THE COVER:

2002
A Challenging Year for the Family Violence Department

The past year has proved to be a challenging one for the Family Violence Department. Some of the challenges, those brought about by the events of September 11, 2001, we wrote about in the last newsletter. We had hoped and expected for a return by now to at least some degree of normalcy, however that term might be defined. Instead, we have found ourselves facing one “emergency” after another—staff members out for weeks and months at a time for illnesses of one type or another, the death of a parent or the birth of a child, and so on and on. As a result, we operated for the past several months with a shoestring staff, whose configuration changed weekly as one staff member returned and yet another went out. Silver linings are always helpful at such times. Ours was the recognition of the many talents and abilities among our staff, qualities of leadership, creativity, and dedication that shone like beacons during those months. This volume of Synergy is largely the product of those qualities.

In this issue, we bring you a retrospective on the Nicholson case from New York, a case that brings hope to battered women and children across the nation as they strive to stay together as family units. Much of the case rested on the solid policy foundation of Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice (Greenbook). A second article reports on additional Greenbook-related activities, in particular on a retreat for advocates from the federal Greenbook Initiative. We feature as well a review of The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics, by Lundy Bancroft and Jay G. Silverman, PhD, and a number of announcements on diverse topics: new staff in the Department, current happenings at the National Domestic Violence Hotline, and news about fatality review, among them.

On a closing note, we also bring you a small tribute to one of the nation’s wisest and most dedicated and effective advocates for women and children, Diane Reese of the West Virginia Coalition Against Domestic Violence and Sexual Assault. Diane was a close, long-time friend of the Department, a treasured advisor to many of our projects, and a touchstone for us in our policy development work. She lost her battle to cancer on August 2, 2002. We will miss her immensely and are still searching for the silver lining of her loss.

Merry Hofford

The map above shows the location of programs based in child protection agencies, courts, visitation centers, and domestic violence services which have been highlighted in recent reports or earlier issues of Synergy and which serve battered women and their children. The latest addition is the Asian Women’s Shelter in San Francisco, California, highlighted in the Beckie Masaki interview.
Ending “Double Abuse”: The Legacy

Judge Jack B. Weinstein’s Order... produced an unprecedented injunction against the City of New York demanding that the Administration for Children Services (ACS) cease its unconstitutional practice of removing children from their mothers because the mothers were victims of domestic violence.

During the past decade, attention has focused on the re-victimization that many battered women and their children face when they leave an abusive home and enter the child welfare system. States and professionals now await the impact of a recent federal lawsuit that challenges the way child welfare systems serve battered women and, ultimately, how they address the complex intersections between domestic violence and child maltreatment.

Documented in Judge Jack B. Weinstein’s Order filed on March 18, 2002, the recent case, Nicholson v. Williams, produced an unprecedented injunction against the City of New York demanding that the Administration for Children Services (ACS) cease its unconstitutional practice of removing children from their mothers because the mothers were victims of domestic violence.2 Explains Judge Weinstein in the Order, “[t]he evidence reveals widespread and unnecessary cruelty by agencies of the City of New York towards mothers abused by their consorts through forced unnecessary separation of the mothers from their children on the excuse that this sundering is necessary to protect the children. The pitiless double abuse of these mothers is not malicious, but is due to benign indifference, bureaucratic inefficiency, and outmoded institutional biases.”

The opinion in Nicholson is a result of the effort of 20 states that participated in the case, as well as numerous expert witnesses, the battered mothers who shared their stories, the advocates who educated the East District Court about the reality of battered women, and the judge who heard the collective plea. Although the case is now on appeal, many agree that the opinion itself will have a far-reaching impact even if not upheld.

This article provides a brief overview of the history and terms of the Nicholson opinion, as well as observations by those in the legal, child welfare, and domestic violence fields of its potential impact on policy and practice.

**The Evolution of Nicholson**

On June 15, 2000, a federal civil rights class action lawsuit4 was filed on behalf of battered women and their children against the New York Administration for Children Services (ACS), the City and State of New York, and various City departments. More than 20 states participated in the suit by submitting amicus briefs in support of the action.

The lawsuit alleged that the practice and policy of ACS of removing children from battered mothers for the reason that mothers “engaged in” domestic violence by suffering such abuse violated the constitutional rights of both mothers and children to preserve their family integrity; to retain care, custody, and control of their children; and not to be forcibly separated from their children unless found unfit. The suit alleged that ACS was holding battered women responsible for abuse committed by another because it was “administratively easier to punish the mother by separating her from her children.”5

For example, the court found that ACS had failed to train and supervise adequately the caseworkers assigned to domestic violence cases; had not dedicated substantial resources to addressing domestic violence; and had failed to provide adequate legal representation to battered women. The case revealed that battered women frequently faced delays in obtaining legal representation and were often assigned attorneys who were overworked and could not dedicate sufficient time to cases due to inadequate attorney compensation. In many cases, this lack of assistance caused prolonged separation of mothers from their children as women struggled to obtain effective protective orders against batterers so their children could be returned. As a result, the plaintiffs claimed their constitutional right to effective representation in abuse and neglect cases also had been violated.

On March 18, 2002, the court granted an injunction against ACS ordering that all such policies and practices cease immediately.6

**Key terms of the injunction include the following:**

- ACS shall declare a child abuse report against the mother unfounded where the sole basis is either (1) the mother being “engaged in” domestic violence or (2) the mother failing to cooperate with domestic violence “services” (unless ACS has specified how the child has been harmed or is at risk of harm as a result of failure to use services).
- ACS shall not remove a child from the mother’s custody without a court order solely...
because the mother is a victim of domestic violence, unless there is written consent from the mother or in cases where the child is in such imminent danger that they must be removed and there is not sufficient time to obtain a court order.

• ACS shall make all reasonable efforts to separate the batterer from the mother and child and to provide reasonably adequate protections, such as emergency shelter, protective orders, prosecution, etc., in cases where the batterer abuses or threatens to abuse a child in connection with domestic violence against the mother (and the mother has not herself abused or neglected the child).

• ACS shall include at least one domestic violence specialist in each clinical consultant team it establishes.

• ACS must provide adequate compensation of $90 per hour for attorneys appointed to represent a battered mother where ACS has filed the petition; and

• ACS will be subject to a review committee formed to assist in the enforcement of, and compliance with, this preliminary injunction.

What Nicholson Means for Policy and Practice:

With its commentary on how current practices in the child welfare system can re-victimize battered women and their children, Nicholson, many agree, is a landmark decision that could have a far-reaching impact on service delivery and public policy even if the case is not upheld on appeal. In the meantime, Nicholson already has become an occasion for intense debate in the legal, child welfare, and domestic violence fields.

Many advocates for battered women agree that the terms of the Nicholson injunction have the potential to serve as model policies for both child welfare programs and legal professionals across the country. Observes Joyce Steinbrecher, Outreach Specialist for the West Virginia Coalition Against Domestic Violence, “the case can be held up as a standard to educate other judges, domestic violence advocates, and child protective services on the potential harm that current practices have on children.”

The Nicholson decision also may have ramifications for the public debate around domestic violence and child maltreatment issues. Says Bernardine Dohrn, JD, Director of the Children and Family Justice Center at Northwestern University School of Law, “the decision is of great import for both advocates for children and those who represent battered women because it tracks the common sense knowledge that safety for the mother is the best path toward safety, stability, and well-being for children in most cases.” Moreover, the Nicholson decision brings heightened awareness to the need for a broader range of protective options for battered women and their children as well as for increased resources to support battered women in carrying out safety plans.

However, some activists fear that Nicholson will lead to a backlash in policies for battered women. Says Linda Spears, Acting Associate Vice President of the Child Welfare League of America, “I am hopeful that it will encourage states to look at this issue and begin the planning needed to address effectively cases where there is domestic violence. But, I am concerned that by bringing this discussion into the court, agencies will move more quickly, acting before we have the science to demonstrate that the philosophy and methods really work.”

Many agree that the risk of the Nicholson decision is that broad protocols will be implemented where decisions about safety and services must be made on a case-by-case basis.

Preventing such backlashes in public policy and furthering the positive impact of Nicholson will

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As an advocate, the case feels like a groundbreaking victory that solidified for me the need to proceed on a course of collaborations and education. As a mother, I am reminded of underlying fears of an all-powerful system that can remove the most precious part of me, my children, for reasons that are beyond my control.

Joyce Steinbrecher, Outreach Specialist, West Virginia Coalition Against Domestic Violence
require the continued diligence of advocates, as well as the continued collaboration between domestic violence and child welfare agencies. Notes M.s. Steinbrecher, “domestic violence advocates will need to develop strategies for recognizing surface level policy changes and then to advocate on an individual and systems level for more in-depth changes that impact caseworker actions and decisions.”

Though a final determination on the Nicholson appeal is pending, the case is already a model of how women who were not only battered by their partners, but also by a system meant to help families in crisis, can come together to reform an entire city’s child welfare system. “A lawsuit can’t make us work together,” concludes Ms. Spears, “but I think that in New York and in many other communities people are beginning to do so with a great deal of potential for promising results.”

When looking for best practices to include in the Nicholson Order, Judge Weinstein cited and relied on Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice, a publication of the National Council of Juvenile and Family Court Judges.

Editor’s Note:
The City of New York and the State appealed the case to the United States Court of Appeals for the Second Circuit and asked for a stay of the injunction pending appeal. On June 21, 2002, the Second Circuit issued an interim stay of the injunction while it considered the defendant’s arguments. On June 26, 2002, the Second Circuit denied the City and State’s motion for a stay of the preliminary injunction pending appeal. The injunction went into effect on June 27, 2002. It is possible that the appeal will be heard before the end of the year.”

END NOTES:
1 For more information about the case, including detailed factual accounts of the 10 named plaintiffs, see Nicholson v. Williams, et al., 203 F.Supp.2d 153, 2002 WL 448452 (E.D.N.Y. March 18, 2002).
3 Nicholson, 203 F.Supp.2d at 163.
4 As a class action this case includes all persons with related claims whether or not they participated or were named specifically in the proceedings. Therefore, this lawsuit includes all battered women who could potentially be investigated for abuse or neglect by ACS for the reason that they “engaged in domestic violence in front of their children.”
5 Nicholson, 203 F.Supp.2d at 209.
6 The court agreed to give ACS a six-month stay (until June 22, 2002) before facing possible ramifications for violating the injunction. In June 2002 the stay was lifted and the injunction took effect. The injunction will end on January 31, 2004.

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The National Domestic Violence Hotline (NDVH) is working to expand its impact in the deaf community with regard to domestic violence issues. Since its inception in 1996, the hotline has had a TTY line. Because, it soon became clear that having a TTY alone did not meet the needs of the deaf community, NDVH instituted a Deaf Outreach Program to address better the unmet need. With the hiring of Warren Grannis, who has been deaf since birth and has also been personally affected by domestic violence, the Deaf Outreach Program has begun to make headway.

Statistics show a definite need for NDVH to provide deaf services. According to the National Center for Health, almost seven percent of women in the United States have some form of hearing loss. The U.S. Department of Justice reports indicate that 4 million women are physically abused each year and figures show that approximately 500,000 of these women are deaf. According to the National Institute of Justice, 503,485 women are stalked by their partners each year, with approximately 70,000 of these victims being deaf. Other studies indicate that deaf women are two to six times more likely to be abused than their hearing counterparts.

One of the biggest issues facing the TTY line is the lack of public awareness. “It’s not that we can’t help deaf women, it’s that deaf women don’t know we are here to help,” states NDVH Program Director Shaun Thompson. “And we are doing all we can to change that.” Of the approximately 13,000 calls NDVH receives monthly, less than two percent come from TTY callers. NDVH hopes to increase the number of calls with its current TTY number awareness campaign. NDVH is working to ensure that deaf women have all the same services of their hearing counterparts.

NDVH provides referrals to domestic violence shelters, programs, and counseling for deaf women who need help getting out of abusive relationships. NDVH is available 24 hours a day, seven days a week, covering all 50 states, Puerto Rico, and the Virgin Islands. The National Domestic Violence Hotline’s TTY number is (800) 787-3224.

Warren Grannis is the Deaf Outreach Advocate for the National Domestic Violence Hotline. He may be reached at 1(800) 787-3224 or at wgrannis@ndvh.org.

The National Domestic Violence Hotline TTY Number: (800) 787-3224

New Staff Introductions

The Family Violence Department of the National Council of Juvenile and Family Court Judges is pleased to announce the arrival of two new staff members. Both Eli and Jennifer join us from the San Francisco Bay Area of California. We are excited to welcome two talented individuals to the National Council and the department.

Eli Haro joined the department as an administrative assistant. Her primary responsibility is to handle all issues related to staff and committee travel. Eli holds a Bachelor of Science degree in liberal studies with a primary education credential from Hayward State University. Prior to this position she worked with a non-profit/subsidized program serving children and adolescents for the City of Berkeley.

Jennifer Stoll-Hadayia joined the department as a policy analyst. Jennifer brings with her experience in the areas of women’s health, policy and research, and health communications. Currently, Jennifer is working with the resource center as well as developing an in-house grant training curriculum for the department. She holds a Bachelor of Arts degree in English and women’s studies from Yale and a Master of Public Administration degree, with a specialization in Gender and Public Policy, from Columbia University.

Jennifer Stoll-Hadayia and Eli Haro
There is a growing body of research regarding damage done to children who are exposed to domestic violence. Lundy Bancroft and Jay G. Silverman take the discussion a step further in their new book, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics (The Batterer as Parent). In The Batterer as Parent, the authors focus on how personality traits that are consistent with battering can and do interfere with a batterer’s ability to parent his children. The authors explore these battering personality traits in the context of pre- and post-separation family dynamics, help the reader distinguish between the desire to be an effective parent and a batterer’s desire to control his partner through the children, and use case scenarios from their own practice in custody evaluations and batterer intervention programs to illustrate the impact of battering behavior on parenting skills.

The Batterer as Parent covers many topics, including the underlying issues of abuse, how such abuse impacts parenting styles, and the batterer’s impact on the home. In addition, Chapter Five, Impeding Recovery: The Batterer in Custody and Visitation Disputes, provides valuable insight into custody and visitation disputes in which domestic violence is present and gives the reader guidance on sorting out often-conflicting stories so that the best interest of the children can be determined. In this chapter, Lundy and Silverman point out that the abuse often does not end with separation. They discuss issues such as the batterer’s ability to manipulate his children’s responses to custody evaluators, and explain the family dynamics associated with domestic violence that may increase these children’s vulnerability to this kind of manipulation. The authors also discuss the tactics batterers use to manipulate the courts, including litigation and allegations of “parental alienation” as forms of abuse.

The authors describe a common failure in practice to recognize that generally accepted theories and models cannot effectively and should not be used in cases involving domestic violence. Instead, Bancroft and Silverman give the reader an alternative model for use in assessing risks to children where domestic violence is or has been present. The assessment tool consists of 14 points relative to a batterer’s attitudes and behaviors and includes case scenarios showing how these attitudes and behaviors endanger children. Once an assessment of danger has been made, safe visitation becomes the issue, and the authors examine different types of supervised visitation schemes. They suggest a tiered approach to visitation that allows a batterer who is participating in a batterers’ program and conducting himself appropriately to move gradually toward less restrictive contact.

In addition to that assessment tool, the authors offer the reader additional tools to use in working with parents who are abusive. For example, the authors discuss fostering and assessing change in parents who batter and provide the reader with steps needed for a batterer to be able to become a responsible and safe parent. The authors observe that batterers are most likely to make progress in their parenting and underlying abuse issues when a proper context is created and identify for the reader how to create a context for change.

Bancroft and Silverman also offer field-specific recommendations for those involved in custody and visitation decisions, including child therapists, family therapists, custody evaluators, family courts, agencies and courts with child protective jurisdiction, parent trainers, psychological evaluators, batterer’s programs, battered women’s programs, supervised visitation centers, and family lawyers and bar associations. This book is a valuable resource for those professionals in the fields listed above and for anyone else interested in learning more about family dynamics in homes where children are exposed to domestic violence.

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Greenbook Domestic Violence Leadership Retreat
On April 28-30, 2002, in Boston, MA, the Family Violence Prevention Fund convened the first Domestic Violence Leadership Retreat for the federal Greenbook Initiative, a public-private collaboration to address domestic violence and child maltreatment issues in the child welfare, advocacy, and court systems. The Greenbook Initiative is based on Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice (Greenbook), a publication of the National Council of Juvenile and Family Court Judges, and is funded by eight agencies within the Department of Justice and Health and Human Services.

The retreat marked the first time that domestic violence programs participating in the Initiative could meet and work together on issues of common concern. The retreat brought together 28 advocates from the six Initiative sites and had the following key goals:

• To develop leadership abilities among domestic violence advocates at each site,
• To identify the training and technical assistance needs of the sites to improve their efforts to serve battered women in the child welfare system, and
• To share information among the sites about successful models of collaboration.

Participants discussed issues such as accountability of systems and collaborators, child witnessing, client confidentiality, the mandating of victim services, and the challenges of working with men in the child welfare system. Each site also met independently to draft a site-specific action plan for developing consensus and continued leadership on these issues with other domestic violence advocates at their sites.

Overall, the retreat provided participants with a unique opportunity to come together as a group, to have the time and space to delve into some fundamental issues, and to begin to think and talk about the most complex issues they face in their current work. Recognizing their shared concerns, participants also laid the foundation for a network of support among advocates working with battered women and children, as well as for sharing new information and models of collaboration across the sites. As a result of events such as the retreat, the Initiative represents not only the opportunity for collaboration on domestic violence and child maltreatment issues, but also the occasion to increase the capacity of domestic violence programs to serve as vocal advocates for battered women and their children.

The retreat continues the momentum of the first All-Sites Conference of the Initiative held on Oct. 17-19, 2001, in St. Louis, MO where representatives from the six sites and a variety of federal partners gathered for a national dialogue on improving systems for addressing domestic violence and child maltreatment through the initiative.

For more information about the Domestic Violence Leadership Retreat, contact Lonna Davis at the Family Violence Prevention Fund at (617) 522-2770 or by e-mail at Lonna@endabuse.org.