects awareness of the myriad negative effects of domestic violence on families. Indeed, if deficiencies in a battered woman’s parenting are attributable to domestic violence, as many advocates argue (Meier, 2003), then it almost certainly follows that domestic violence will lead to parenting deficiencies. Appel and Holden (1998) note a number of possible explanations for why battered mothers may be more abusive than

mothers who are not being abused. Battered mothers' stress from abuse may impair their parenting; there may be a spillover of negative marital interactions into the mother-child relationship; abusive fathers may coerce mothers into abusing their children; battered mothers may "engage in harsh parenting to preempt the father's even harsher punishments;" and battered mothers may have learned through negative marital interactions that aggression is an effective means of control (Appel and Holden, 1998, pp. 589-590).

Criticizing the research on overlap, Stark (2002) pointed out that the definitions of child abuse in this research are "highly subjective and imprecise" (p. 116) and often include acts "that many parents consider normal discipline" (p. 115, n. 59). As one narrows one's definition of abuse, men increasingly predominate as the abusers (Stark, 2002). These points have been acknowledged by other reviews (Appel & Holden, 1998; Edleson, 1999). Nevertheless, Appel and Holden (1998) asserted that the 40% rate of overlap is based on a "conservative definition of child abuse" (p. 578). Stark (2002), in contrast, suggested that physical abuse should be limited to injuries requiring medical attention, and found that "the rate of harm that rises to the level of 'abuse' in domestic violence cases" occurs only 3-4% of the time (p. 115).

Taken at face value, the arguments advanced by Stark (2002) and the court in *Nicholson v. Williams* (2002) undermine many of the arguments advocates make in family court on behalf of battered women. A presumption against awarding custody to abusive spouses on the grounds that domestic violence exposure harms children is hard to justify if children from "distressed

relationships”—which are likely to predominate among divorcing couples battling over custody—are just as likely to experience such harms. If the overlap between domestic violence and child abuse is less than 5%, it is hard to argue that the presumption of custody is justified by the risks of child abuse. On the other hand, if one acknowledges that substantial percentages of children in violent homes are both psychologically traumatized and at risk of abuse, the presumption maintains its viability. Much of the factual basis for the *Nicholson* opinion, however, is called into question.

The Efficacy of Restraining Orders

At several points in the *Nicholson* opinions, restraining orders against the batterers are mentioned as a potential basis for allowing children to remain in the home (*Nicholson v. Williams*, 2002; *Nicholson v. Scoppetta*, 2004). The assumption that restraining orders are effective underlay the district court's claims regarding the relative harms of foster care placement. Judge Weinstein argued that foster care “can be much more dangerous and debilitating than the home situation,” citing Stark's testimony that “foster homes are rarely screened for the presence of domestic violence, and...the incidence of abuse and child fatality in foster homes in New York City is double that in the general population” (*Nicholson v. Williams*, 2002, p. 249). Comparing foster care to the general population—rather than the homes from which children are removed—is an unreasonable means of balancing the costs and benefits of removal, unless one assumes that services can make children's homes free from violence.

If restraining orders are a viable option to removal of children from violent homes, then one can maintain that domestic violence exposure is indeed as harmful as family court advocates claim, without increasing the likelihood that battered mothers will lose their children. Stark testified in *Nicholson* that the negative effects on children have been observed to “abate after a relatively short period of safety...and security [is] provided” (*Nicholson v. Williams*, 2002, p. 198). Moreover, to the extent that any parenting deficiencies of battered women are caused by battering, many of those deficiencies should abate once the abuse has ended. There is some evidence that battered women’s parenting improves after separation (Holden et al., 1998).

However, the *Nicholson* opinions failed to cite any research on the efficacy of restraining orders. Restraining orders are fully enforceable only with the cooperation of the mother, the police, and the prosecutors (if a restraining order is violated). Harrell and Smith (1996) interviewed 355 women who had filed petitions for temporary restraining orders due to domestic violence. Almost half did not return to court three weeks later to request a permanent order, and the severity of abuse did not predict whether they returned. Most had contact with the batterer in violation of the order within the first three months, and almost a third reported acts of severe violence within the first year, including kicking, strangling, beating, forced sex, threats with weapons and threats to kill. Most failed to report violations to the police, many of them reporting that they were too afraid or that the police would not help. Despite a mandatory arrest statute for restraining order violations, 80% of the calls to the police failed to result in an

arrest. Other research has found that the batterer usually flees before police arrive, making arrest unlikely (Feder, 1996, Kane, 2000). Kane (2000), studying the Boston Police's enforcement of 818 restraining order violations, found that even if the batterer remained on the scene, the police usually ignored the mandatory arrest statute unless there were threats of violence. In the "highest risk" situation, in which the batterer used a weapon and remained at the scene, the police still failed to make an arrest 25% of the time.

The police's failure to take proper action against restraining order violations is perhaps best illustrated by the experience of one of the named-plaintiffs in the *Nicholson* case. Michelle Norris had a two year old child and was living with the child's father, Angel Figueroa. ACS investigated a report of possible domestic violence and drug abuse but did not find reasons to intervene. Later that month, Ms. Norris decided to end the relationship and move out of the apartment, and Mr. Figueroa attacked her, dragging her by her hair, throwing her into the wall, and hitting her in the face. Ms. Norris showed the police her injuries, Mr. Figueroa was arrested, and she was granted a restraining order. She moved in with a friend, but went back the next month to obtain her possessions while Mr. Figueroa was gone. Mr. Figueroa arrived, attacked her again, breaking her phone and hitting her in the face.

The police were called, and when they appeared Mr. Figueroa took the baby to the bathroom and locked the door. The police informed Ms. Norris that, because of the order of protection, either she or Mr. Figueroa would have to leave the apartment or both would be placed under arrest. Ms.

Norris explained to the police that she was trying to leave, but that she wanted her son back first. Mr. Figueroa refused to leave the bathroom, and the police escorted Ms. Norris out of the apartment without helping her to take her son back from Mr. Figueroa. The next day, Mr. Figueroa left Justin with a baby-sitter, and Ms. Norris returned to take the child (*Nicholson v. Williams*, 2002, p. 186).

If Ms. Norris had remained in the apartment, and obtained a restraining order to remove Mr. Figueroa from the home, then a social worker assessing the safety of the child would confront a difficult situation. What protection would the restraining order truly afford?

Dependency Intervention after *Nicholson*

We have suggested that the effect of the *Nicholson* litigation will be to reduce the likelihood that children will be removed from their mother's custody because of domestic violence. At the same time, however, we have argued that the district court understated the effects of domestic violence on children and was over-optimistic regarding the prospects for restraining orders to protect children adequately. It is important to consider what guidelines the decisions establish for the future, once the immediate effects of the litigation have dissipated and the day to day difficulties of assessing safety in individual cases return.

Unfortunately, the decisions provide little guidance. The courts emphasized the wrongfulness of dependency jurisdiction and removal "solely" on the basis of domestic violence (*Nicholson v. Williams*, 2002, p. 257; *Nicholson v.*

Scoppetta, 2003, p. 164; *Nicholson v. Scoppetta*, 2004, p. 366). In several of the named plaintiffs' cases, one could argue that the "only real basis for neglect was that the mother had been beaten" (*Nicholson v. Scoppetta*, 2003, p. 163). Either the workers failed to investigate adequately or there was no history of domestic violence and virtually no risk of future violence, making the workers' actions unsupportable.

Focusing on cases in which removal occurs "solely" because of domestic violence simplifies the otherwise difficult issues confronting the courts and dramatically limits the impact of their holdings. First, the courts need not confront the legitimacy of intervention when a parent is unable (rather than unwilling) to protect her children against domestic violence. Judge Weinstein found that ACS was inferring "from the fact that a woman has been beaten and humiliated that she permitted or encouraged her own mistreatment," concluding that "it desecrates fundamental precepts of justice to blame a crime on the victim" (*Nicholson v. Williams*, 2002, p. 252). We would agree that equating victimization with an unwillingness to protect one's children is clearly illegitimate. It sidesteps the issue, however, of how social services should respond when a battered mother has found herself repeatedly incapable of protecting her children against an abusive spouse. Dependency intervention founded on an inability to protect does not assume that the parent permitted or encouraged the abuse to occur.

Second, by disallowing only a small subset of cases in which removal was based "solely" on domestic violence, the courts did not have to draw lines between permissible and impermissible intervention. Although the Second Circuit

Court of Appeals referenced several cases among the plaintiffs in which “the batterer had not only assaulted the mother but also in some way threatened the physical safety of the child,” (*Nicholson v. Scoppetta*, 2003, p. 163), it did not discuss whether intervention in those cases would have been warranted. Similarly, the New York Court of Appeals, in holding that the definition of a “neglected” child under state dependency law did not include cases in which the “sole” allegation is that one parent allowed the child to witness domestic violence, specifically declined to apply its holding to the named plaintiffs, “recognizing that in the inordinately complex human dilemma presented by domestic violence involving children, the law may be easier to state than apply” (*Nicholson v. Scoppetta*, 2004, p. 367 n. 5). The court went on to approve of cases finding battered mothers neglectful when there was “repeated” domestic violence, when the children appeared fearful and distressed, and when the mother had failed to take action (e.g. “allowed him several times to return to her home”) (*Nicholson v. Scoppetta*, 2004, p. 371).

Although the New York Court of Appeals refused to consider the facts of the named plaintiffs’ cases, it is instructive to do so. Consider Xiomara C., who had two children, aged four and five, with Justin C. In March of 2000, Justin violently attacked Xiomara. He punched her head, shoulders, and both eyes. He took two knives, put them against her eyes and told her that if she moved, he would kill her. Then he pushed her to the ground. When she tried to get up, he pushed her down again. He dragged her into the bathroom and forced her into a bathtub full of ice cold water until her skin

was numb. Then he used the shower nozzle to hose her with scalding water (*Nicholson v. Williams*, 2002, p. 190).

ACS removed the children the next day and filed a dependency petition that solely alleged domestic violence against both parents.

On its face, the petition appears legally deficient because it describes nothing more than domestic violence. However, the facts of the case suggest additional factors that the New York Court of Appeals would consider relevant in justifying dependency jurisdiction. ACS had received previous reports of domestic violence, and had provided Xiomara and Justin referrals for “domestic violence counseling and preventive services, but neither participated” (*Nicholson v. Williams*, 2002, p. 190). Xiomara acknowledged to the investigating social worker that Justin had been physically and verbally abusive for six years. Finally, after abusing Xiomara on the occasion in question, Justin kicked her out of the bathroom and locked himself in with their son. Xiomara called the police, and they knocked down the bathroom door. The son emerged, having “suffered bruises and cuts to his face while he had been locked in the bathroom with the father” (*Nicholson v. Williams*, 2002, p. 190).

It is unknown whether the mother was offered assistance in attempting to leave Justin, to seek temporary shelter, or to seek a restraining order. Nevertheless, in the New York Court of Appeals’ analysis, the long history of abuse and the physical injuries suffered by her son suggest that removal could be justified. Although Judge Weinstein emphasized that “no allegations were made that Xiomara committed or threatened to commit any violence against

Justin or her son” (*Nicholson v. Williams*, 2002, p. 190), the legally relevant factors do not require that the mother be violent, only that she be unable to protect the child.

What is most remarkable about the New York Court of Appeals opinion is its treatment of *Lonell J.* The reader will recall that the trial court was unable to find that the children in *Lonell J.* were medically neglected, leading it to ask the legislature to make exposure to domestic violence per se neglectful (*Matter of Latisha J. and Lonell J.*, 1997). The appellate court held that dependency jurisdiction was justified without any legislation, because the infant’s child’s illness (and, perhaps, the toddler’s unchanged diaper) justified a finding that the children were suffering from the psychosomatic effects of domestic violence exposure (*In the Matter of Lonell J.*, 1998).

The New York Court of Appeal’s analysis of the facts of *Lonell J.* highlight the limited impact of the holding that dependency court intervention and removal of children should not be predicated solely on domestic violence in the home. The court did not read *Lonell J.* as presuming that domestic violence justifies removal, because “multiple factors formed the basis for intervention and determinations of neglect,” namely “the unsanitary condition of the home and the children’s poor health” (*Nicholson v. Scopetta*, 2004, p. 383). Hence, problems in the home that do not justify intervention or removal become jurisdictional when coupled with domestic violence exposure. Moreover, the court accepted the assumptions of a causal link between the infant’s physical illness and domestic violence exposure, noting that “[t]he tragic reality is, as the facts of *Lonell J.*

show, that emotional injury may be only one of the harms attributable to the chaos of domestic violence” (*Nicholson v. Scopetta*, 2004, p. 383). The court’s acceptance of the tenuous link between domestic violence and the child’s physical condition exposes the limited effects of the court’s otherwise strong language that emotional harm would rarely justify removal.

Conclusion

It is perhaps inevitable that arguments made for granting battered women custody in family court will conflict with arguments made against denying battered women custody in dependency court. In every dependency case in which a battered mother remains with the batterer, arguments emerging from family court will undermine her efforts to prove that she can be a good parent. Family court advocate’s pessimism about future violence teaches that the only solution to domestic violence is permanent separation from the abuser.

There are three possible ways to resolve the conflict, none of them very appealing. One is to have more faith in the future safety for mothers and their children who remain in abusive homes. We have not critically examined the assumptions about future danger in this chapter, but a full understanding of the issues requires recognition of cases in which batterers can be rehabilitated. A second approach is to acknowledge the negative effects of domestic violence on children but to argue that taking custody away from the battered mother violates her parental rights. Taking this approach elevates parental rights above children’s safety. A third approach is to put more emphasis on the harms of removal and foster care. Taking this approach undermines our efforts to protect

children against other dangers in the home, because it calls into question the difficult choices we make in protecting children against physical and sexual abuse.

Given the dangers, there will be occasions in which child protective workers must conclude that even with a restraining order, children and their mothers face an imminent threat because of domestic violence. If the mother will not or cannot obtain shelter where the batterer cannot find her and her children, placement will be necessary. One can imagine a social services system in which foster placements are designed to take children and their non-abusive parents. That system, however, does not exist, making removal of children a necessary evil. The issue for policymakers and researchers is to better identify the conditions under which children are best served by our clumsy and imperfect methods for keeping them safe.

References

- Appel, A.E., & Holden, G.W. (1998). The co-occurrence of spouse and physical child abuse: A review and appraisal. *Journal of Family Psychology*, 12, 578-599.
- Baron, S. (2003). The scope of family court intervention. *Journal of the Center for Families, Children, and the Courts*, 4, 115-127.
- Browne, A. (1987). *When battered women kill*. New York, NY: Free Press.
- Cal. Family Code Section 3020(a) (West, 2005).
- Cal. Welf. & Inst. Code Sections 360-361 (West, 2005).
- Dunlap, J.A. (2003). The "pitiless double abuse" of battered mothers. *American University Journal of Social Policy and the Law*, 11, 523.
- Edleson, J.L. (1999). The overlap between child maltreatment and woman battering. *Violence Against Women*, 5, 134-154.
- Evans, K.C. (2004). Can a leopard change his spots? Child custody and batterer's intervention. *Duke Journal of Gender Law & Policy*, 11, 121-*
- Feder, L. (1996). Police handling of domestic calls: The importance of offender's presence in the arrest decision. *Journal of Criminal Justice*, 24, 481-490.
- Giles-Sims, J. (1985). A longitudinal study of battered children of battered wives. *Family Relations*, 34, 205-210.
- Goodmark, L. (1999). From property to personhood: What the legal system should do for children in family violence cases. *West Virginia Law Review*, 102, 237-338.

Graham-Bermann, S.A. (2001). Designing intervention evaluations for children exposed to domestic violence: Applications of research and theory. In S.A. Graham-Bermann & J.L. Edleson (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 237-267). Washington, DC: American Psychological Association.

Haddix, A. (1996). Unseen victims: Acknowledging the effects of domestic violence on children through statutory termination of parental rights. *California Law Review*, 84, 757-815.

Harrell, A., & Smith, B.E. (1996). Effects of restraining orders on domestic violence victims. In E.S. Buzawa & C.G. Buzawa (Eds.), *Do arrests and restraining orders work?* (pp. 214-265). Thousand Oaks, CA: Sage.

Hershorn, M., & Rosenbaum, A. (1985). Children of marital violence: A closer look at the unintended victims. *American Journal of Orthopsychiatry*, 55, 260-266.

Holden, G.W., & Ritchie, K.L. (1991). Linking extreme marital discord, child rearing, and child behavior problems: Evidence from battered women. *Child Development*, 62, 311-327.

Holden, G.W., Stein, J.D., Ritchie, K.L., Harris, S.D., & Jouriles, E.N. (1998). Parenting behaviors and beliefs of battered women. In G.W. Holden, R. Geffner, & E.N. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* (pp. 289-336). Washington, DC: American Psychological Association.

Hughes, H.M., & Luke, D.A. (1998). Heterogeneity in adjustment among children of battered women. In G.W. Holden, R. Geffner, & E.N. Jouriles, (Eds.), *Children exposed to domestic violence: Theory, research, and applied issues* (pp. 185-221). Washington, D.C.: American Psychological Association.

In re Daphne G., 763 N.Y.S.2d 583 (Sup. Ct. App. Div. 2003).

In re Estate of Thomas, 2004 WL 943629 (N.J.Super.A.D., 2004).

In re Lonell J., 673 N.Y.S.2d 116 (Sup. Ct. App. Div. 1998).

Jaffe, P.G., Lemon, N.K.D., & Poisson, S.E. (2003). *Child custody and domestic violence: A call for safety and accountability*. Thousand Oaks, CA: Sage.

Jouriles, E.N. & LeCompte, S.H. (1991). Husbands' aggression toward wives and mothers' and fathers' aggression toward children: Moderating effects of child gender. *Journal of Consulting and Clinical Psychology*, 59, 190-192.

Kane, R.J. (2000). Police responses to restraining orders in domestic violence incidents: Identifying the custody-threshold thesis. *Criminal Justice & Behavior*, 27, 561-580.

Kitzmann, K.M., Gaylord, N.K., Holt, A.R., & Kenny, E.D. (2003). Child witnesses to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology*, 71, 339-352.

Kruttschnitt, C., & Dornfeld, M. (1992). Will they tell? Assessing preadolescents' reports of family violence. *Journal of Research in Crime and Delinquency*, 29, 136-147.

Kurtz, L.R. (1997). Protecting New York's children: An argument for the creation of a rebuttable presumption against awarding a spouse abuser custody of a child. *Albany Law Review*, 60, 1345-1375.

Lemon, N.K.D. (2001). Statutes creating rebuttable presumptions against custody to batterers: How effective are they? *William Mitchell Law Review*, 28, 601-676.

Levendosky, A.A., & Graham-Bermann, S.A. (1998). The moderating effects of parenting stress in woman-abusing families. *Journal of Interpersonal Violence*, 13, 383-397.

Lyon, T.D. (1999). Are battered women bad mothers? Rethinking the termination of abused women's parental rights for failure to protect. In H. Dubowitz (Ed.), *Neglected children: Research, practice, and policy* (pp. 237-260). Newbury Park, CA: Sage.

Lyon, T.D. (2002). Scientific Support for Expert Testimony on Child Sexual Abuse Accommodation in J. R. Conte (Ed.), *Critical issues in child sexual abuse* (pp. 107-138). Newbury Park, CA: Sage.

Lyon, T.D. (in press). False denials: Overcoming methodological biases in abuse disclosure research. In M.E. Pipe, M. E. Lamb, Y. Orbach, and A.C. Cederborg (Eds.), *Disclosing abuse: Delays, denials, retractions and incomplete accounts*. Mahwah, NJ: Erlbaum.

McCloskey, L.A., Figueredo, A.J., & Koss, M.P. (1995). The effects of systemic family violence on children's mental health. *Child Development*, 66, 1239-1261.

McEvoy v. Brewer, 2003 WL 22794521 (Tenn. Ct. App., 2003).

Magen, R.H. (1999) In the best interests of battered women: Reconceptualizing allegations of failure to protect. *Child Maltreatment*, 4, 127-135.

Margolin, G., & Gordis, E.B. (2000). The effects of family and community violence on children. *Annual Review of Psychology*, 51, 445-479.

Margolin, G., Gordis, E.B., Medina, A.M., & Oliver, P.H. (2003). The co-occurrence of husband-to-wife aggression, family-of-origin aggression, and child abuse potential in a community sample. *Journal of Interpersonal Violence*, 18, 413-440.

Matter of Latisha J. and Lonell J., 217 N.Y.L.J. 28 (April 16, 1977) (Bronx County Family Court 1997).

Meier, J.S. (2003). Domestic violence, child custody, and child protection: Understanding judicial resistance and imagining the solutions. *American University Journal of Gender, Social Policy, and the Law*, 11, 657-724.

Mohr, W.K., Lutz, M.J.M., Fantuzzo, J.W., & Perry, M.A. (2000). Children exposed to family violence: A review of research from an ecological-developmental perspective. *Trauma, Violence and Abuse*, 1, 264-283.

Nicholson v. Scoppetta, 344 F.2d 154 (2d Cir. 2003).

Nicholson v. Scoppetta, 3 N.Y.3d 357 (N.Y. 2004).

Nicholson v. Williams, 203 F.Supp.2d 153 (E.D.N.Y. 2002).

O'Keefe, M. (1994). Linking marital violence, mother-child/father-child aggression, and child behavior problems. *Journal of Family Violence*, 9, 63-78.

Picker, C.A. (1993). The intersection of domestic violence and child abuse: Ethical considerations and tort issues for attorneys who represent battered women with abused children. *Saint Louis University Public Law Review*, 12, 69-112.

Rumm, P.D., Cummings, P., Krauss, M.R., Bell, M.A., & Rivara, F.P. (2000). Identified spouse abuse as a risk factor for child abuse. *Child Abuse & Neglect*, 24, 1375-1381.

Rusbult, C.E., & Martz, J.M. (1995). Remaining in an abusive relationship: An investment model analysis of nonvoluntary dependence. *Personality and Social Psychology Bulletin*, 21, 558-571.

Sas, L.D., & Cunningham, A.H. (1995). *Tipping the balance to tell the secret: The public discovery of child sexual abuse*. London, Ontario: London Family Court Clinic.

Stark, E. (2002). The battered mother in the child protective service caseload: Developing an appropriate response. *Women's Rights Law Reporter*, 23, 107-131.

Straus, M.A., & Gelles, R.J. (1990). *Physical violence in American families*. New Brunswick, NJ: Transaction.

Strube, M.J. (1988). The decision to leave an abusive relationship: Empirical evidence and theoretical issues. *Psychological Bulletin*, 104, 236-250.

Sullivan, C.M., Hguyen, H., Allen, N., Bybee, D., & Juras, J. (2000). Beyond searching for deficits: Evidence that physically and emotionally abused women are nurturing parents. *Journal of Emotional Abuse*, 2, 51-71.

- Walker, L.E. (1979). *The battered woman*. New York: Harper.
- Walker, L.E. (1984). *The battered woman syndrome*. New York: Springer.
- Weiner, M. H. (1999). Domestic violence and custody: Importing the American Law Institute's principles of the law of family dissolution into Oregon law. *Willamette Law Review*, 35, 643-715.
- Weithorn, L.A. (2001). Protecting children from exposure to domestic violence: The use and abuse of child maltreatment statutes. *Hastings Law Journal*, 53, 1-153.
- Whitcomb, D. (October, 2002). Prosecutors, kids, and domestic violence cases. *Prosecutor*, 36, 32-34.
- Wolfe, D.A., Crooks, C.V., Lee, V., McIntyre-Smith, A., & Jaffe, P.G. (2003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review*, 6, 171-187.
- Zorza, J. (1992). The criminal law of misdemeanor domestic violence, 1970-1990. *Journal of Criminal Law & Criminology*, 46, 63-72.