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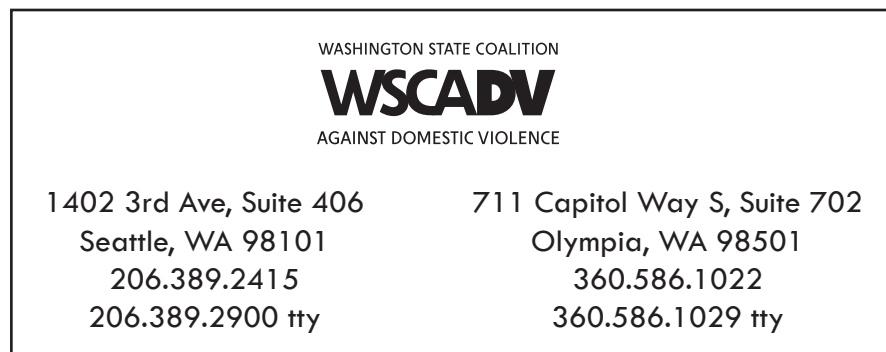
## **CPS: Reforming Child Protective Services Through Advocacy for Battered Women**

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**For the Washington State Coalition Against Domestic Violence**

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*The following article was originally published in 2004. While much of the critique and analysis contained here is still relevant, efforts have been undertaken, and are currently underway, to address major concerns. Both Washington state victim advocates and workers at DSHS Children's Protective Services are engaged in this process. There is much work to be done.*

## **Introduction**

The purpose of this article is to improve how domestic violence advocates respond to Child Protective Service (CPS) agencies. After sketching the historical background of the current situation, this article will: discuss the dilemmas that surround our engagement with CPS, profile battered women in the CPS caseload, summarize what research tells us about the effects of domestic violence on children, and suggest some practical applications of this information. While the discussion may be helpful in work with women and children in shelters, my main hope is that advocates will be able to use “dual victim” cases as a springboard to system change, by enhancing the capacity of CPS agencies to support women’s safety choices, thereby providing better services for children. The article draws on my expert testimony on behalf of Sharwline Nicholson and other plaintiffs in a federal class-action lawsuit. The Nicholson plaintiffs claimed that the Administration for Children’s Services (ACS), New York City’s child protection agency, was violating the U.S. Constitution when it charged women with child neglect and removed their children solely because of the mother’s abuse by her partner (what the agency termed “engaging in domestic violence”) or because she “refused services” prescribed because of her abuse.<sup>1</sup> After months of testimony, the judge found in favor of the plaintiffs, issued a preliminary injunction prohibiting ACS from engaging in the unconstitutional behaviors and appointed a “Nicholson Review Committee” (NRC) to monitor compliance with the injunction. Although there is some form of external oversight over CPS agencies in more than 20 states and jurisdictions, the NYC panel is the first to specifically monitor the response in domestic violence cases. A short bibliography on the issues raised in the article can be found at the end of the article.

## **Historical Background**

The contours of the child welfare response to battered mothers were set almost a century ago. In *Heroes of Their Own Lives*, feminist historian Linda Gordon reveals that child welfare workers in the early 1900s identified domestic violence, child abuse and child sexual abuse with a single source of male power and routinely used police to remove the “brutal men” they deemed responsible. After World War I, however, the focus of child welfare shifted from men to mothers. In addition, the definition of child maltreatment was gradually expanded to include “neglect” and a range of issues related to poverty and behavioral problems, and the emphasis in intervention shifted from criminal prosecution (except in the most extreme cases) to a combination of support services, “parent education” and the removal of children to foster care through family court proceedings. Domestic violence (called “marital discord”) fell off the radar screen along with men. When sexual abuse was addressed, it was alternately blamed on predatory strangers, child provocation or “weak,” dependent mothers.<sup>2</sup>

The current CPS system grew out of debate in the 1970s between liberals, who supported government-funded support for needy families, and conservatives opposed to any state involvement in family affairs. The compromise was that state intervention in families would be permitted only when there was imminent risk to a child's well-being. Seeking to provide family supports, liberals pushed to expand the definition of abuse and neglect to include homelessness, substance abuse and a range of comparable situations that were assumed to put children's well-being "at risk," even if a child had not been demonstrably harmed. This approach was considered humane because it favored services over criminal justice involvement. Unfortunately, the range of families caught in the child welfare net expanded much more rapidly than available services, leading CPS to use placement for a range of problems that are only marginally related to child protection in the traditional sense. This is the main cause of the "foster care crisis." The foster care crisis is characterized by too many children for placement, a dramatic decline in the quality of foster care, the increasing use of financial incentives to secure adoption, and the overwhelming caseloads that have led to litigation, enforced oversight and numerous "tragedies." Most children are in placement today because of "neglect" rather than actual abuse. Importantly, the proportion of children abused in foster homes (around 4 per 100) is almost twice as high as the proportion of children abused in the population at large (about 2.5 per 100).

Child welfare services and family court proceedings remain institutional bastions of gender bias, where mothers are uniformly held responsible when things "go wrong" at home. The exception that proves the rule is child sexual abuse, where CPS pursued the male perpetrators typically responsible only when pressured to do so by the anti-rape movement. CPS directs its counseling and "parent" education services at mothers almost exclusively. Women are defined as "mothers" and they are treated as conduits to the problems of their children, rather than as persons with needs of their own. In many states, cases are filed under a mother's name even after she is deceased. Fathers are often not even interviewed during foster placement, an important reason why there is so much child abuse in foster and adoptive homes. The "responding parent" in neglect cases is almost always the mother. This background is critical to understanding how CPS has interpreted the potential harms domestic violence poses to children.

### **The Short, Unhappy Marriage of Domestic Violence and Child Protection**

Current CPS practice in domestic violence cases reflects three recent and converging developments: (1) a growing literature on the risks to children who are exposed to domestic violence; (2) mounting political pressure for CPS to intervene where domestic violence occurs; and (3) a body of case law that applies the Failure to Protect Doctrine (under state neglect statutes) to non-offending parents in these families. Following the presumption that witnessing abuse harms children, CPS and the courts in many states 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 domestic violence. The revictimization of battered women by CPS and the Family Court raises acute dilemmas for the advocates, lawyers and researchers responsible for publicizing the harm domestic violence poses to children, urging CPS and the Family Court to intervene and helping to train CPS personnel.

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 these children will be harmed again if they remain in their homes. A critical question in the Nicholson case was: Does the exposure of a child to domestic violence automatically justify charging a non-offending mother with neglect and removing her child? Answering this question entails reviewing the known risk of child abuse and/or neglect in domestic violence cases, the typical dynamics and the resulting service needs of clients, including the need for child protection and best practice standards. Another concern is the organizational obstacles that prevent CPS from adopting best practice standards and how advocates can help to remove these obstacles.

### **Domestic Violence and Child Abuse: What is the Connection?**

Domestic violence against the mother is probably the most common context for child abuse or neglect, although estimates of the overlap range from 6½% to 82%, and of the number of children affected from 3.3 million to 10 million.<sup>3</sup>In an early study of this connection, Dr. Anne Flitcraft and I found that 45% of the mothers were battered whose children were identified for child abuse or neglect at Yale-New Haven Hospital (see “Women and Children at Risk” in Resources section). We also found that the children of battered mothers were significantly more likely to be physically abused than neglected and that the same man who was abusing the mother was typically also responsible for abusing the child. Indeed, fathers or father substitutes 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. When researchers at Boston City Hospital Pediatric Department replicated our study, they found that the mother was battered in almost 60% of the child abuse and neglect cases.

It would be helpful to have a “gold standard” of approximately what proportion of CPS cases involve domestic violence to judge whether their current rates of identification are adequate. But this is hard to determine because the proportion of CPS cases where domestic violence is identified depends on whether the agency screens for domestic violence and with what tools, whether the organization supports intervention, and whether mothers see the agency as a credible source of support or safety. CPS workers are rarely held 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. Over a seven-month period, domestic violence was identified in 32% of CPS cases in Massachusetts, for example. Yet, when caseworkers included a stated goal of protecting adult victims, the proportion of domestic violence cases increased to 42%. When caseworkers 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. 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 14½% of CPS cases; when referral agencies employed a preventive questionnaire, they identified domestic violence as a problem in 49% of the cases. 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 greater resources are devoted.

Many battered women respond to frank and confidential questions about abuse. However, within the context of a CPS investigation, many women fear that revealing domestic violence will jeopardize their parenting status or cause abuse to escalate. Research shows this fear is reasonable. In our studies at Yale, we found that foster placement was used more readily for children of battered than non-battered women. These cases were significantly more likely to be assigned for investigation for “failure to protect” than in cases where domestic violence was not reported.

Because CPS workers fail to ask about domestic violence and victims are reluctant to discuss their problems with CPS, cases come to the attention of CPS only when a severe injury occurs or some other factor makes identification unavoidable. This situation often leads CPS caseworkers to define domestic violence as an “emergency” that requires such dramatic interventions as placement, rather than recognizing domestic violence as a dynamic that is more typically ongoing, whose most devastating effects are cumulative rather than incident-specific and where sustained support and enhanced advocacy are needed. In addition to being widespread, domestic violence can have both indirect and direct effects on children’s health and welfare.

### **Indirect Effects**

With a lifetime prevalence at somewhere between 20 and 30 percent of the female population, domestic violence is the single most important cause of injury for which women seek medical attention. Domestic violence is also a significant contributor to homicide, divorce, incarceration, homelessness, HIV, substance use, suicidality, depression, and a broad range of other medical, behavioral and mental health problems among women. All of these problems can harm children either because they are separated from the primary caretaker (such as during a hospitalization) or because the mother’s capacity for caretaking is compromised by the problems caused by abuse. I estimate that approximately 40% of battering cases involve “coercive control,” where the perpetrator isolates, intimidates and controls the victim as well as assaults her. In these cases, “control” extends to how she relates to or disciplines the children as well as to regulation of the woman’s access to resources needed to keep children healthy and safe.

To what extent do these indirect effects of the batterer’s abuse of the mother impair her capacity to parent, particularly in the CPS caseload? Unfortunately, most research focuses on the deficits rather than the strengths of battered women. In fact, although abuse causes a range of physical health, mental health and behavioral problems for victims, their parenting capacity remains unimpaired in the vast majority of cases. This is true even among the small minority of victims who seek shelter. A recent shelter-based study 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.” 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. Seventy-three percent of the battered mothers reported spanking or slapping their children, yet only fifty-eight percent of the children reported ever being spanked or slapped. Significantly, the proportion of battered mothers who employ corporal punishment is actually smaller than the comparable proportion among American parents generally. Perhaps the most telling findings are that the children of battered mothers in these shelters reported relatively high and stable scores on their self-concept across time, and exhibited overall adjustment that fell within the range of what is considered normal.

### **A Profile of Battered Mothers in the CPS Caseload**

Despite the many problems caused by abuse, within the multi-problem CPS caseload, battered women are much less likely than non-battered women to exhibit the sorts of mental health or behavioral problems that affect children. In our research at Yale, Dr. Flitcraft and I found two subgroups of mothers. In a group where children were “neglected,” the mothers typically had histories that included alcohol or drug abuse, mental illness, sexual abuse or violence in childhood. In a second group, where most battered women fell, children had been “abused,” but the mothers had few secondary problems. One explanation for this paradox is that the battered mothers frequently enter the CPS caseload because of the batterer’s behavior, not because of anything that is wrong with them. In New York City, we found that non-battered mothers in the CPS caseload were almost one hundred percent more likely than battered mothers to be identified with abusing drugs (19.4%-11.3%) or both alcohol and drugs (2.0% vs. 1.4%). By contrast, fully 84½% of the domestic violence victims had no mental health problems. This evidence makes the high rate of removal of children among battered women even more shocking.

The possibility that a mother’s victimization may indirectly harm her children justifies helping her develop a safety plan and offering voluntary services to all families where domestic violence is identified. But the fact that battered women within the CPS caseload tend to be relatively high functioning and capable parents mitigates against finding these mothers neglectful or assuming that domestic violence automatically poses an emergent risk to children justifying placement. It also underlines the wisdom of basing any intervention on a woman’s strengths and capacity for independent decision-making rather than her deficits. Victims may need treatment for substance abuse or mental health problems related to trauma. But more typical needs include economic assistance, shelter and other housing options, and enhanced advocacy—particularly within the criminal justice and court systems. Without compelling evidence that victims have entered the CPS caseload because of behavioral and mental health problems, referrals to counseling, “parent education” or other typical CPS services send the message that the woman, not her abuser, is responsible for her victimization.

### **Direct Effects**

There is no question that domestic violence directly increases the risk that children will be abused or neglected. Studies have consistently found that both the men and women in households where

domestic violence occurs commit more child abuse than where it is absent. However, the proportion of cases where the harm to children rises to a level sufficient to prompt emergency removal is too small to justify a generic equation of domestic violence with child abuse or neglect.

### **Limits of Research on Domestic Violence and Child Abuse**

The factors that place the child at risk in domestic violence cases are poorly understood, largely because research in this area is methodologically and conceptually weak. Among the numerous problems with the research, the most important involve the use of measures of children's problems that have little relationship to legal or institutional definitions of abuse; reliance on small, clinical or shelter samples that are unrepresentative of either battered women or victims within the CPS population; and a failure to balance reported problems with measures of resilience or protective factors. Studies rarely link the outcomes for children to the type of domestic violence or the type of exposure involved (such as direct witnessing, overhearing, seeing the consequences). Rarely do researchers determine whether children who "witnessed" domestic violence were also abused or whether they actually have the problems indicated by tests or second-hand reports from caretakers. Virtually no studies in the field control for such confounding factors as the disruptive effects of going to a shelter, a child's developmental age, exposure to community violence or other potentially traumatic life experiences that may explain clinical measures of dysfunction. Since few studies track the effects of domestic violence on children's mental health over time, we have no way to know whether observed problems are long-term, adaptive or whether they are likely to respond to a safe environment (like a shelter) or to counseling. In sum, we know little more than that domestic violence places some subset of children at risk and what types of problems they suffer.

The poor quality of research has not prevented courts, state policy makers and CPS agencies from treating domestic violence as virtually identical to child abuse or neglect. Since there is little understanding of the actual risks or dynamics in domestic violence cases, child welfare professionals take the most conservative course. They assume any and all cases of domestic violence present an emergency situation and that adult victims as well as perpetrators are equally culpable for children's "exposure." This approach frequently has consequences for the parties involved that can be as devastating as abuse itself.

### **Direct or Inadvertent Assault**

There are four ways in which domestic violence can directly harm children: (1) as a result of an assault; (2) witnessing; (3) modeling; or (4) when coercive control is extended to a child. Research indicates that children are injured in an estimated 17% of domestic violence encounters because one of the partners abuses the child, or the child intervenes or is inadvertently injured by a partner's abuse of the primary caretaker. Although not conclusive, existing evidence suggests that serious injury is relatively rare in these cases. For example, of the 15,060 incidents in which Connecticut State Police made an arrest in 1999, children were "involved" in 2,651 (17.6%). But in only one in 6 of these cases (441), 3% of the total, was an adult charged with "risk of injury," suggesting actual injury to children was rare. Note that cases involving arrest and CPS



intervention represent the most serious end of the domestic violence spectrum. Even if we take the highest estimates of harm to children (12.7% or 4%, respectively) as a measure of when removal should be considered, the fact that children are not harmed in somewhere between 87% and 97% of these incidents underlines the wisdom of a case-specific assessment rather than a blanket approach that equates domestic violence with child abuse or neglect.

## **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. Witnessing has been linked to a range of physical, psychological, and behavioral problems, depending on the developmental stage at which exposure occurs.<sup>4</sup> 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. Moreover, the effects of witnessing appear to dissipate significantly over time. Where children do exhibit behavioral problems, there is evidence that these are typically a direct result of the perpetrator's abuse rather than the mother's reactions, her problems, or other mediating factors.

Estimates of the percentage of children who experience some behavioral problems as a result of witnessing domestic violence range as high as 75%. However, there is little evidence that children who witness domestic violence commonly suffer serious problems. Among the boldest claims to the contrary come from the National Family Violence Surveys (NFVS), where it is estimated that as many as one child in three in the United States is harmed by domestic violence either because they are physically abused or develop behavioral problems. One reason this conclusion is spurious is that it combines relatively infrequent acts of serious violence against children with widely accepted forms of punishment and considers both "abuse." Moreover, "temper tantrums" are the most common behavioral problem uncovered by the NFVS, 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 1.4% and 2.8%. Though these rates are low, they are higher than the rates reported for non-exposed children, and may merit interventions that go beyond the array of counseling and support services that should be offered to all children exposed to violent relationships. The point, however, is that the rates of serious problems in children exposed to domestic violence are far too low to justify a policy that equates witnessing with abuse or neglect or assumes that all children in these circumstances face an imminent risk of being harmed. Since the effects of witnessing that are serious enough to qualify as maltreatment are limited to an extremely small proportion of exposed children, a decision to mandate services or remove children should only be made after the dynamics of abuse, the protective capacities of caretakers and children, and the vulnerability of a child have been carefully assessed.

## **Modeling**

It is widely believed that exposure to violence in childhood predisposes children to subsequent misbehavior or violence as adults. Indeed, the NFVS suggests that if male children in particular are exposed to the severest forms of domestic violence, where guns or knives are used, for instance, they are approximately 10 times more likely than other children to become abusive adults. The trouble with generalizing from this statistic is that only 1% of all children are raised in these “most violent” families and that only one child in five (.02% of all children) of this 1% grow up to become perpetrators of domestic violence. Perhaps it is easier to understand the statistic this way: for every 1,000 male children, 10 will be exposed to the use of knives and guns in their home and 2 of these children will engage in domestic violence as an adult. The vast majority of these children, 8 of 10, do not appear to model the behavior they have witnessed. The NFVS also shows that for every 10 children exposed to lower levels of violence, only 1 will become a violent adult and 9 will not.

The percentage of children from violent homes who “act out” as teens is somewhat higher. There are only a few longitudinal studies that followed children into later life, a costly research method that provides a more accurate measure of modeling than simply asking adults (or their partners) whether they were “abused” or witnessed parental domestic violence as children. One review of the longitudinal studies literature concludes that as many as 30% of the children exposed to parental domestic violence may become violent adults. These studies rarely control for other influences that might explain why children became violent adults, such as exposure to violence in the media or in their communities. However, even if the risk is higher that children will model their parents’ violence, it cannot justify a policy that identifies witnessing domestic violence with child maltreatment.

## **Coercive Control**

The most devastating context in which domestic violence places children at risk involves a perpetrator’s use of “coercive control,” a pattern of abuse in which frequent physical, but usually non-injurious, assaults are accompanied by efforts to isolate, intimidate and control a partner. Although there is a growing literature on coercive control and advocates are familiar with its dynamics, it has yet to be studied in any systematic way. Based on limited information, I estimate that approximately 40% of the battered women seeking services are victims of coercive control. In these cases, because of the cumulative effect of assaults and control strategies over time, victims often feel like prisoners. Perpetrators may deprive partners of basic resources such as money, food, transportation or medication, or regulate aspects of their everyday life such as how they dress, cook, clean or discipline children. With the use of cell phones, stalking, beepers and other means, perpetrators often extend their attempts to regulate their partner’s behavior to work and other social settings and try to isolate them from family, friends, helping professionals and other potential sources of support. The woman’s physical risk is related to her “entrapment,” meaning the extent to which the isolation and controls imposed by the perpetrator make it seem impossible for her to effectively exit the abusive relationship. In cases of coercive control, child maltreatment is more likely to take the form of “neglect” than “abuse” because, in depriving the victim of basic resources and controlling her behavior, the perpetrator sabotages her caretaking. Because there

is little research on coercive control, it is impossible to estimate what proportion of children are at risk in these cases or, even, exactly what risks are involved. Coercive control can also hurt children through two other patterns which I call “the battered mother’s dilemma,” and when child abuse occurs as “tangential spouse abuse.”

### The Battered Mother’s Dilemma

“The battered mother’s dilemma” refers to the choices battered women are frequently forced to make between their own safety and the safety of their children. In a recent case in which I testified, a woman whose life had been threatened returned to her house and was killed when her husband took their eighteen-month-old child “hostage.” While an incident like this brings the dilemma into sharp focus, it is more typical for a perpetrator to repeatedly force a victimized caretaker to choose between taking some action she believes is wrong (such as inappropriately disciplining her child), being hurt herself, or standing by while he hurts the child. Confronted with these dilemmas, victims attempt to do the best they can to manage an impossible situation, a response I call “control in the context of no control.” Any choice battered women make in these situations is dangerous and can result in harm to them or their children. Battered women who choose to keep themselves safe rather than to risk their safety by trying to help their children often feel ashamed and guilty about their choices and are highly vulnerable to victim-blaming interventions.

As advocates, one of our responsibilities is to work with CPS, the police or other agencies to redress the imbalance in power that places battered women in this dilemma and thereby expand their choices. Instead, battered mothers are often charged criminally, have their children removed or are otherwise held responsible for “failing to protect” children from an abuser or for not promptly reporting a child’s injury, even when to do so would put them in mortal danger. This victim-blaming strategy may reflect ignorance of the constraints faced by battered women or may be rooted in the exaggerated and sexist expectations of women’s role as mothers in our society. In either case, the punitive response merely aggravates the battered mother’s dilemma.

CPS policies often aggravate “the battered mother’s dilemma.” The increasing propensity for CPS agencies and courts to equate domestic violence with abuse or neglect illustrates this process. If a mother reports domestic violence, she risks losing her child; if she does not report, she and her children are in danger. With the threat of removal as the background, few women will talk frankly with a caseworker about being abused and may mislead a caseworker about the real nature of their predicament. If the woman is subsequently discredited, she may be denied services because of her “lie.” Holding battered women responsible for “engaging” in domestic violence also lends credibility to the batterer’s threat that if the victim disobeys him, she will lose her children. Abusers’ efforts to disempower their partners are also replicated when caseworkers require so-called “safety” plans (e.g., going to a shelter, leaving the abuser, or moving) as a mandated service without consultation with the client or domestic violence advocacy agency. Again, the woman is forced to choose between an unrealistic scenario that may increase her risk, cause her to lose her job or her home, or being charged with “refusing services” and consequently losing her child.

### Tangential Spouse Abuse

A related tactic occurs when the batterer treats the child as an extension of the mother and hurts, threatens or controls the child to increase the woman's dependence, compliance and/or fear. Child abuse as tangential spouse abuse is particularly common when the offender's access to his partner is limited (e.g., during separation and divorce), but he has access to the children because of a court order or by informal arrangement. Examples of this tactic in intact couples include: threats to report the mother to CPS, using children to tape-record a mother's telephone conversation, 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 or go to school and then neglecting them. To protect their children from these tactics, many mothers will hesitate to separate from an abusive partner, to report his abuse or to seek a Protection Order. Instead of respecting and enhancing the woman's protective strategy in these cases, CPS workers confronted with this situation often blame or punish the mother for "refusing services."

In summary, there is little empirical support for a policy that either equates domestic violence with child abuse or holds non-offending victims of domestic violence responsible for "neglect." In a vast majority of domestic violence cases, victims retain their capacity to parent and children remain physically and psychologically intact. Despite the numerous problems abused women suffer, battered mothers actually have fewer confounding psychosocial or behavioral problems than other mothers in the CPS caseload. Many children are hurt when their mother is abused, and any child exposed to parental violence can suffer psychologically or model violence in their adult relationships. If these problems are too infrequent to merit a blanket policy of removal, they do justify including children where domestic violence occurs in safety planning and offering them services. Where children are hurt because of domestic violence, the same man who is abusing the mother is many times more likely to be the source of harm or risk to the child. The most difficult situations involve coercive control, where the perpetrator targets the autonomy and decision-making capacity of the primary caretaker or uses the child to control the mother. The risks to children in these cases are unknown. But the aim of intervention in these relationships is to redress the imbalance of power, enhance the caretaking capacities of the victimized parent and hold the offender fully accountable.

### **The Risks of Placement**

The normal problems associated with separation from a primary caretaker and placement in a foster home are greatly magnified with children exposed to domestic violence.

Some researchers believe that merely witnessing domestic violence against a caretaker elicits fears of separation sufficient to evoke psychological and behavioral problems in children, particularly if they are of preschool age. The healthy development of preschool children requires a sense of security in a continuous bond with a caretaking parent who exercises reasonable control over their immediate universe, including control over the boundaries separating the caretaking relationship from the outside world. Batterers repeatedly violate these boundaries and, in coercive control, may also hinder a woman's capacity to set boundaries for a child's

behavior. One result is that young children exposed to domestic violence often experience their immediate environment as unpredictable and unsafe even when they have not been directly hurt or threatened. Instead of focusing their fears only on the abusive partner, they see the world as a frightening place because the person on whom they most depend can be made unavailable at any time. To manage these fears, some children project them onto other adults or older children in their environment, alternately withdrawing or becoming attached emotionally, becoming hostile or combative, or refusing to let their mothers of their sight. These children frequently suffer from nightmares, bed-wetting or similar stress-related problems.

Against this background, the trauma of placement can be particularly harsh because it confirms what the child fears most, namely separation, and can intensify feelings of guilt or self-blame that may leave lasting scars. Thus, in cases of domestic violence, placement should be used only as a last resort and only with compelling evidence that a mother's judgment is impaired (e.g, by chronic substance use or mental illness) or that the child faces imminent harm. Research by psychologist James Kent and his colleagues reported that "children removed from their natural homes and placed in a series of foster homes suffered long-term psychological problems that were actually more serious than the problems experienced by physically abused children who continued to be at-risk for abuse who remained with their parents."

The logical candidate for removal in abuse cases is the perpetrator, not the child. But there are problems associated with this strategy as well. Children may feel ambivalence about an abusive adult's removal from the home, particularly if the mother is also ambivalent about separation. The abuser has played a caretaking role or the child has formed a protective bond with the abuser, a dynamic called "identification with the aggressor." In this scenario, the child may blame the victim or themselves for the removal. Despite this possibility, denying an abusive partner access to the primary caretaker clarifies responsibility for the abuse, helps the mother re-establish boundaries between the home and the outside world, and restores the child's sense of security and continuity. Unfortunately, even when the victim favors separation and is supported by a court order, there is no guarantee it will end abuse. Indeed, most abusers attempt to maintain access after separation, adding another layer of danger and unpredictability to the home environment, increasing the overall level of tension.

Advocates can play a critical role in helping victims and CPS work through the dilemmas posed by separation. Most victims have an acute sense of the risks and benefits of alternative responses to abuse, including separation. While a victim's calculations may be imprecise (since the abusive partner is often unpredictable), advocates can help caseworkers respect the victim's special knowledge, support her decisions about if, when and how separation should be effected, collaborate in formulating a "safety plan" around what she has already done to protect herself and the children, and provide resources that expand the options available.

Occasionally, temporary foster placement is a desirable facet of safety planning, even if children have not been harmed. Some women remain in abusive relationships, putting themselves and their children in harm's way, because they fear separation will put the children at even greater risk, an example of the battered mother's dilemma. In other instances, a mother may understand the practical limits of intervention, recognize the child's risk, but feel too guilty or ashamed to request placement. Or she may feel she is ready to protect her child through placement, even if

she feels unable to protect herself. In these scenarios, removal is a step in a larger safety strategy, determined through joint planning with the victimized adult, and designed to preserve the functioning family unit of mother and child. For joint planning to work, advocates play a critical role in communicating the woman's predicament and needs in terms helping professionals and other potential supporters can understand. Family preservation should be built into the placement plan permitting the mother to frequently visit her child and access to services appropriate for reunification. Outside this context, involuntary child placement can elicit enormous guilt, anger and a refusal to cooperate with services. By contrast, parents who have initiated a process of placement have told me that being involved in the decision restored a sense of control over their fate. A great weight was lifted from their shoulders because they knew their children were safe, often for the first time. Conversely, when placement is part of a safety plan that involves all family members, a child's guilt about "leaving" can be assuaged and the trauma of separation lessened.

### **Challenges to Collaboration with CPS**

Domestic Violence Service (DVS) advocates and CPS caseworkers have the same principal constituencies and both emphasize safety. But we approach these constituencies from different orientations that seem at times to be mutually exclusive. The most obvious difference is that DVS staff advocate for the interests of women as women primarily and support their children mainly in the process of providing safety, service and support to adult victims. CPS agencies are mission-driven organizations that are held accountable for child safety and well-being, but not for the safety of adult victims in their caseload. Shelters arose out of a political movement in which victimized women played a critical role. By contrast, the major support for CPS comes from pediatricians and child welfare professionals. CPS considers women almost exclusively as mothers, interprets their needs only in relation to the needs of their children, and provides services designed to support women's capacities as caretakers. The rationale for this singular focus is that children are the most vulnerable segment of our population and other agencies, such as police or battered women's shelters, are responsible for adult safety and support. In some jurisdictions, CPS agencies emphasize "reunification" or "family preservation" alongside child protection. But, these aims have proved difficult to reconcile in practice, particularly in "high risk" cases, and attempts to give these aims equal weight often leave frontline CPS workers confused and demoralized.

The battered women's movement adapted the terms "domestic violence" and "abuse" from child welfare. But in child welfare, "abuse" refers to the fact that an adult has over-stepped their legitimate caretaking and decision-making power over a dependent child. The state's interest in the child is expressed by either ensuring that adult authority is exercised legitimately or by taking temporary protective custody of the child and delegating caretaking to a proxy parent. However, men have no legitimate authority over their partners. Any attempt to usurp a partner's decision-making capacity, coerce or subordinate her is illegitimate and constitutes abuse. The contrasting status of women and children also defines our differences in approach. There is no counterpart in our work with battered women to the protectionist policies of CPS. Best practices with battered women emphasize autonomy in decision-making and empowerment. In child protection, a mistake can cost a child's life. In the battered women's movement, we say that we know we are on the

right track when we allow women to make their own mistakes.

The differences in approach between DVS and CPS are highlighted when we work with families in which women and children are both victimized. To work effectively with non-offending parents and their children in these cases requires a realistic understanding of the risks posed by violence and the constraints on a victim's choices. But caretakers will only share this information if they trust CPS not to respond punitively. Because CPS is held accountable only for child protection, and can "take over" decision-making if they believe the child is in danger, caseworkers approach victimized mothers suspiciously and aggressively seek information that victims may not be ready to share or cannot share safely. A common result is a standoff: the non-offending parent withholds information, the CPS worker imposes an unrealistic "service plan," the woman refuses to comply, the worker becomes punitive and the mother becomes enraged. This dynamic was illustrated when ACS demanded to interview the 14-year-old daughter of Ms. Garcia, one of the Nicholson plaintiffs, who had witnessed her mother's abuse. Concerned that her 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's 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." By the time the domestic violence advocate became involved in this case, the battle lines were clearly drawn.

Given our different aims, values, constituencies and primary loyalties, conflicts between DVS and CPS are inevitable. The challenge is not to avoid or mute these conflicts, but to use them productively. This can be done if we make our differences explicit and show how they translate into alternative strategies that can be tested in community settings.

### **The Limits of the CPS Response**

Evidence from the Nicholson case and from around the country indicates that CPS agencies routinely sanction non-offending mothers rather than their abusive partners. Evidence also shows that CPS agencies rarely provide advocacy on behalf of victims or their children with prosecution, police or the courts, and equate safety plans with traditional service mandates. Additionally, CPS frequently petitions the family courts to remove children because victims fail to comply with inappropriate plans, rather than because of demonstrated harms to children. Instead of holding the perpetrator accountable, ending the victim's isolation through social or financial support, and reinforcing her capacity for independent decision-making, CPS dictates solutions such as insisting the victim go to a shelter or into counseling, even when this means she may lose her home or her job. If victims fail to comply with these plans, they are "indicated" for "refusing services." Removing the children of battered women from their homes because they have been victimized or because they have refused to take the steps CPS believes are necessary to end domestic violence is a victim-blaming practice that cannot be supported by research, provides unnecessary trauma to children and may aggravate the danger of serious abuse to mothers and/or children. Even as

we engage CPS caseworkers as partners or adversaries in specific cases, advocates should hold the agency as a whole publicly accountable for these and similarly unjust, discriminatory and harmful decisions.

The current organization of CPS presents formidable obstacles to optimal intervention in cases involving battered women. My own view is that many of these obstacles reflect the narrow mission caseworkers take to the field, as well as the gender bias that leads CPS agencies and the courts to hold non-offending women responsible if children are hurt in the midst of domestic violence or coercive control. Although many CPS agencies have turned to local DVS organizations for accurate information about woman abuse, many others continue to rely on widely discredited stereotypes about battered women and how domestic violence affects children. These stereotypes include the belief that battered women are “ambivalent” about leaving an abuser and are psychologically dependent and unable to act effectively on their own behalf. Clients who do not fit the stereotype of ambivalence and passivity are immediately suspect. In one of the Nicholson cases, Ms. Tillet allowed her boyfriend (who had moved out) to give her a ride home from the hospital (where he had put her) rather than create a scene that might culminate 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. We have already seen how Ms. Garcia’s attempt to protect her daughter from a potentially harmful interview was met with a punitive response. Before the girl’s removal, 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.” Because 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. CPS reframes initiatives like the ones taken by Ms. Garcia as “resistance.”

CPS agencies have become involved with domestic violence relatively recently, largely because of external political pressure. Emphasis on the fact that domestic violence harms children heightens concern. But because caseworkers have inaccurate information about how frequently domestic violence does harm to children or about how to determine when domestic violence is likely to harm children, cases involving domestic violence create an administrative nightmare for CPS. Inaccurate perceptions that are frequently perpetuated by the training CPS workers receive include that children are always harmed when they witness or are otherwise “exposed” to domestic violence, that non-offending parents are unable to protect their children in these cases, and that domestic violence constitutes an “emergency” that justifies immediate and dramatic action. Against this background, it is hardly surprising that caseworkers and their supervisors fall back on placement to allay their concerns.

Another factor that limits CPS response is the absence of a conceptual map to help caseworkers unravel the chain of causation or shape the information they receive about domestic violence into an intelligible and evidence-based story to guide assessment, judgment or intervention. We have done a much better job in documenting the “overlap” between domestic violence and child abuse than in explaining the dynamics in these cases or the predicaments these dynamics create for battered women, such as the battered mother’s dilemma. In our research at Yale, we found that in most cases, wife abuse occurred before child abuse, suggesting that what was at work here was



“child abuse as tangential spouse abuse,” where the perpetrator turned on the child as a way to control the mother. This means that investing in domestic violence services could be a powerful way to prevent child abuse.

The absence of accurate information or a coherent conceptual framework is evident in the protocols, training guides and assessment instruments available for CPS. The best of these materials offer a broad definition of domestic violence that includes: economic or psychological abuse, isolation and dimensions of control alongside physical violence, and enunciating “guiding principles” that include joint safety planning, holding perpetrators accountable and empowering victims. Many agencies have devised assessment tools that calculate the degree of risk in a home according to how victims answer a series of questions that attempt to operationalize the broad definition. Without accurate information about battered women or about how domestic violence affects child welfare, however, these tools lack coherence and are often contradictory.

An example comes from ACS in New York City. ACS provides caseworkers with a protocol that defines domestic violence as “coercive control,” but provides no guidance about how to apply this to actual situations. Meanwhile, the training ACS provides makes no mention of coercive control (tactics such as isolation, stalking, threats) and instead emphasizes psychological dimensions of abuse, confusing workers about whether they should be looking for elements of intimidation and control or for “dependence” and “ambivalence.” ACS workers are also given an assessment instrument that identifies cases as “high risk” if the partner has ever threatened or hit the primary caretaker. This risk designation is neither useful nor accurate. As we’ve seen, domestic violence may be present in 50% or more of the CPS caseload. But only a small minority of the children in these families will suffer physical, psychological or behavioral problems. The assessment includes other questions that are likely to indicate a high risk, such as whether the mother has access to money or is under surveillance. But these questions are not designated as indicating risk. Why ask them, then, one might wonder? Moreover, no connection is made between “high risk” cases and the related service needs of battered women and their children.

Calling attention to domestic violence through focused training and the development of protocols, guidelines and assessment instruments sharply increases the proportion of cases where it is identified. But without guidance in how to apply what is seen or heard to intervention decisions, improved identification merely aggravates the dilemmas caseworkers face—dilemmas which they then pass on to client families through inappropriate and punitive interventions.

Some jurisdictions have sharply reduced placement in domestic violence cases. This dramatic step is only justified to prevent future risks when three conditions have been met. First, assessment shows that the abuse or neglect of the child is an ongoing risk that outweighs the risks associated with foster placement. Second, criminal justice intervention has been aggressively pursued for the offending adult. At a minimum, this would include support for the victim in obtaining a protective order, arrest of the batterer where appropriate, enhanced advocacy to ensure prosecution, and an offer of relevant services to the offender. Finally, CPS has engaged in joint safety planning with the non-offending adult and a range of family and community partners. This joint safety planning process includes an offer of services geared to the specific needs of all family members.

## Steps to Improve CPS Intervention

CPS has a greater impact on battered women than any other system except for the legal and criminal justice systems, particularly in minority or low-income communities. While I have emphasized the harmful effects of CPS intervention, CPS agencies also have access to a range of skills and resources that are often vital to a family's survival.

The long-term aim of advocacy with CPS is to make their response equitable and just. There are a number of immediate steps advocates can take that can improve the chances for a positive outcome in encounters with CPS. These include: (a) changes advocates can implement directly through collaboration with CPS, and (b) reforms advocates can pressure CPS to adopt.

### Direct Changes Through Collaboration with CPS

- Provide CPS with Accurate Information About Domestic Violence and its Effects on Children. By providing accurate information about domestic violence to CPS caseworkers, supervisors and administrators, advocates can lay the groundwork for evidence-based practice. In addition to sharing empirical research, advocates should familiarize CPS with the latest thinking on abusive behavior, including information on coercive control. Several sources of this information are listed in the Resources section on page 230.
- Help Design Principles to Guide CPS Intervention in Domestic Violence Cases. In many communities, DVS have been involved in helping CPS shape the principles that guide intervention in domestic violence cases and to which caseworkers will be held accountable. At a minimum, principles should identify the importance of: (a) safety for adult victims as a child protection strategy; (b) service planning through partnership with non-offending parents, (c) intervention to support the autonomy and self-determination of adult victims; and (d) holding the domestic violence perpetrator, not the victim, responsible for the abusive behavior and for stopping it. 5
- Demonstrate That Adapting the Values and Practices of the Battered Women's Movement Can Lead to Better Outcomes. In encounters with CPS, there is no substitute for bringing victims and victim stories into the dialogue, particularly as a way to help caseworkers "walk in the shoes" of battered women. Principles that emphasize self-determination and partnership remain rhetoric unless advocates use case examples to show that taking a "strengths perspective" works to enhance safety, increase client satisfaction, and facilitate family preservation. It is critical that CPS understand the differences between advocacy and a traditional social service approach.
- Help CPS Recognize the Importance of Aspects of Power and Control Other Than Physical Violence. Battered women frequently tell us "violence wasn't the worst part" and highlight elements of the perpetrator's psychological, economic, sexual coercion and control that frequently affect children. Because CPS rarely recognizes these dimensions of abuse, caseworkers conclude that a woman is exaggerating if she describes a level of fear and danger that seems disproportionate to the physical assault she has suffered. By providing an evidence-based description of these varied dimensions of power and control and how they

affect women's choices, advocates can reinforce the need for caseworkers to base assessment and service on the unique dynamics in a particular case.

- Provide CPS with Examples of Collaborative Models. Advocates should initiate a discussion of how domestic violence expertise can be integrated into the ongoing work of CPS. In this discussion, advocates can present various models of collaborative work and offer to participate in their implementation. The two major approaches to collaboration are for CPS to develop internal expertise in domestic violence or to subcontract with domestic violence victim services programs and other community-based organizations. In both approaches, advocates perform functions that may include policy-making, technical assistance, consultation, training, assessment and direct case management. A widely imitated model comes from Massachusetts, where CPS employs a tier of domestic violence specialists. By contrast, Connecticut subcontracts with community agencies for domestic violence training and case management with battered women and their children. New York City combines both approaches. It employs a domestic violence specialist in senior administration and includes domestic violence expertise on multi-disciplinary consultation teams. And, it also contracts with community "prevention" agencies to provide services to battered women and perpetrators. In Michigan, the state funds an independent track of service providers to manage "dual victim" cases. The broadest framework for collaboration is the "Coordinated Community Response," where DVS and CPS join with a range of health, mental health and criminal justice services to do community-wide service planning.
- Conduct a "Safety Audit." An exciting recent development has taken place in Duluth, where Ellen Pence and others at the Domestic Abuse Intervention Project (DAIP) adapted a method making legal and human service institutions more responsive to the needs of battered women and their children. Known as the Praxis Safety and Accountability Audit, the method has been applied to several CPS agencies and can be adapted by local programs to track client experience in your community.
- Litigation. Although lawsuits can be expensive and time-consuming, advocacy groups have increasingly and successfully employed them in the CPS system. Their major purpose is system or policy change, usually as part of a pre-judgment settlement. In preparation for the suit, advocates play a critical role in gathering case information, preparing women and children for the process, providing expert testimony and identifying desired changes. In New York, as a result of litigation, fewer battered mothers are being charged with neglect, domestic violence expertise has been incorporated into multi-disciplinary consultation teams and the agency is revising its responses in these cases. It is too early to say, however, whether the overall experience of battered women and children with CPS has improved.

## **Needed Reforms in CPS**

- Routine Identification. At present, most CPS agencies have no systematic way to identify domestic violence. As a result, unless it is brought to their attention in the initial referral, abuse becomes an issue only when an assault creates an emergency, the worst possible time to initiate intervention. Routine questioning of all clients is the first step towards a system-wide,

prevention-oriented response based on an appropriate allocation of resources.

- Enhanced Advocacy with Criminal Justice. Most CPS agencies use police only when they need to safely remove abused children. Battered women are expected to call police, secure orders of protection and enforce these orders on their own. If they fail, they are charged with neglect. In New York City, a Pilot Project (known as Zone A) showed that combining aggressive liaison with criminal justice and involvement by domestic violence advocates greatly increased offender accountability and reduced foster placement.
- Appropriate Allocation of Resources to Domestic Violence. If one part of the CPS system changes to better cope with domestic violence but others do not, things will get worse for battered women, not better. Improved identification without a concomitant increase in services will quickly overwhelm the system. Domestic violence affects somewhere between 40% and 60% of the CPS population, but only a tiny proportion of the CPS budget is currently devoted to the problem. Advocates should press for a commitment of internal resources to support families that is equivalent to its prevalence and seriousness within the CPS population.

Even with these changes, current problems are likely to persist until CPS broadens its mission to include the provision of safety and empowerment for all victimized family members. With this broadened mission, CPS must establish accountability at the management and organizational levels, and devote resources to domestic violence intervention equivalent to its importance in the CPS caseload. At the same time, CPS must be held accountable by the community for the truth that fuels the community-based response—that protecting and empowering battered women is the single best way to keep children safe.

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1. Readers who are interested in my testimony in *Nicholson* can write the author at EDS203@juno.com.
  2. The role of the Family Court system in this process is the topic of a recent report by the Battered Mothers' Testimony Project at the Wellesley Centers for Women. "Battered Mothers Speak Out: A Human Rights Report on DV and Child Custody in the Massachusetts Family Courts" (2002) considers the failure of MA Family Courts to protect abuse victims a violation of their "human rights." See <http://www.wcwonline.org/wrn/batteredreport.html> to download.
  3. For a recent review of this literature, see Anne E. Apple and George W. Holden, *The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*. J. FAM. PSYCHOL, Vol. 12, 578-599 (1998). The estimate of 6.5% is from a study of 933 cases of wife assault in Britain by R.E. Dobash, *The Relationship between Violence Directed at Women and Violence Directed at Children Within the Family Setting*, App. 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*. AM. J. ORTHO-PSYCHIATRY, Vol. 51, 692-99, (1981). The

estimate of 3.3 million is from Bonnie E. Carlson, "Children's Observations of Interparental Violence," in Albert R. Roberts, ed., *Battered Women and Their Families*, 147-67 (1998). By contrast, Straus estimated that there may be as many as ten million teenagers exposed to domestic violence each year. Murray A. Straus & Richard J. Gelles, *Physical Violence in American Families*, 106-07 (1990). Straus and Gelles go on to estimate that "at least a third of American children have witnessed violence between their parents, and most have endured repeated instances." *Id.* at 98.

4. 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. See Peter G. Jaffe, et al., *Children of Battered Women*, 28-29 (1990). 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. 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).
5. These principles are outlined in Ganley, A., Schechter, S., *Domestic Violence: A National Curriculum for Child Protective Services*. Family Violence Prevention Fund, 1996, available at <http://endabuse.org/programs/display.php3?DocID=79>.

### **Additional Resources**

Evan Stark, "The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response," *Women's Rights Law Reporter*, Spring 2002, Vol. 23 (2). This is the expert testimony presented in federal case *Nicholson v. Williams*.

For an overview of the relationships between woman battering and child abuse drawn from feminist theory, see Evan Stark & Anne Flitcraft, "Women and Children at Risk: A Feminist Perspective on Child Abuse" in *Women at Risk: Domestic Violence and Women's Health*, Sage Publications, 1996.

Lundy Bancroft and Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Families* Sage Publications, 2002.