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CHILD WELFARE WATCH

Tough Decisions:

Dealing with Domestic Violence

According to state case record reviews, just 16 percent of reported cases of child abuse and neglect also include allegations of domestic violence. But more extensive research has found that between one-third and one-half of all child welfare cases in New York also involve woman abuse. (*See "Doing Better for Battered Moms," page 2.*)

In child abuse and neglect cases involving domestic violence, the number of children placed in foster care has declined dramatically, according to a review of Bronx Family Court cases by the Legal Aid Society. In cases concluded in 1999, nearly one in four children were separated from parents and kin. In cases concluded after June 2002, nine of 10 children remained with a parent, and the rest were with relatives. (*See "Safety First," page 4.*)

Domestic violence survivors endure punishing hardships in the city's courts. Often, they must appear in multiple courts—Family, Criminal and Supreme—for different issues stemming from the same assault or relationship. This can lead to conflicting outcomes, like one judge ordering visits for a family reunification plan and another ordering a mother to stay away from her husband. (*See "Making Matters Worse," page 7.*)

Many children who have witnessed domestic violence have nightmares, trouble sleeping, intense anxiety about a parent's safety and problems concentrating. As they grow up, child witnesses may become more aggressive and antisocial and feel more anxiety, depression and anger than other children. Experts consider New York City's programs for these children to be among the best in the field, yet these programs have only a few hundred slots and long waiting lists. (*See "Witness Protection," page 9.*)

More than 14,000 women were referred by Safe Horizon and other agencies to domestic violence shelters last year, but only one in three received a bed. The city can accommodate just 1,900 domestic violence survivors at a time. (*See "Safety First," page 4.*)

Nearly one of every 10 child abuse and neglect investigations in the city now includes a consultation with a clinical expert in domestic violence, substance abuse or mental health based in ACS field offices. Last year, about 40 percent of these consultations involved domestic violence. This work is the result of a $5 million program begun in late 2002. (*See "First on the Scene," page 11.*)

Introduction:

Doing Better for Battered Moms

PUBLIC OFFICIALS USUALLY CONSIDER orders from the courthouse bench to be unwelcome, restrictive of management and demanding a lot of resources for compliance. At the New York City Administration for Children's Services (ACS), reaction to the federal district court injunction imposed last year in the *Nicholson v. Williams* class action lawsuit has been no exception.

The lawsuit challenged ACS practice in cases of suspected abuse and neglect that involve domestic violence. (See "Nicholson v. The System," page 6.) Too often, plaintiffs said, ACS removed children from their mothers unnecessarily and circumvented the women's due process rights. The judge agreed.

Agency administrators say the injunction has required them to train staff to simply comply with judicial dictates, diverting energy from more substantive work on the problem of domestic violence.

The *Nicholson* case marked the climax in New York of conflicting passions that have riven the child welfare and domestic violence fields nationwide for decades. Domestic violence advocates long believed that child welfare bureaus coerced vulnerable women by threatening to remove, or by actually removing, children from their care. Child welfare authorities questioned whether advocates for battered mothers fully understood the government's mandate to protect children.

The testimony of ACS Child Protective Manager Nat Williams offered evidence of practices that domestic violence advocates have long condemned. After Sharwline Nicholson was brutally assaulted by her daughter's father, Williams approved the removal to foster care of her baby girl and six-year-old son. He let five days pass after Nicholson's children were placed with strangers in foster care before seeking approval from the Family Court for the placement. Further, he rejected Nicholson's choice of caregivers, including a relative in the Bronx and her mother in New Jersey, and Nicholson wasn't allowed to see her own children for more than a week.

Williams conceded this was done with the hope that Nicholson would agree to receive services. He may have had good reason to want Nicholson to participate in safety planning services or enter an emergency shelter. Yet the description of coercive tactics involving the removal of small children was viewed as shocking in the courtroom.

Fortunately, from Massachusetts to Iowa, Michigan to New York City, domestic violence advocates today are increasingly working alongside more flexible and attentive child protection units. Sensitive work with battered mothers is often now seen as the surest way to also protect their children.

Studies document the overlap of spousal abuse and child abuse, as well as stark cause-and-effect linkages between domestic violence and depression, substance abuse and child neglect. Some state child welfare departments report that as many as two-fifths of their most violent child abuse cases also involved spousal abuse. In New York City, case record reviews found that between 14 and 16 percent of reports included domestic violence allegations. But in a 1997 survey of women referred to foster care preventive services, nearly half said they were victims of domestic violence. What's more, children themselves are often witnesses to violence, and suffer their own emotional scars.

Government can neither prevent all family violence nor be the only intervening force. Effective collaborations include clinical experts, child protection staff, community groups, police, district attorneys and other institutions. In New York City, new partnerships as well as new resources for child protective workers—protocols, trainings, clinical support and more—began before the *Nicholson* lawsuit, and have grown substantially in its wake.

This edition of *Child Welfare Watch* examines the confluence of child welfare practice and domestic violence advocacy as it has taken shape in the nation's largest and most complicated child welfare system. It is not intended to be a comprehensive overview; this edition's primary focus is on the role of public agencies and the courts.

And while officials may contest the value of the *Nicholson* injunction, innovations spurred at least in part by the lawsuit have established better services for our city's families.◆

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Recommendations & Solutions

Proposed by the Child Welfare Watch Advisory Board

Reform in the Wake of Nicholson

The Administration for Children's Services (ACS) has brought lessons learned from pioneering domestic violence projects in other states to the largest urban child welfare system in the nation—and services here are changing for the better. Important improvements have been made in ACS field offices and in its legal practice. Domestic violence expertise has also grown among human service nonprofits.

In this report we look at some of the changes and discuss where practitioners, advocates and others hope to go next. These recommendations reflect the results of several dozen interviews, here in New York and elsewhere. They were developed by the advisory board and staff of the *Child Welfare Watch* project, with the intention of supporting efforts to improve how ACS and its contract agencies serve children and families dealing with violence in the home.

HASTEN NEW INVESTMENT in DOMESTIC VIOLENCE PROGRAMS

♦ The issue of domestic violence has generated political energy that could now be concentrated on expanding shelter resources and child witness programs, as well as on clinical support for child welfare services and legal support for parents. In New York City, only one bed is available for every three women referred to a bed in a domestic violence shelter. Non-residential services for battered women need more than twice the capacity of current programs to eliminate waiting lists. Programs for children who witness domestic violence have only a few hundred slots.

INSTITUTIONALIZE ACS POLICY REFORMS in FRONT-LINE PRACTICE

♦ Clinical experts on domestic violence based for the last year in ACS field offices have supported and bolstered investigators', supervisors' and managers' knowledge and expertise. This "clinical consultation" program should be sustained and strengthened. However, clinical experts have much work to do before front-line ACS staff become fully open to their support and skills. The *Watch* advisory board opposes extending the limited capacity of the teams to ACS contract preventive agencies until either more clinicians can be hired, or their expertise has become more thoroughly institutionalized within child protective services.

♦ The current ACS domestic violence protocol, drafted two years ago, includes a guide for interviewing the victim, assessing risk, planning for safety, and, separately, interviewing the batterer. According to several people who work with field office staff and who spoke with the *Watch*, familiarity with this protocol remains inconsistent and its use is not enforced widely enough by all CPS supervisors.

♦ The goals and principles in the ACS domestic violence strategic plan published in May 2003 offer a valuable guide for planning and implementation, but their realization will depend on the commitment of greater resources.

♦ One consequence of the *Nicholson* lawsuit has been extensive data collection by ACS on the overlap of domestic violence, child abuse and neglect reports, and the child welfare caseload. As far as we can determine, this data has not been analyzed to reveal trends within specific communities nor to reach valuable insights about the city as a whole. The data should be made available in a form that would help emerging neighborhood networks and community organizing projects clarify their strategies.

CHILDREN WHO WITNESS VIOLENCE HAVE a RIGHT to COUNSELING

♦ Agencies that contract with ACS should increase opportunities for family therapy for children in foster care. Good practices in child witness programs include family therapy for the children and the non-offending parent. This should be a standard resource for domestic violence survivors and their children—even when the children have been placed in foster or kinship care, if reunification remains their goal.

When the entire family is in preventive services, family therapy excluding the batterer should be strongly encouraged, even when the batterer is served by the same agency. The logistical hurdles are substantial. In foster care, coordinating therapy in addition to visitation is complicated. But these difficulties can be overcome.

♦ Foster care, mental health and youth service agencies should develop screening, counseling and peer support groups for older children who have witnessed domestic violence. Few children entering foster care are assessed or offered treatment to cope with the experience of domestic violence. Few participate in group counseling, and few receive education designed to prevent "date abuse" as a young adult.

BUILD COMMUNITY ORGANIZING PROJECTS on DOMESTIC VIOLENCE AWARENESS

♦ A City Council-funded project in Flatbush has shown the value of broad, institution-based community education that encourages collaboration among respected neighborhood groups, police, schools, religious institutions and residents, and spreads the responsibility for preventing and addressing domestic violence and child abuse across our city's social and governmental institutions. Local organizations need to know how to reach out to a parent safely and respectfully, how to help with safety planning, how to find professional assistance, and how to encourage a sense of moral indignation regarding abuse throughout the community.

INCLUDE ABUSE and NEGLECT CASES in INTEGRATED DOMESTIC VIOLENCE COURTS

♦ The "One Family, One Judge" policy promoted by Chief Judge Judith Kaye could help battered mothers avoid contradictory demands and overlapping court processes. However, victims using the integrated courts should be surveyed to determine whether having all of their cases before one judge has benefitted them or raised new problems.

PROVIDE DOMESTIC VIOLENCE SUPPORT and FUNDING to FOSTER CARE AGENCIES

♦ The ACS-funded Family Violence Prevention Project has established an effective model for extending domestic violence expertise throughout a broad network of nonprofit agencies. ACS should spearhead an aggressive effort to bring this same expertise to foster care agencies, where birth parents, foster parents, teens and even agency staff are dealing with violence in the home. City officials report that such a project is in fact underway. ◆

Safety First:

An Entrenched Culture at ACS Begins to Change

FEDERAL DISTRICT COURT JUDGE Jack Weinstein spoke to an audience extending far beyond his courtroom when he announced his injunction in the case of *Nicholson v. Williams* in 2002. Up and down the Administration for Children's Services (ACS) hierarchy, the decision gave leverage and urgency to initiatives that a handful of officials and advocates had encouraged for years.

In the year and a half since, new investigative guidelines, training requirements and practice methods have begun to reshape the work of ACS investigators, managers and attorneys.

Yet despite great progress, the overhaul of the child welfare system envisioned by advocates is far from complete. Lawyers and practitioners outside the agency say a great distance must be traveled before the system becomes fully responsive in the ways that domestic violence experts—and Judge Weinstein himself—would like to see.

"Children's welfare, the state interest which is so often the great counterweight deployed to justify state interference in family affairs, has virtually disappeared from the equation in the case of ACS's practices and policies regarding abused mothers," wrote Judge Weinstein more than a year ago. His injunction required fundamental changes, most notably an end to the city's practice, as the judge described it, of separating children from their battered mothers with neither valid reasons nor guarantees of due process. (See "Nicholson v. The System," page 6.)

The result of ACS and Family Court reforms is that today, battered women reported for child abuse or neglect are more likely than in the past to receive meaningful assistance from the city—and less likely to have their children taken away and placed in foster care. In Bronx Family Court, there has been a tremendous reduction in the number of children placed in foster care in cases involving domestic violence, according to the Legal Aid Society's Juvenile Rights Division.

"In the past, if people didn't understand domestic violence, they would just yank the children and leave the woman with the batterer, which is probably the worst thing they could do," recalls Susan Lob, director of the Battered Women's Resource Center. "Historically, nothing's been done to him," she says. "ACS gets it now that that's not the desired outcome."

THE NICHOLSON CASE HAS HELPED RESHAPE Family Court proceedings for many hundreds of parents. The Legal Aid Society Juvenile Rights Division recently compiled data showing that in Bronx Family Court abuse and neglect cases filed after June 2002—when Judge Weinstein's injunction took effect—91 percent of the children in concluded cases involving domestic violence were in the care of the non-offending parent (almost always the mother), and 9 percent were in kinship placements. By comparison, in a survey of cases concluded in 1999, 46 percent of the children were with the non-offending parent, 31 percent were in kinship care, and 23 percent were living with unrelated foster families. In other words, in the pre-*Nicholson* domestic violence cases, nearly one in four children were separated from parents and kin.

What's more, in most of those domestic violence cases filed in the Bronx since June 2002, ACS brought charges only against the fathers—and not the mothers.

"Before *Nicholson*, children were being placed in foster care at a much higher rate," says Lisa Kociubes, who coordinates Legal Aid's Safe Families Project, funded by the Annie E. Casey Foundation. "The thinking now is, let's keep the children with the parent and plan for their safety."

The Bronx numbers reflect the results of Legal Aid's foundation-funded effort to avoid removals. But other boroughs, too, have seen a change.

In Brooklyn, Family Court Judge Lee Elkins says he's seen a substantial reduction in cases where ACS has sought to remove a child on charges that a mother "engaged in domestic violence." He's also seen a new emphasis on pre-court safety planning. "As I read *Nicholson,* it requires [ACS] to engage in safety planning, and [the victim] is the one who should be making decisions," Elkins says. He has required ACS caseworkers to show they've engaged in safety planning before they can recommend removal of a child.

More broadly, in cases involving domestic violence, the *Nicholson* injunction requires ACS attorneys to provide Family Court judges with "particular and specific" allegations about the risk of harm to children that would warrant their removal from a mother. In practice, this means supervisors in the ACS legal division now review any case involving domestic violence before it is filed, to make sure details go well beyond allegations of "engaging in domestic violence."

However, some attorneys working with mothers in Family Court are skeptical of the depth of the post-*Nicholson* changes and insist that, in some recent cases, the city has not changed the underlying intent of removing children from their mothers' care.

"ACS is complying with that court order to the letter. I don't think they're complying with the spirit," says Carolyn Kubitschek, whose firm represented the plaintiffs in the *Nicholson* case. She says that in one of her cases, the initial charge against a mother was "engaging in domestic violence." ACS then dropped that charge and instead attempted to remove the kids by arguing the mother should have known about the father's drug addiction.

DOMESTIC VIOLENCE OFTEN LIVES SIDE-BY-SIDE with other problems. Studies have shown that in many cases battering coexists with, results from, or leads to drug and alcohol abuse and severe depression—and the consequent neglect of children. For an investigator, it is often possible to identify other problems that can technically justify a removal.

Yet that doesn't mean filing a petition in court is necessarily the best way to protect the child, explains Liz Roberts, director of Domestic Violence Policy and Planning at ACS. Last year, the agency posted teams of clinical experts in 12 of the city's child welfare offices to help staff learn how to work better with parents who have mental health, substance abuse and/or domestic violence problems. (See "First on the Scene," page 11.)

The clinicians and ACS trainers are pressing workers to use a revised protocol on every investigation that appears to involve domestic violence. The six-page protocol guides workers on how to appropriately interview a battered woman, as well as the suspected batterer and children in the home (this should be done carefully, and separately, without confronting the batterer about the allegations in front of the woman or children). It also helps workers make a safety plan for the mother and her children, and provides a small handful of resources for referrals and support.

However, some trainers as well as some of

FIRST PERSON: SAVED BY MY TENTH CASEWORKER

By Diana Henriquez

In the beginning, my boyfriend acted like he loved me. But after a year, he began to kick me, punch me, smack me in the face. Once he pulled a gun and threatened to kill me. He told me he would hunt me down and kill me if I tried to leave.

I suffered through about a year of abuse before trying to leave him the first of many times. Meanwhile, his violence was getting worse.

When I first called the cops, they said that, since my boyfriend had been living with me for more than six months, they couldn't do anything. I called the cops seven times in all while I was living with my boyfriend, but they never helped me. I also went to a domestic violence unit, but the first time the social worker told me I'd have to come back in a few weeks. After the second trip, when they still didn't help me, I never went back.

I felt I had no one to turn to. Even my mother said she didn't want anything to do with my problems. I felt like I was stuck with this man. Then, in July 1993, about two years after I met him, my boyfriend broke my three-year-old son's leg. I don't know why or how. He went to the hospital and, after that, ACS took him. Losing my son was the hardest thing I have ever gone through.

I stayed with my boyfriend because I thought he would kill me if I tried to leave. Then a couple of months after ACS took my son, my boyfriend was arrested on drug charges and sentenced to five to seven years in jail. He spent a year and a half locked up.

After my son was taken, I had to fight the foster care system. I felt lost each time I went to court. I didn't know what to do or say. I didn't trust anyone. For a year and half, all I did was comply with the requirements placed on me, cry, and wish for my son back. I didn't understand why he was taken.

Eventually, I started to learn who I was and what I wanted from my life. Therapy helped. Coming to terms with my past meant learning not to blame myself for everything that had gone wrong and accepting myself and what had happened to me.

But even as I grew stronger, my caseworkers found all sorts of reasons why my son couldn't come back. I had 10 different workers in the span of six years, making it nearly impossible to develop a trusting relationship with any of them. With the exception of my last social worker, none seemed interested in helping me get my son back.

Eventually I succeeded in getting my ex-boyfriend arrested for being in my house without permission. Because he had other charges against him, he was locked up for almost two years. By now, my son had been in foster care more than three years. The pain of not being with him grew.

I started to read books about how to fight back. Mine wasn't a quick learning curve, but four years after he had gone into foster care, I began putting demands on the table. I was no longer the scared, young girl I had been. But still my caseworker was saying that my son was not ready to come home.

It was my tenth caseworker, Donna, who finally saved me. The lawyer for ACS was trying to terminate my parental rights, but Donna told the judge what I had accomplished in the past five years and how much my son was hurting without me. My son finally came back to me in 1999. He had been in foster care for six years.

The first few years my son was home were hard. He had nightmares. He was very angry, Sometimes he'd yell, "Fuck everybody, you can send me back!" At first, I didn't feel strong enough to handle it. For the most part, I just let him yell and scream and tried to have faith that he would come around and be himself again. Eventually I realized he was just testing me to see if I was going to get rid of him like all his foster homes.

My son is now 13 years old and everything has changed for the better. He and I have built trust and closeness over the past four years. He's doing better in school, and at home we talk and laugh. It's been a long road, but I enjoy every hour, minute and second with him.

I often wonder why the system didn't help us stay together. The cops could have helped me by arresting the perpetrator of my abuse. The child welfare system could have given me preventive services instead of taking away my son. The court system could have held my boyfriend responsible for his violence; instead the city charged me with neglect and abuse. Everywhere I tried to get help, I couldn't find it.

I've learned over the years that, when the system isn't working right, you can and should fight. I've also learned to work within it as a parent leader at a nonprofit agency, New York Foundling, using my knowledge to help other parents through the system. But now that I have my son with me, I don't want to look back on the lost six years as a tragedy. Instead, I focus on the invaluable lessons I've learned. ACS needs to learn these lessons too, so other families are not treated this way. ◆

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For more stories see www.youthcomm.org.

the clinical experts—who are employed by nonprofit organizations but stationed inside ACS offices—say there is great variation among the frontline staff.

"We are trying to instill change in a really entrenched system," explains Joe Ackerman, who until recently ran the New York Foundling Hospital's clinical consultation teams in five ACS neighborhood offices. "Change is hard." He and several of his colleagues say a growing cadre of workers in every field office has accepted the new approaches, yet there are many other investigators who remain resistant to change.

IN MAY, ACS PUBLISHED A STRATEGIC PLAN that sets out deadlines for achieving specific goals in the domestic violence arena, including new training, better evaluation tools, and improved coordination between ACS and the criminal justice system to ensure that batterers are held accountable.

The plan has won nearly uniform praise, but many advocates remain uncertain about whether agency employees have embraced the policy vision. One point of concern, echoed by domestic violence advocates across the country, is that child welfare workers may be coercing mothers into signing releases allowing agency caseworkers to read their counseling records in order to confirm that the mothers are actually attending programs and receiving services.

"If the mother had significant symptoms of depression or post-traumatic stress disorder that seemed to be related to the battering, we would want to be sure she is getting services, to protect the children," says Roberts of ACS. "Coercion is not necessarily something we should need or want to do. …We're not asking victims to share every detail."

However, once a mother signs a waiver, she may also waive her right to confidentiality not only of her attendance records, but also

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NICHOLSON V. THE SYSTEM

The most powerful force pushing ACS' recent domestic violence policy reforms is a federal class action lawsuit that prompted a judge to condemn the city's child welfare system as Kafkaesque and akin to "a form of slavery."

Filed in 2000, *Nicholson v. Williams* brought together the cases of three New York City mothers and their children. Each of the women had survived an assault by a partner, only to be charged by ACS with neglect for "engaging in domestic violence." ACS placed their children in foster care, and the mothers sued.

In January 2002, federal Judge Jack B. Weinstein ruled that the city had violated the women's constitutional rights, as well as those of their children. He issued an injunction that ordered ACS to change its policies and practices by June 2002, and to stop substantiating findings of abuse or neglect against mothers based solely on the fact that they were victims of domestic violence or had "failed to cooperate with 'services,' where the sole reason for offering services is that the mother has been a victim of domestic violence." He also ordered ACS to evaluate all pending domestic violence cases.

Judge Weinstein's stark opinion criticized agency managers for engaging in reflexive, fearful "institutional self-protection," "bureaucratic caution and ignorance," "bureaucratic inefficiency, and outmoded institutional biases," among other scathingly described practices. Notably, he disputed former Commissioner Nicholas Scoppetta's contention that only a very small number of women had had their children removed because of domestic violence. "The evidence indicates that it occurs on the order of a hundred cases a year," Weinstein said in court.

The judge essentially ordered ACS to comply with its own existing policies, which require caseworkers to make "every effort" to work with a non-abusive mother to plan for the safety of her children without taking them into foster care.

But Weinstein did not reverse any neglect findings already issued in Family Court. While *Nicholson* was pending, at least one mother who had joined in the lawsuit, Michelle Garcia, was found to have neglected her children based on suffering an assault by her boyfriend. She appealed, and, on February 25, 2003, the Appellate Division of state Supreme Court ruled in her favor, and reiterated Weinstein's argument that she could not be charged with neglect simply for failing to cooperate with services.

ACS General Counsel Joseph Cardieri says the women who sued the city were, perhaps, examples of "the worst cases, arguably bad cases," but were not representative of how ACS generally dealt with domestic violence. "You can't extrapolate from those handful of cases that the system had a policy and practice," of removing children from domestic violence victims, he says.

Although the city has settled with the women named in the case, paying them $75,000 per child placed in foster care, city lawyers appealed the class action case to federal Circuit Court. In September 2003, the higher court issued an opinion reiterating Weinstein's conclusion that serious constitutional issues were at stake, and agreeing that the women's experiences reflected practices well-known to ACS leadership. However, before issuing a final ruling, the justices referred the case to New York State's top court seeking clarification of state codes regarding child neglect.

"Before they find this behavior unconstitutional, they wanted to give the state Court of Appeals the chance to say it is not permitted by state law," says David Lansner, who represents the plaintiffs.

Alan G. Krams of the city's Law Department disputes that interpretation, saying instead that "The federal court noted… that ACS's practices are consistent with state law, as it has been interpreted by several of New York's intermediate appellate courts. Once the New York Court of Appeals addresses the questions of state law posed by the federal court, we are hopeful that the U.S. Court of Appeals will set aside the District Court's injunction."

Regardless of the outcome in court, says Cardieri, ACS fully intends to implement its latest reforms on cases involving domestic violence and has no intention of ever taking children away from a mother simply because she is the victim of a domestic assault. "Good policy is good policy," he says. ◆

Safety First

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to statements made to a therapist. If ACS later files a neglect petition against the mother, those statements could plausibly be entered into evidence against her, say Family Court attorneys. But they cannot point to specific cases where records from therapy have, in fact, been disclosed in court.

THE NICHOLSON INJUNCTION'S DEMANDS leave some government policymakers and administrators feeling constrained. "Most of the things we have been and are doing would have happened anyway," says Roberts. "*Nicholson* creates a litigious climate that makes my work more difficult. To do this work well, the child welfare system cannot do it alone. We need strong and consistent partnerships with domestic violence providers, district attorneys, police, Family Courts, everybody. In a litigation context which is adversarial, it's very difficult to create those relationships. And it creates a lot of extra work that is not always productive—reporting, monitoring, producing documents, they are all a part of that."

Attorneys representing battered mothers counter that *Nicholson* is about preserving individual rights, and even with Judge Weinstein's demands, these rights can be hard to protect. For example, in one mother's recent appeal, made well after the injunction, ACS attorneys argued the neglect finding against the mother, Monica M., was justified because of a history of domestic violence.

The five-member *Nicholson* review committee, appointed by Weinstein to assure compliance with his injunction, strongly disapproved. Committee Chair Bill Jones wrote in a May 15, 2003, memo to attorneys that ACS's "position and the arguments in support of it demonstrate a lack of awareness of *Nicholson* in that they blame mothers for being abused, don't acknowledge the need to show how a child is harmed by any violence, and are a clear abridgement of the principles enunciated in *Nicholson*, principles that ACS is obligated and committed to implement."

Even after every possible appeal in the *Nicholson* case is completed, there will always be frontline workers who respond to domestic violence in different ways. But advocates look to the lawsuit as improving the system. "The lawsuit got ACS angry," says Alisa del Tufo, executive director of CONNECT, a domestic violence advocacy, organizing and technical assistance program. "But it made them change." ◆

Making Matters Worse:

An Overwhelmed Family Court Struggles With Domestic Violence

SHAMIKA WRIGHT'S HUSBAND punched her in the head last May and knocked her to the ground as she cradled their 8-month-old son in her arms, according to police reports. At the hospital, a nurse took her vital signs, and staff called the state's child abuse hotline.

The city's Administration for Children's Services (ACS) investigated the family. At first, the case appeared to be an excellent example of a new era of mindful child welfare practice, where the alleged batterer is held accountable for his actions and the survivor finds the help she needs to keep her family together. Wright, a 25-year-old college graduate who had been married for about two years, took her infant and her 4-year-old son to stay at a relative's house for a few days, and then went into a shelter. Investigators declared the children safe and brought a neglect case against their dad.

But the worst of Wright's nightmare was yet to come.

Midway through the case against her husband, Bronx Family Court Judge Clark V. Richardson turned the tables. After he learned that both parents had filed orders of protection against one another in 2001, and that at that time Wright had allegedly pushed her mother-in-law and twisted her fingers back during an argument, Judge Richardson decided the young mother and her husband had engaged in mutual violence. The children, he said, must be removed from her custody.

Wright had no lawyer, as she hadn't been named as a respondent. The children were taken from her and placed with their paternal grandmother. Wright says she was then kicked out of her shelter because the space was needed for a woman with children. Next, ACS, which had not originally sought the children's removal, charged her with neglect.

"I don't think [Judge Richardson] even spoke to the mother" before the removal, says Brett Ward, a lawyer with the firm of Lansner and Kubitschek, who represented Wright pro bono in the ensuing court battle. Judge Richardson did not return calls seeking comment on this case and court process.

Despite the unusual twist in her case, Wright's traumatic path through New York City's courts is, in many ways, typical for domestic violence survivors with children.

About three weeks after her children entered foster care, she sits on a hard bench in Bronx Family Court, staring at the floor, worried. Her husband, alleged batterer, and father of her children occasionally glances at her with no particular malice from across the crowded waiting room. She's almost as big as he is. She says she has nothing but time to think about what's been said, but all that comes to her mind is what she's done wrong, how everything is her fault, mostly because she can't think of anyone else to blame. "I feel like it's taking a toll on my body and spirit. I'm so exhausted, I just want it to be over." Now, it shows. She turns to the wall and cries in hushed sobs.

LEAVING A VIOLENT RELATIONSHIP CAN BE confusing and painful. In New York, domestic violence survivors endure additional hardship in the punishing atmosphere of the city's courts. Often, they must appear in multiple courts—Family, Criminal and Supreme—for different issues stemming from the same assault or relationship. This can lead to conflicting outcomes, such as one judge ordering visits for a family reunification plan, and another ordering a mother to stay away from her husband. There is also a grave shortage of lawyers to represent parents in Family Court, and the few that are available are often overwhelmed. Cases are routinely delayed. Court calendars are packed with too many cases, for which there are too few judges. And, perhaps most frustratingly, the court system is structured in an adversarial, black-and-white way, insensitive to the psychological and practical complexities of domestic violence.

"We owe it to the victims of domestic violence and their children, our most vulnerable litigants, to change the way the courts treat families," wrote Judge Jonathan Lippman, chief administrative judge of the New York State Unified Court System, in January 2003 in the *New York Law Journal*. To do this, he proposed removing "the first obstacle they encounter when they turn to the courts for help—the structure of the court system itself."

Some of this state-mobilized innovation may soon begin to have an impact on abuse and neglect cases involving domestic violence in New York City. New model courts are slated to embrace these cases, bringing multiple cases affecting one family before a single judge and potentially improving the speed and clarity with which they are addressed. Meanwhile, some of the most far-reaching innovations on the national scene are pulling together staff from entire social service systems, well beyond the courthouse, to improve services and safety planning for battered mothers. This model, too, may soon arrive in the Bronx. (See "Greenbook Initiative," page 8.)

BUT FOR NOW, REFORMS HAVE ONLY BEGUN to touch Family Court. The hurdles for women like Shamika Wright are tremendous.

In recent years, there's been talk of reducing the overall length of time cases take to proceed in Family Court, yet delays are still common. "Delays are the rule and not the exception," says Michael Arsham, executive director of the Child Welfare Organizing Project, which works with parents seeking to regain custody of their children. Cases can be adjourned and dragged out over multiple appearances.

This is what happened to Wright. Judge Richardson repeatedly adjourned an early phase of the case and extended an emergency hearing regarding the appropriateness of her children's removal and whether the kids were in imminent danger. In June, she went to court six times; on four of those court dates, she spent nearly the entire day in the waiting room.

A scarcity of resources lies at the root of most delays. Currently, there are 47 Family Court judges (not including the city's Family Court administrative judge, Joseph Lauria, who occasionally hears cases) to hear the approximately 244,000 cases that come through court each year. "The enemy that we really fight is volume," notes Judge Lauria. "There are still Family Court judges with almost 1,000 cases on their calendar."

Family Court in New York City suffers one glaring scarcity above all others: a shortage of court-appointed lawyers. "I know of several cases in which the judge tells the parent if she doesn't have a lawyer, she shouldn't speak. Everybody in the room is frustrated," notes Chris Gottlieb, an attorney fellow at New York University's Family

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Making Matters Worse

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Defense Clinic. "You can't do your job if the parent doesn't have a lawyer." In the Bronx and Manhattan alone, there are about 80 assigned-counsel lawyers working on approximately 13,500 cases each year, according to administrators.

Exceptionally low pay deters many lawyers from such work. For 17 years, these attorneys have received only $25 an hour for out-of-court work and $40 for in-court. In June, the state legislature overrode a veto by Governor George Pataki and authorized wages of $75 an hour for assigned counsel in Family Court. The new law will take effect January 1, 2004.

EFFORTS TO RESHAPE THE COURTS TO accommodate the needs of families dealing with domestic violence also have to consider the complicated psychological, financial and other effects domestic abuse can have on a battered person. Battered women are not necessarily in a position to leave their abusers. He may control the lease on their home, the bank account, the income stream, and often her sense of self-worth. "The thing that comes through most strongly in these relationships is the incredible ambivalence," notes Arsham. "I love him, I hate him, I want to kill him, I can't live without him. That doesn't translate well into the black-and-white world of child welfare" and the courts, where there are supposed to be "obvious winners and losers, good guys and bad guys."

Some recent pilot projects have tried to deal with this complexity by establishing specialized courtrooms to hear only domestic violence cases. The cutting edge in New York is located at the Bronx Integrated Domestic Violence Court. It is the clearest expression of the "one-family, one-judge" concept, in which the same judge pulls together multiple cases involving a family touched by domestic violence, ranging from divorce proceedings to criminal assault charges and custody decisions. The court is part of a statewide initiative spearheaded by Chief Judge Judith Kaye that has worked with 1,500 families since late 2001. Eventually, abuse and neglect cases will likely be incorporated into the integrated court in the Bronx as they are in other parts of the state, but no date has been discussed for the shift.

There are numerous advantages to the integrated approach. The court is familiar with a batterer's current criminal record, for example, which can prove useful in decisions about child custody or visitation. The judge has instant access to all the cases affecting a family at a given time and can avoid rendering conflicting decisions (such as an order for family visitation conflicting with an order of protection). The judge is also able to monitor a batterer's compliance with orders of protection or court-ordered services, like anger management classes. In addition, the integrated court is meant to be simpler for litigants, saving them from some repeat visits, clarifying the possible outcomes and shortening the overall time a case is in court, which can otherwise drag on for months and even years in Family Court.

Integrated domestic violence courts are slated to open up in Queens and Staten Island before the end of this year, says Lauria, and across all of New York State by 2006.

Some advocates say tying together criminal and divorce proceedings with decisions about child removal and foster care could be risky. They fear that the involvement of a criminal prosecutor, for example, alongside the batterer's defense counsel, ACS lawyers, and Legal Aid lawyers for the children could altogether overwhelm a mother's authority as she tries to contest a decision to remove children to foster care. What's more, they say, information in the criminal case could influence the demands placed on a mother by a judge or ACS, or even delay the reunification of a family.

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FEDS MAY GREEN LIGHT INFLUENTIAL GREENBOOK INITIATIVE

The Greenbook Initiative, a federally funded program designed to spawn interagency collaboration in dealing with domestic violence and child maltreatment, may soon come to New York City. A funding bill that recently passed the House of Representatives and is now pending in the Senate would appropriate as much as $500,000 to start a Greenbook project in the city. In its present form, the bill would provide a total of $5 million to launch projects in six sites nationwide and provide for technical assistance to the programs.

Already six other jurisdictions participate in the federal demonstration project, each receiving roughly $350,000 per year to address fragmentation in services for families dealing with violence. Nationwide, different systems, including child welfare, domestic violence agencies, law enforcement, and the child dependency courts handle these cases with distinct mandates and can sometimes issue conflicting and harmful decisions.

The Greenbook project began to address this lack of coordination in 1999 with a publication titled "Effective Intervention in Domestic Violence and Child Maltreatment Cases," which lays out best practices and guidelines for streamlining services (and is, in fact, green). The Family Violence Project at the National Council of Juvenile and Family Court Judges (NCJFCJ), its publisher, has since given out more than 22,000 copies.

"Ultimately, our hope is that all the sites that are trying to get the work done will have some funding," says Billy Lee Dunford-Jackson, assistant director of the Family Violence Department of NCJFCJ.

The pending legislation is likely, but not certain, to allocate money for the six new programs. Mary Booth Dwight, a lobbyist with Heidepriem & Mager, Inc., says she is both confident that some money will be appropriated for the new Greenbook project sites and extremely doubtful that the bill will be funded in full. If allocated, the funds would become available sometime next year. Though it is not yet decided where in New York City a program would be located, there has been early discussion of Jose E. Serrano's South Bronx Congressional district as a possible site. Serrano is the ranking Democrat on the Commerce, Justice, State Subcommittee of the House Appropriations Committee.

A five-year federally financed evaluation of existing Greenbook programs is already underway. The first section, a review of the processes used by the six original Greenbook demonstration sites, is due out in several months and will be available on the Greenbook website. (www.thegreenbook.info) Two later reports will review the outcomes at these sites and whether systems involved in domestic violence cases there are communicating with each other and holding batterers accountable.

In the meantime, local advocates are hopeful about the potential of a New York City site. "If we are lucky enough to get the Greenbook, we'll be able to create more community based and grassroots involvement" in domestic violence cases involving children, says Alisa del Tufo, executive director of CONNECT, formerly the Family Violence Project of the Urban Justice Center. The ultimate goal, says del Tufo, is to create a more user-friendly court process and more preventive services so families don't have to go to court. "If we can create some sort of model where domestic violence is identified in child welfare cases in an even better way that they are now and we can create a network of preventive services, we'll be able to divert those cases and be even more supportive to the non-offending parent." ◆

Witness Protection:

Helping Children Deal With Violence in the Home

FIVE-YEAR-OLD KENNEY HAS trouble being separated from his mother—and difficulties being with her, too. He doesn't like to let her out of his sight. But his mother scolds him when she finds him clingy. And in response, Kenney sometimes repeats phrases he's heard his mother's boyfriend use with her. Because his conversational role model is also his mother's abuser, those words can be particularly hurtful.

At STEPS to End Family Violence, a domestic violence support program, Kenney and his mother are both undergoing therapy to help them deal with the effects of domestic abuse. Kenney, whose name has been changed for this article, hadn't been hit, but he had watched and listened as his mother was.

When STEPS first began supporting battered women, the program offered babysitting to make it easier for moms to get therapy. The babysitters soon realized the kids had issues of their own. Many of the children seemed unusually anxious when their mothers weren't around; others exploded in anger or cringed in fear, mimicking the behavior they had witnessed. For children growing up with violence in the home, silence, blame and explosive anger are common.

Children with one violent parent often feel unprotected by either parent, and can experience an overwhelming feeling of helplessness in the face of violence.

So STEPS began to offer therapy for children ages 4 to 13. Children exposed to chronic stress or trauma, particularly at a young age, can experience changes in the physiology of the brain that can end up leaving them in a chronic state of fear or anticipation of violence, even when nothing threatening is happening around them.

Kenney's therapy began by giving him goals to accomplish—like finishing a game—before checking on his mother, while she waited in another room. Over time, he was able to go from checking on her every ten minutes to only twice per session. Helping the child see that his mother was not going to disappear tempered some of his anxiety.

Many children who have witnessed domestic violence have nightmares, trouble sleeping, intense anxiety about a parent's safety, and problems concentrating. As they grow up, these children typically become more aggressive and antisocial and feel more anxiety, depression, anger and poor self-esteem than other children. They also are more likely to use violence and bullying to get what they want, and to believe that bullying and victimization are inevitable, says Carrie Epstein, senior director of child trauma at Safe Horizon, a victim's assistance agency.

Therapists with domestic violence experience can help ensure that children's responses are seen within their proper context, as a normal response to violence at home. "There are plenty of mental health clinics that do very good work with children, but dealing with domestic violence is different," says Betsy McAlister Groves, director of the Boston Child Witness Program at Boston Medical Center. "If you don't know the dynamics, you can't do very good work. You can make things worse."

EMPIRICAL DATA ABOUT THE SUCCESS OF different practices in addressing these problems are nearly non-existent and treatment methods are in the early phases of development. Nonetheless, leaders in the field have developed a set of best practices. And about half a dozen agencies in New York City offer treatment designed specifically for children who have witnessed domestic violence. Experts consider the New York programs to be among the leaders in the field.

Still, only a few hundred slots exist, and they often have long waiting lists, says Molly Murphy, a fellow at Lawyers for Children, where she has been compiling a list of children's services in New York City. "There aren't enough services for kids," Murphy says. "Often they're referred, but they wait for months. People know about the good providers. They're swamped."

For children in foster care who have witnessed domestic violence, the problems of getting appropriate treatment can be especially complicated. Foster children in need of therapy are usually referred to the city's community mental health clinics, where clinicians rarely have expertise in either domestic violence or child welfare issues, never mind their complex overlap.

Complicating matters further, some of the best practices of working with children exposed to domestic violence directly conflict with tenets of child welfare's mandate to protect children. Leaders in the field of treating child witnesses say it can be crucial for a parent and child to attend therapy together. Children with one violent parent often feel unprotected by either parent, and can experience an overwhelming feeling of helplessness in the face of violence. They may also feel responsible for protecting their mothers. Family therapy can help to rebuild a mother's sense that she can protect her child and the child's sense of being protected. But few children in foster care receive ongoing family counseling along with their parents or other family members, and when they do, they are rarely treated by specialists.

Likewise, a major task of domestic violence treatment is to lift the veil of secrecy that allowed the abuse to continue. But in speaking honestly about how domestic violence has affected them, parents or children may bring to light how the child also experienced abuse or neglect by either the offending or non-offending parent. For therapists working with families where abuse or neglect is suspected, the legal obligation to make a report can conflict with the therapist's goal of creating a safe space for children and parents to speak. How can a therapist truly offer privacy and support to these families? How can families, especially those in preventive services, feel comfortable telling the truth?

IN MAY, THE ADMINISTRATION FOR Children's Services (ACS) released its first strategic plan for addressing domestic violence. The plan includes a section on services for child witnesses and teens in the child welfare system, but many in the field say this remains perhaps the least defined part of the overall effort. By winter, the agency plans to have

continued next page

identified gaps in services for child witnesses and begun to address them. And by next spring, ACS intends to develop best practices for working with adolescents who have witnessed relationship violence or been in violent relationships themselves.

Over the last year, ACS has been a partner in the Safe Families Project, run by the Juvenile Rights Division of the Legal Aid Society in the Bronx. During its first 12 months, the project represented 181 children whose families' primary allegation was domestic violence and helped parents and children get the services they needed—from therapy for the mothers and children to batterers' intervention programs, housing and public assistance once the parents separate.

Every child in the project is provided a social worker, compared to only 20 percent of children who usually are assigned one through Legal Aid. And the program works with providers of domestic violence-specific treatment for children and families, shelters and city welfare offices to ensure that every family member gets services and treatment quickly. In cases filed during the program's first year, 91 percent of the children were able to stay with their non-offending parent. Only 5 percent were in non-kinship foster care.

The program reflects what is possible when resources and skillful casework are applied in a focused way. Providing this level of attention to domestic violence cases citywide will take money. The Safe Families Project is funded by the Annie E. Casey Foundation, and is currently expanding from the Bronx to also serve some families in Brooklyn. But the need remains far greater.

"Hopefully what we have in the Bronx will expand," says Lisa Kociubes, who directs the program. "When services are targeted specifically to kids who've witnessed violence, the treatment really works. The more training and focus on DV, the better." ◆

FOUR STEPS TO HELP KIDS COPE

Experts in developing and running programs for child witnesses to domestic violence agree on a few essential goals:

1. Provide family therapy for children and non-offending parents whenever feasible, even if children have gone into foster care. Family therapy can be derailed by several factors, including scheduling conflicts, visitation issues, non-compliance by parents or by foster parents who are responsible for bringing children to therapy, or young people's refusal to participate. But family therapy is the surest route to helping the parent overcome their shame or guilt and for children to learn that this parent wants to do the right thing, says Betsy McAlister Groves of the Boston Child Witness Program at Boston Medical Center.

2. Offer group counseling for children or teens who have witnessed domestic violence. For older children, group treatment helps break the isolation and silence that often comes with the experience of domestic violence. When children are asked to disclose family secrets, they may not only feel ashamed, guilty or disloyal, but they may also fear the repercussions. "In these families, there's usually an explosion of feelings by the person who's abusive and everyone else walks on eggshells attempting not to set the person off," says Denise Green, a senior psychologist at Harlem Hospital. "Children learn to hide their feelings and keep secrets. Part of group work is to open up the secrets, because silence keeps children where they're at."

Teens, especially, tend to do well in group therapy, where they can explore their feelings with the support of other young people who've been through similar experiences.

3. Educate teens about relationship violence and offer support groups for teens in domestic violence relationships. Children who grow up witnessing domestic violence are at high risk of repeating the same behavior in relationships as teens and adults. "Repeated, serious abuse can cause a person to develop the upside down idea that being close to someone else is the same as being bullied by someone else," said Jonathan Cohen, president of the Center for Social Work and Emotional Education. "It can make you feel like it's normal to be bullied." It is common for teens in foster care to end up in violent relationships, yet few group homes and foster families have the tools to help teens in their care cope with relationship abuse.

4. Create supports for child witnesses outside of therapy. Many young people are resistant to therapy but need support coping with the after-effects of traumatic experiences nonetheless. After-school programs designed for child witnesses or activities with specially trained staff can help alleviate some young people's symptoms even if they don't delve as deep as therapy.

For example, at Safe Horizon, therapists teach kids a variety of stress reduction techniques like deep breathing, muscle relaxation and "thought stopping"–interrupting negative thoughts and pushing themselves to think of positive or calming things instead. Therapists also help children with the two main tasks of resilience: building caring relationships and participating in activities that they enjoy.

However, these techniques can be practiced outside of therapy by staff specially trained to work with young people. To reach teens resistant to therapy, group home staff, social workers and foster parents should be trained to teach young people similar techniques to cope with stress and get support. ◆

First on the Scene:

Reformers are Looking to Frontline Workers to Fix the System

LISA S. SAT IN A HARD CHAIR IN A city child welfare field office, afraid to return home, her two small children by her side. She'd been beaten black and blue by her live-in boyfriend. The caseworker from the Administration for Children's Services made phone call after phone call, but was unable to find a room or a bed where the mother and her children could spend the night.

Frustration is a familiar feeling for both battered women seeking help and for child welfare investigators who respond to reports of child abuse and neglect. The investigators' mission is to determine whether the children mentioned in the reports are safe, and whether the allegations can be substantiated. But they are also caseworkers who must come up with plans to make sure the children remain safe and secure. And in domestic violence cases, that often means trying to help mothers stay out of harm's way.

Lisa's decision to step out of reach of her batterer, into a shelter and, perhaps, a different way of life, was torturous. But that decision was only the first hurdle. Finding a place to go was another. The city has a severe shortage of domestic violence shelter beds, according to the Mayor's office, which reports that about 14,000 women each year call the city's domestic violence hotline seeking shelter. There are just 1,900 beds in the system, and women may stay as long as five months.

The ACS investigator thought Lisa S. might give up, choose the route of least resistance and return to the familiar life of her apartment, her fear and her attachment to her boyfriend. It would be a loss with potentially severe consequences.

A lack of adequate resources is just one of many aggravations of a job that demands comprehensive forensic work, fast decisions and the unforgiving responsibility for small children's lives.

ACS has tried to ease this burden with clinical specialists who are now based in 12 of the city's child welfare field offices. In his opinion in the *Nicholson v. Williams* lawsuit, Judge Jack B. Weinstein cited this clinical project as a promising step toward solving some of the agency's problems addressing domestic violence.

In 2002, the city contracted with four nonprofit human service organizations to hire and supervise 36 experts in domestic violence, substance abuse and mental health. They now help strengthen the skills of ACS workers on complicated cases. Contracts for the program total almost $5 million per year, and funding is in place for three years, according to ACS.

The domestic violence consultant on Lisa's case helped keep the young mother focused on the future, and assisted the investigator in cobbling together a plan that got Lisa through the night. She found space for the children to sleep in New York Foundling Hospital's crisis nursery, while Lisa stayed with a friend. The next day, a bed opened up and the whole family entered a domestic violence shelter. Lisa didn't go back home.

THE CLINICAL CONSULTATION PROGRAM IS modeled after a project in Massachusetts begun more than a decade ago, when the state hired domestic violence advocates to work alongside investigators and established specialized units dedicated to cases involving battered mothers. The emphasis in New York City is to inform and change the practice of frontline ACS workers. Here, though, the clinicians spend little time working directly with families and more time training and consulting with the workers themselves. Some say they would prefer to be out in the field showing investigators the most effective ways to work with domestic violence victims rather than talking about it in an office environment. But others say the current system lets them meet with more workers and make a wider impact.

Last year, the clinicians met with investigators for 5,500 consultations, on nearly one-tenth of ACS investigations. About 40 percent of those involved domestic violence; the rest were mental health and substance abuse cases.

Some child protective investigators, however, have resisted the program. They have told the clinicians they already know how to do their jobs, and that they are tired of being instructed by outsiders and trainers. In response, consultants have tried to establish personal relationships with the workers while proving their own expertise and helping resolve difficult cases.

"There are times the workers say, 'I'm just here because my supervisor made me come,'" says Cynthia Wells, who works for New York Foundling and directs teams of specialists in ACS field offices in Queens and Manhattan. "Then they sit down and listen and say, 'This is the first incident in this family.' The clinician says, 'Have you gone to the precinct to verify it?' And they say 'Oh, no. Do I have to do that?'"

Yet the core group of field office workers and managers who want the clinicians' help is steadily growing. "We have weeks where we are extremely busy," says Wells.

As a matter of policy, the consultants don't have any power to make decisions on individual cases. "One of the of the biggest challenges is the liability that child protection people have," explains Lonna Davis, a domestic violence expert who helped create the program at the Massachusetts Department of Social Services and who now consults for ACS. "If they mess up, they are in trouble. They typically do things that are directly tied to their mandate. Their mandate doesn't say protect mothers, it says protect children." Besides, child protective workers usually have a dozen investigations underway at any given time.

"They need to make a determination and move the cases along," says Joe Ackerman, who ran the program for the New York Foundling Hospital until recently. "For our clinicians, that's hard, because they are used to making sure the family gets services." It's a cultural difference to which both sides have had to adapt.

At the same time, the responsibilities of the clinical teams are expanding. Already, they spend much of their time organizing and running training sessions in addition to consulting on individual cases. During the next two years, they will also work with caseworkers at nonprofit foster care and neighborhood-based preventive service agencies that have ACS contracts. Some fear specialists' carefully cultivated efforts will be spread too thin once they start working with nonprofits as well as ACS.

Meanwhile, the consultants have been helping investigators and supervisors understand what the *Nicholson* injunction means for the front lines of the child welfare system.

"The workers all know Nicholson, absolutely," says Wells. "That's why we're there, that's their understanding." But has the presence of domestic violence experts made a permanent change? "I'd like to say yes, it has changed," she says. "But we're just at the tip of the iceberg." ◆

When Domestic Violence Occurs in Front of a Child:

What Is Law Enforcement To Do?

A MAN IS ARRESTED FOR ASSAULTING HIS girlfriend or wife, and police know the woman's child saw the attack. Should authorities file a report of suspected child abuse with the state hotline, even though the child's mother—the batterer's victim—will then be subjected to an investigation by the Administration for Children's Services?

Last year's *Nicholson* decision left little question that victims of domestic violence should not be held legally accountable for a violent incident that occurs in front of children. But police and district attorneys' offices still disagree about how law enforcement agencies should handle these cases.

Some prosecutors feel legally bound to report such incidents to the State Central Register on Child Abuse and Maltreatment. They say the law considers witnessing abuse to be harmful to a child, even if the adult victim isn't responsible for the violence. Others say simply being present when violence occurs does not warrant a report to the state.

For Larry Busching, chief of Family Violence and Child Abuse Program at the Manhattan District Attorney's office, the obligation to report such cases is clear. Busching says he always calls the State Central Register when a child has been present for a "significant act of violence." Scott Kessler, chief at the Queens district attorney's Domestic Violence Bureau, says his office, too, reports such incidents as a matter of course.

Both say the requirement to report was established by a 2000 New York State Court of Appeals decision, *People v. Theodore Johnson*. In that case, Johnson, who had severely beaten his ex-girlfriend in front of her three daughters, was found guilty of endangering the girls' welfare even though his violence wasn't specifically directed at them. "Johnson supports the idea that if you're beating that child's mother, you're not only abusing that woman, you're abusing the child, too," says Busching.

Prosecutors say they expect batterers—and not their victims—will be held responsible for any harm to children that results from this exposure to violence. While there are no exact figures on how often a batterer is charged with endangering the welfare of a child as a result of committing a violent act in front of a child, prosecutors say the misdemeanor charge can sometimes strengthen a case against an abuser. "A guy will plead [guilty] to the assault because of the extra leverage the [endangerment] charge may give you," says Busching. Prosecutors also say the endangerment charge can be used to keep fathers apart from their children.

However, reports to the state's Central Register nearly always spur investigations by the Administration for Children's Services, and advocates point out that investigations are filed under the mother's name. If abuse or neglect is substantiated, a mother may be subjected to Family Court proceedings, have a record on file for decades—and risk losing her children to foster care, regardless of what happens to the man in the family.

Some prosecutors feel legally bound to report attacks in front of a child to the State Central Register. Others say simply being present when violence occurs does not warrant a report.

"People automatically go to make a [child protective services] report without thinking about what the consequences are," says Sherry Frohman, executive director of the New York State Coalition Against Domestic Violence. "Witnessing violence is not a reportable offense. People are making reports haphazardly because people don't know that."

THIS DIFFERENCE OF OPINION STEMS AT LEAST in part from the State Central Register's near-silence on its reporting policy. State guidelines for mandated reporters—including prosecutors and police—say reports of suspected abuse or neglect should be based on the imminent physical, mental or emotional harm to a child. But officials of the state's Office of Children and Family Services (OCFS), where the register is based, say they do not want to discourage callers. Only after some hesitation, and repeating that "it is always better to err on the side of the child's interest," did OCFS spokesperson Sandra A. Brown acknowledge that reports are not required if the sole grounds are that a child witnessed violence in the home.

MEANWHILE, THE POLICE DEPARTMENT LEAVES the requirement to report child abuse open to interpretation. According to Sergeant Ben Molokwo, a spokesperson for the NYPD's domestic violence unit, the department has no written policy about whether officers should call in reports of child abuse when children are present for domestic violence.

Instead, says Molokwo, officers rely on "common sense standards." "When there isn't violence [aimed at the child], that's ultimately a judgment call," he says, adding that if police called in every case in which a child witnessed violence, there would be "a million reports."

With police responding to more than 600 domestic violence incidents each day and the number of ACS investigations holding steady at roughly 55,000 each year, there is a real danger of overwhelming the child protection system. Indeed, Minnesota's child welfare agency found itself unable to handle all the children who were brought in as a result of 1999 legislation that changed the statewide definition of child neglect to include children exposed to violence. While the law didn't provide additional funding for the agency, it increased the agency's caseload by more than 50 percent. "They had to screen and investigate the new cases, which created a huge demand for resources," says Jeff Edleson, director of the Minnesota Center Against Violence & Abuse. Because of the financial strain it put on the agency, the state law was repealed nine months after it was passed.

Those who don't consider reporting child abuse mandatory when children witness violence say they sometimes struggle to figure out when children might be in danger—and a report warranted. "Typically the gray areas are not that the child is being directly physically abused but that the child is being exposed to the maltreatment of the battered person. You are confronted as a prosecutor

KEEPING IN TOUCH: DOMESTIC VIOLENCE RESPONSE TEAMS

Launched in November of last year, the newest police-based innovation to handle battering and other incidents of domestic violence brings together police and local advocates in two communities to coordinate services among as many as 14 city agencies.

The Domestic Violence Response Teams (DVRT) program is based in two precincts, the 67th in Brooklyn and the 43rd in the Bronx. One is a three-mile area in central Brooklyn that includes long strips of Nostrand and Church Avenues, the other a public housing-studded neighborhood in the Southeast Bronx. They were chosen for the pilot effort because both have consistently had among the highest rates of domestic violence in the city, each precinct logging over 7,000 incident reports per year.

The program is still small: only 59 victims have participated so far. All are known to the police as victims of violent incidents, 80 percent have a current order of protection, and half have orders of protection that have been violated at least once. The victims, who are invited by police and advocates to join, have been involved in an average of five prior reported domestic violence incidents before entering the program. The vast majority agree to participate.

The program's architects started with modest goals. "It's not designed to stop domestic violence in all households," explains project director Amy Barasch of the Mayor's Office to Combat Domestic Violence. Indeed, because of its initially small scale, DVRT may be more beneficial as an educational experience for the city agencies that serve domestic violence victims rather than as a broad anti-violence effort.

Monthly meetings are at the core of DVRT. Two victims' advocates, one for each borough, gather with representatives from city agencies, including the department of corrections, the police department, the department of probation, and district attorneys' offices, to discuss cases and come up with plans to meet the victims' various needs. "It's a way of teaching city government about what does and doesn't work for domestic violence victims," says Barasch. And agency representatives say these meetings can be extremely helpful.

"Now we know who to call," says Rosita Rodriguez, supervising officer at the Department of Probation. Through a recent DVRT meeting, Rodriguez found out that a man on probation had once again assaulted his partner. "That helped us get him into custody," says Rodriguez. "We already knew he had violated his probation…But at the meeting, we learned about new ones. Then the mayor's office [of domestic violence] faxed the domestic incident reports to me, and we added them to the violation of probation, so when we go to court and ask the judge to re-sentence him to prison time, that makes our case that much stronger."

Half of the women who participate in the program have open criminal cases against their batterers, and extra coordination with district attorneys' offices can help smooth the prosecution.

Perhaps most important, though, are the agencies that don't always participate in DVRT cases. Participants sign a waiver allowing access to their records when they agree to be in the program, and they can choose which city agencies they want involved—and which they don't. Because many worry about the possibility of losing custody of their children, says Barasch, "They often decide that ACS won't be a part of it." When victims already have investigations pending with the child welfare agency, DVRT staff recommends ACS staff be included in the monthly meetings. But in the majority of cases, participants choose to not involve them.

Even at this early stage, DVRT has had some direct benefit for victims of violence. Of the 59 women who have entered the program so far, only two have suffered subsequent injuries. And the victims in those cases got a speedy and coordinated response to their crises, says Barasch. "The benefit was that because all of the meetings, providers were already networked, and wrap-around services were provided more quickly." All participants have ready access to those coordinated services, including legal counseling, housing, and financial assistance. And whether or not ACS is involved in the case, DVRT works on getting services for children through a variety of agencies.

To this end, the Department of Health and Mental Hygiene may soon become another partner agency, providing mental health services to children in participating families. "We're looking at strengthening services for children," says Barasch. "That's our next step." ◆

with an inability to determine what is being done to protect the child from that kind of ongoing exposure," says Wanda Lucibello, chief of the Special Victims Division in the Kings County District Attorney's office. "When it's a close call, we bring in a lot of people and put our heads together and get a lot of viewpoints on how are the children being protected."

District attorneys' offices also have to weigh how their reports of child abuse affect the prosecution of their domestic violence cases. Lucibello cites one recent case in which she felt confident that a domestic violence victim was clearly trying to protect her children. After being severely beaten and hospitalized while her children were at school, the woman lied to them about the fact that their father had been the one to injure her. "I thought it was a form of protecting them," says Lucibello, who didn't report the case to the State Central Register." In that particular instance, the children were being protected as much as mom can protect them. Had we immediately phoned a child welfare report in, I'm not sure that she would have continued to feel open to speaking with us."

For police and prosecutors, domestic violence incidents involving children require a delicate balance. "You want to have the case reported against the abuser on the one hand, and on the other hand you don't want to punish the victim," says Busching of the Manhattan District Attorney's office.

The tension between the goals has become pronounced as services for both groups, still relatively new, evolve. Indeed, specialized domestic violence bureaus were introduced to district attorneys' offices just over 10 years ago, and the first domestic violence police officers began patrolling only eight years ago.

But if confusion over reporting child witnesses of violence as abused are growing pains in an emerging field, advocates say the solution is to first spell out the law—and then enforce it. "People still don't have it clear that the mere fact of domestic violence isn't neglect," says Frohman of the New York State Coalition Against Domestic Violence. "We'd like to see OCFS come out with a clear statement." ◆

BATTERERS' PROGRAMS WORK...BUT NOT FOR EVERYONE

Contributing to one of the most heated debates in domestic violence research, many academic experts have argued that programs that seek to transform violent men into peaceful partners are unproven in their effectiveness, and perhaps even useless. But a recent study takes a different view.

Conventional batterer counseling does work, according to the most extensive evaluation of battering intervention programs ever completed. The study, conducted by Ed Gondolf of the Mid-Atlantic Addiction Training Institute at Indiana University of Pennsylvania and funded by the U.S. Centers for Disease Control, found that the vast majority of men who attended programs for batterers did eventually stop their violence for a sustained period of time.

Though nearly half of the men in the seven-year study reassaulted their partners at some point, most committed the attacks in the first nine months after entering a program. Over time, the number of reassaults declined substantially; four years after enrolling in the programs, more than 90 percent of men had not been violent for at least a full year. The study included programs of various lengths—some as short as 12 weeks—in four cities. All apply the popular "cognitive-behavioral approach'" to batterer counseling, in which counselors confront men about their abuse, teach them to identify and address the thought patterns that reinforce it, and suggest alternatives to their behavior.

The results of this research support continuation and improvement of these programs—and show a roughly equal success rate for programs of different lengths. Yet one subgroup of batterers was particularly resistant to treatment in all programs. About 20 percent of the 840 men in the study repeatedly reassaulted their partners. These "repeat batterers" were difficult to distinguish from other men who participated in the programs. Perhaps most unsettling: the majority of repeat batterers were not apprehended after their first reassault.

"As we looked through the case material on these most problematic cases, what struck us was that these men were getting away with it," says Gondolf. "After they re-assaulted the first time, they did it again and again and again. There was no escalating intervention to deal with that."

Now program developers are struggling with how the relatively young field of batterer intervention can evolve to treat this more difficult population. Batterers' programs first emerged in the late 1970s, primarily as voluntary, consciousness-raising groups for men, which grew out of the battered women's movement. Some became mandatory in the mid-1980s as legislators, police and prosecutors increasingly criminalized domestic violence. Federally funded evaluations of these programs, such as Gondolfs, are a recent phenomenon and are only now systematically honing in on the flaws and successes of interventions.

Gondolf's work has broadened the scope of the batterer intervention, according to others in the field. "In the past, we've relied too heavily on singular measures, [such as] arrest data or victim reports," says Larry Bennett, associate professor at the University of Illinois at Chicago. Gondolf's study considered other factors, such as how courts handle cases, how quickly men enter batterer programs, and victims' perceptions of their own levels of safety. "A lot of us researchers have considered that noise, background stuff that you control out of the research," says Bennett. "But it looks now like it's the most important thing."

Overall, the programs are improving, according to Gondolf. "We need to coordinate them more to ensure that as many men as could benefit from the program get it," he says.

Still, he says, there's only so much you can do within the framework of batterers' programs. Indeed, some of the keys to containing the most violent and intransigent batterers may lie elsewhere. The legal and social service systems that handle domestic violence don't effectively screen for the few tell-tale signs of repeat batterers he's identified, such as drunkenness, severe mental illness and having previously committed a serious assault. The court system in most jurisdictions is not set up to account for previous violence in determining current interventions or to take swift action against reoffenders. Similarly, many probation systems are too overcrowded to adequately monitor batterers to make sure they stay away from their partners and attend alcoholism treatment or other prescribed services.

"The major implication is that the system matters" in addition to the individual batterers' program, says Gondolf. "As the system improves, more men will go to batterers' programs, and more men will benefit from them." ◆

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Making Matters Worse:

Victims' advocates note that for now, integrated court works best with a good judge who understands the nuances of domestic violence. But "if you have a bad judge, that's it," says Susan Lob of the Battered Women's Resource Center. "The only saving grace in this [current] system is, if you have a bad judge, in another venue you could get a piece of what you need," she says.

IN THE BRONX, FOR THE LAST FOUR YEARS, one judge has personified the attempt to rationalize Family Court for domestic violence survivors involved in neglect and abuse cases. That judge is Clark Richardson, who presided over Shamika Wright's case.

He established his special part of Bronx Family Court in 1999 after a Legal Aid Society lawyer and a social worker noticed the high number of cases being filed against battered mothers. With the help of ACS, appropriate cases have been directed immediately to Richardson's court calendar. It's the only court project of its kind in the city. He works in close collaboration with the Safe Families Project of the Juvenile Rights Division of Legal Aid, which strives to front-load support services for families in need so they can get help before they end up in court. The project also trains paralegals, attorneys and service providers on the dynamics of domestic violence and child protection.

Judge Richardson wins praise from Legal Aid staff and advocates, yet some attorneys and other advocates are critical of his autocratic style. The lesson for the potential of moving abuse and neglect cases into integrated courts is clear: a strong personality behind the bench can make or break a case—and a family.

Shamika Wright got her sons back. But it was a grueling experience that included frantic phone calls in search of a skillful attorney, six days languishing in the courthouse, a lost job, a lost home, eviction from the homeless shelter, tears of self-doubt and uncertainty—and little contact with her young children for almost a month.

While she's relieved to get her children back, Wright still has much to figure out, such as where, exactly, she and the children will live. She can't go back to her husband's place, and it's tough to find shelter space.

As the Bronx Family Court waiting room empties out, there are no judges or lawyers—and few court officers—in sight. Wright and her husband, who haven't spoken to each other yet today, begin to argue about the details on the way out. ◆

Watching the Numbers

A six-year statistical survey monitoring New York City's child welfare system.

	FY '98	FY '99	FY '00	FY '01	FY '02	FY '03
1 Protective Services						
A. Reports of abuse and neglect	57,732	54,673	53,540	57,224	55,925	53,894
Reports of abuse and neglect have remained above 53,000 per year since 1996.						
B. Reports substantiated (%)	35.6	36.9	37.3	34.1	33.6	33.6
This has been one of the most consistent statistics in NYC's child welfare system.						
C. Pending rate	7.3	7.8	6.7	6.9	5.4	5.2
The monthly average of new cases assigned to child protective workers continues to improve.						
D. Average child protective caseload	13.7	12.8	13.3	13.2	11.6	11.2
The average caseload for investigators is now half what it was in 1992.						
E. Child fatalities in cases known to ACS	36	23	22	32	DNA	DNA
The 12-year average is 28 fatalities per year.						
2 Preventive Services						
A. Families receiving preventative services (cumulative)	26,216	27,124	25,564	27,399	30,313	31,692
There have now been three successive years of significant increases.						
B. New families receiving preventative services (active)	13,012	13,165	11,991	13,990	14,552	14,978
A 12-year high.						
C. Referrals from ACS (%)	42	43	50	51	53	52
Referrals from ACS to its contract preventive providers is up from a low of 32 percent in 1995.						
3 Foster Care Services						
A. Number of children admitted to foster care	12,000	10,418	9,390	7,908	8,498	6,901
Admissions to foster care dropped 40 percent in six years.						
B. Number of children discharged from foster care	13,157	12,854	12,954	12,072	10,538	9,594
The ratio of discharges to children in foster care is the highest its been in 12 years.						
C. Total average foster care population	40,939	38,440	34,354	30,858	28,215	25,701
Just over half as many children are in foster care today as in 1992						
D. Average years spent in foster care	4.00	4.01	4.04	4.15	4.2	4.1
The number remains high. But for first-time foster children returning to their parents, the average length of stay was 6.8 months.						
E. Children with reunification goal (%) (calendar year)	50.9	53.9	52.2	47.4	DNA	DNA
This data is reported by the state, and is two years overdue.						
F. Percentage of separated siblings (calendar year)	51	54	54	52.1	DNA	DNA
As of 2002, 89 percent of those who enter care simultaneously were placed together.						
G. Recidivism rate (%) (calendar year)	12	11	11	12.1	DNA	DNA
This data is reported by the state, and is two years overdue.						
H. Percentage of foster children in kinship care (%)	33	29.9	27.2	26.2	25.7	26.1
The percentage of children placed with relatives has stabilized.						
I. Children placed with contract agencies (%)	74.9	81.0	86.0	88.3	90.4	92
ACS has substantially reduced its own city-run foster care program.						
J. Percentage of foster boarding home placements in borough of origin	30.4	33.2	44.9	57.5	64.6	74.1
This high-priority initiative has taken hold.						
K. Percent of foster boarding home placements in community district	4.9	4.9	7.7	13.7	18.2	22.9
The percentage of children placed in their own community district continues to increase.						
4 Adoption Services						
A. Percentage of children with adoption as a goal (calendar year)	36.0	33.8	34.4	38.6	37.7	38
Close to 10,000 children in foster care have adoption as a permancy goal.						
B. Number of finalized adoptions	3,848	3,806	3,148	2,715	2,694	2,849
Over 12 years, 38,800 children have been adopted from foster care.						
C. Children with slow adoption progress (%)	60.7	53.2	52.9	61.3	DNA	DNA
This data is reported by the state, and is two years overdue						

All numbers above reported in NYC fiscal years unless otherwise indicated. DNA means data not available.
Sources: Mayor's Management Reports, New York State Office of Children and Family Services Monitoring and Analysis Profiles.

CHILD WELFARE WATCH

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The Center for an Urban Future, the sister organization of *City Limits* magazine, is committed to incubating and promoting proactive public policies that are affordable, practical and humane. It gives community leaders and on-the-ground practitioners a vehicle for sharing ideas and experiences with a wider audience.

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For a list of sources and resources used in this report, please see the Center for an Urban Future's website at www.nycfuture.org. Type "Child Welfare Watch" into the searchbox and click on this report.

For more information, please call Kim Nauer at (212) 479-3352.

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