The Legal System's Response to Children Exposed to Domestic Violence

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Abstract

Historically, the legal system has not responded adequately, if at all, to cases involving domestic violence. In the past two decades, U.S. courts and law enforcement agencies have increasingly acknowledged the seriousness of domestic violence and have developed responses to it. Unfortunately, the legal system has been slower to recognize the impact of domestic violence on children. This article highlights four key areas of case law in which the courts have begun, in varying degrees, to examine the effects of domestic violence on children: child custody and visitation, restraining orders, failure to protect a child from harm, and termination of parental rights. A survey of appellate cases since 1990, though not representative of all cases, shows an ongoing need for mandatory judicial training on domestic violence and its effects on children, greater clarity about how to interpret relevant laws, changes in the laws to better serve children, and the renewal of national funding for legal aid programs. Courts and law enforcement agencies in some locales have implemented innovative programs to improve their interventions with children exposed to domestic violence. These programs include coordinated court responses, child development training for police officers, multidisciplinary team approaches, and supervised visitation centers. However, few of these programs have been evaluated for overall effectiveness in improving outcomes for children. Better evaluation is needed, as is ongoing funding for the replication of successful programs nationwide. A companion article by Matthews in this journal issue examines federal laws and policies with regard to domestic violence and children, and reviews many of the state statutes on which the court decisions discussed here are based.

Until the 1970s, domestic violence cases rarely appeared in U.S. courts. The legal system viewed abuse between partners as a private matter to be handled within the family and not by the courts. Similarly, until the 1980s, most police departments possessed written policies discouraging arrest in domestic violence cases. However, with the resurgence of the women's movement and the development of the battered...
women's movement, law enforcement and courts were confronted with increasing numbers of requests for assistance from victims of domestic violence. By the 1980s, domestic violence was an issue in a significant number of cases in almost every part of the court system: criminal, family law, juvenile, probate, and general civil courts. While courts have made a great deal of progress in the past two decades in terms of acknowledging and addressing domestic violence issues, they still have significant problems in processing such cases. And, though innovative law enforcement programs are being developed in some locations, many police departments continue to fall short of fully enforcing domestic violence laws.

Unfortunately, there are almost no data available on how many cases involving domestic violence there are in the courts. The court system does not compile such figures. However, the data on domestic violence calls to law enforcement, available since the mid-1980s in some cities and states, indicate that the prevalence rates for domestic violence are high and may be rising. Police departments receive more calls reporting domestic abuse than any other type of crime.

Though law enforcement and courts have become increasingly aware of domestic violence as a major problem, they still tend to see it as primarily affecting adults and have been slower to see its potential negative impact on children exposed to it. This view is changing, largely due to recent studies showing that exposure to domestic violence can be very harmful to children and that large numbers of children are involved in domestic violence cases. (For more information regarding the prevalence of domestic violence and its impact on children exposed to it, see the article by Fantuzzo and Mohr in this journal issue.)

This article will examine the legal system's response to children exposed to domestic violence. Holdings from recent appellate cases involving domestic violence and children will be reviewed. Current court practices and law enforcement responses will be analyzed, and innovative court and police programs will be described. Finally, recommendations for further improvement in court and law enforcement responses to domestic violence cases involving children will be made. (For information regarding the federal and state statutes on which these court and law enforcement responses are based, see the article by Matthews in this journal issue.)

**Recent Case Law**

Cases addressing children as witnesses to domestic violence may appear in all types of courts and touch on issues of family law, criminal law, juvenile dependency, and even civil tort law. To determine trends in recent case outcomes throughout the country, a search was conducted for appellate decisions published between 1990 and mid-1998 that involved issues of domestic violence and children. It is important, however, to note the limitations of this methodology. Most legal disputes of all kinds are resolved between the parties and do not go to trial. Court decisions from legal disputes that do go to trial are not usually written or published, and only a small percentage are appealed. In addition, not all appellate decisions are published. Therefore, published appellate cases may not be representative of the entire body of cases, and relying on published appellate decisions to ascertain trends in the ways in which all domestic violence cases are resolved will not provide comprehensive data. However, this method of legal research and analysis is the only practical means available, and legal
researchers and scholars widely rely on it as the standard way of ascertaining trends in court decisions. In addition, published appellate cases, though perhaps not indicative of all cases, are particularly important because they set precedents for future court decision making.

This review of recent appellate cases highlights four key issues related to children exposed to domestic violence: child custody and visitation, restraining orders, failure to protect a child from harm, and termination of parental rights. The cases presented show a growing recognition by the courts that domestic violence is an important factor in many areas of law in which children are involved.

**Child Custody and Visitation**

Child custody and visitation disputes often arise when a battered parent decides to leave an abusive situation. Decisions in such cases are based on what is called the "best interest of the child" standard, in which the court determines which custody and/or visitation arrangement will best provide for the health, safety, and general well-being of the child. Custody laws in some states list specific factors for courts to consider, such as the relationship between each parent and the child; each parent's parenting abilities, mental health, moral fitness, and financial stability; and whether the current custody arrangements are working well for the child.14

Courts have differed as to whether the perpetration of domestic violence by one parent against another should be considered in determining what is in the best interest of the child.20

As of 1997, some 44 states and Washington, D.C., had statutes requiring courts to consider domestic violence in all custody determinations.15 In some states, the law mandates that the trial court issue written findings regarding whether or not domestic violence occurred. In those states, failure to issue such findings can result in the reversal of the trial court's decision.16 Of the cases reviewed, many that awarded custody to a battered parent cited the presence of domestic violence as a significant determining factor in the decision, even in the states in which the law permits, but does not require, that domestic violence be considered.17 However, in one case, the court awarded custody to the father, stating disbelief of the mother's allegations of violence by him, and finding instead that the mother had abused the father.18 In another case, the court decided that other factors outweighed the presence of domestic violence. One of these factors was the fact that the perpetrator was willing to have his children participate in counseling.19

In the past few years, several states have adopted statutes creating a presumption against awarding custody to a batterer.20 In these states, once the court finds that the victim has proven the existence of domestic violence, the batterer must then show why it is in the best interest of the child to be with the batterer. In most of these cases, it is very difficult for a batterer to show this, so the finding of domestic violence becomes the determinative factor in the custody decision.21 However, some states require a higher evidentiary standard than is typically required in civil cases to reach a finding of domestic violence and to trigger the presumption.22

Supervised visitation is essential in many cases involving domestic violence, to protect the battered parent from further abuse and to protect the child from harm by the batterer.

In 1997, some 28 states also had statutes giving custody preference to the parent who is most likely to encourage contact between the child and the other parent.23 This can be very problematic for battered women, who may have good reason not to encourage such contact. Some courts have recognized that such provisions should not apply in domestic violence cases. For example, in one case, the trial court had given custody to the father because the battered mother had discouraged contact between the father and their child. The appellate court reversed this decision, stating that domestic violence was a valid reason for discouraging father-child contact.24 Fortunately, state legislatures are beginning to reconsider these "friendly parent" laws as they relate to domestic violence. For example, Minnesota's statute states that the preference for frequent and
continuing contact does not apply when there is domestic violence.25

Unless the court makes an order for shared physical custody of the child, it will typically order that one parent have sole physical custody and that the other have some type of visitation with the child. Visitation can be for short periods of time, such as an hour or two, or longer periods, such as an overnight or full weekend. Courts sometimes order supervised visitation, in which a parent can visit with their child only while in the presence of another adult. A review of appellate cases with holdings on visitation issues showed a marked trend toward ordering supervised visitation for batterers.26 This type of visitation is essential in many cases involving domestic violence, to protect the battered parent from further abuse and to protect the child from harm, or even abduction, by the batterer.27 Unfortunately, it is often difficult to find an appropriate person to supervise these visits. Some communities have supervised visitation programs available, but the need is much greater than the available resources. When supervised visitation is not an option, and the facts of the case are extreme, the court may order visitation by phone, tape recordings, photographs, letters, or other means by which communication can take place without physical contact. Courts are usually reluctant to cut off visitation altogether, and will often order supervised visitation even when the battered parent argues for no visitation at all.28

Often, in order for a battered mother to create a new, safe life for herself and her children, she must move away from the batterer. Because this can make frequent visitation with the batterer impossible, the battered mother must ask the court for permission to relocate.29 Although very few recent cases have addressed this issue, at least two courts have allowed the custodial mother to move out of state, due in part to domestic violence by the visiting parent.30 While the trend is toward permitting relocation due to domestic violence, it is still difficult in many courts for battered women to obtain court permission to relocate.31

Studies have documented the significant overlap between domestic violence and child abuse, finding, for example, that between 30% and 60% of men who batter their female partners also abuse their children.

Restraining Orders

Restraining orders issued by a court at the request of a battered woman put limitations on the batterer’s ability to have contact with the battered woman, and sometimes with the children.32 They can be issued by many different types of courts, but are usually issued by family law courts. In many states, these orders are so comprehensive that they are almost like divorce settlements, including, for example, custody and visitation orders.33

Very few cases regarding restraining orders and children exposed to domestic violence reach the appellate level. Two recent cases have addressed the issue of who can request a restraining order in cases of domestic violence.34 One court found, for example, that two children who had witnessed domestic violence toward their mother by her new husband were not included in the state’s restraining order law and, therefore, their fathers could not bring such an action before that court on their behalf. (See D.M.H. v. Thompson in note number 34 at the end of this article.) It may be prudent for states to change their legal definitions of who can file a restraining order so that a child who has witnessed domestic violence can request an order, whether or not the battered parent is making such a request. However, it is unclear who would file this request on behalf of the child, and there is the risk that such an order could impose on the battered woman restrictions that she does not want in her contact with the batterer.

Failure to Protect the Child from Harm

Many studies have documented the significant overlap between domestic violence and child abuse, finding, for example, that between 30% and 60% of men who batter their female partners also abuse their children.35 When a child is harmed by violence perpetrated by one parent, the other parent may face criminal charges of failure to pro-
tect the child from harm and/or may face temporary or permanent removal of the child by child protective services (CPS) on similar grounds. (For more information regarding responses to families with both domestic violence and child abuse present, see the article by Findlater and Kelly in this journal issue.)

There are no data available that indicate how many cases alleging failure to protect are brought before the criminal courts or handled by CPS agencies and the juvenile dependency court. However, the review of appellate cases revealed several court decisions regarding criminal charges of failure to protect. In these criminal cases, findings of guilt against the mother for failure to protect her child from harm from the batterer tended to turn on whether she had known, or should have known, of the harm to the child. In one case, for example, in which the batterer pled guilty to murdering their child, the mother was convicted of failing to protect the child. Though the mother claimed that she was unaware of what had been happening, the court decided, based on testimony by the batterer, that she had known. Battered women sometimes argue against possible criminal conviction for failure to protect by describing their inability to stop the abuse. These duress arguments typically state that the woman would have risked greater bodily injury or death to herself, if she had tried to stop the abuse. Unfortunately, these arguments were not successful in any of the surveyed cases.

Termination of Parental Rights

The juvenile dependency court cases that were reviewed centered primarily on the issue of whether, and under what circumstances, parental rights should be terminated. Once a petition has been filed alleging that a child has been abused or neglected, the juvenile court judge decides whether the child should be made a dependent of the court. If this step is taken, and the child is removed from the home, the parents are usually offered reunification services that they must complete in order to have their child returned to them. If the reunification plan is not successful, the juvenile court may terminate their parental rights. This issue becomes more complicated when the mother is also being abused.

Battered mothers frequently have their parental right terminated for failure to protect their children from exposure to domestic violence, even when neither the mother nor the batterer has physically abused the children. However, the cases surveyed show that when a trial court terminates a battered woman’s parental rights due to her failure to protect her children from the batterer, an appellate court sometimes reverses this order. In one such case, a mother’s
parental rights were terminated despite the fact that she had left the father and taken the children with her to another city.\textsuperscript{40} The appellate court, in reversing the trial court's decision and reinstating the mother's parental rights, emphasized that the mother had taken timely and effective action to ensure the safety of her children. The trial court's decision to terminate parental rights in this case points to the dangers of equating exposure to domestic violence with child abuse, without investigating the true nature of the harm to the child, and the ability and willingness of the mother to prevent such exposure in the future.

Sometimes the exposure to domestic violence, without direct physical abuse of the child, has been enough for the court to terminate the father's parental rights. In several cases, fathers who battered their child's mother, stepmother, or even the father's new girlfriend, had their parental rights terminated.\textsuperscript{41} In other cases, fathers who were batterers were given a second chance, or even primary custody of the child. In one of these cases, though, the court found that the mother was directly abusing the child, and that this abuse was worse than exposure of the child to the domestic violence.\textsuperscript{42}

In the past two decades, there have been several cases in which fathers who have been convicted in criminal court of killing the mother of their children have argued against termination of their parental rights. Surprisingly, many courts have held that killing the other parent of the child is not, in and of itself, sufficient to terminate parental rights.\textsuperscript{43} The outcome in these cases often turns on the length of the father's criminal sentence\textsuperscript{44} and on whether or not an adoptive home or alternate placement for the child is available.\textsuperscript{45} Courts find the length of the sentence significant both because it determines when the father will be free to parent his children, and because it can be indicative of the degree of brutality of the murder.\textsuperscript{46}

Some courts have found that a parent's depriving a child of his or her other parent constitutes neglect of the child and is grounds for termination of parental rights.\textsuperscript{47} Similarly, other courts have held that the father's act of murdering the mother, and the consequence of the act—imprisonment of the father—deprives the child of both parents and is sufficient to terminate the father's parental rights.\textsuperscript{48} One court found that if the father had murdered the mother in the presence of the child, that act established parental unfitness and was grounds for termination.\textsuperscript{49} However, in another case, the court decided to give the father custody of the children after his release from prison, even though the children had been present in the home at the time of the mother's murder.\textsuperscript{50} Other factors that the courts in these murder cases have considered in determining whether or not to terminate the parental rights of the father include: whether the children were physically abused by the father, whether the father threatened the children, whether the killer was a devoted father, whether there was a long history of violence, whether the father had substance-abuse problems, whether the father would have a job and home upon his release, whether the children stated a preference to live with their father, and whether the father was a model prisoner.\textsuperscript{51}

None of the cases reviewed involved a woman killing her male partner and then requesting that her parental rights not be terminated. While women kill their male partners much less frequently than men kill their female partners, this does occur. And women who do kill their male partners are often sentenced to long prison terms.\textsuperscript{52} The reason for the lack of cases is beyond the scope of this article, but it may be that women do not usually lose their parental rights when they are convicted of killing their partners, or that they are less likely to appeal such terminations once the trial court's decision has been made.

**Innovative Court Programs**

Despite the growing recognition by the courts that domestic violence can be a key
issue for children involved in criminal and civil cases, there is still much room for improvement. The appellate cases reviewed here describe decisions at the trial court level that make it clear that many trial court judges remain unaware of the importance of addressing domestic violence, and that some are openly hostile to doing so. Even when courts do address domestic violence, there is limited understanding and discussion of its impact on children; many of the written findings center primarily on the rights of the parents. Clearly, there is a great need for mandatory education for judges and other court personnel on domestic violence, its effects on children, and recent legislative changes that impact court decision making in this area. The fact that, in many of these cases, the appellate courts reversed trial court decisions also points to the importance of access to affordable appellate legal assistance. This assistance may be provided through programs funded by organizations such as the Legal Services Corporation (LSC), a private, nonprofit corporation established by Congress that provides grants to independent programs in the United States and its territories. Unfortunately, the huge cuts in LSC’s funding across the country in the past two decades have decimated the ranks of low-cost attorneys for poor litigants. If victims of domestic violence are to have meaningful access to the courts at the trial and appellate levels, this program, or one like it, must be funded.

The reviewed cases also indicate a need for legislative changes to better address the needs of children exposed to domestic violence, and the difficulties their battered mothers face. These changes are already under way in several states. (For more information regarding such legislative changes, see the article by Matthews in this journal issue.)

To meet the challenges of adequately serving children exposed to domestic violence, some courts are beginning to develop innovative programs and change their practices. New programs and changes include more professional training and parent education, improvements in mediation practice, specialized domestic violence courts, advocacy programs for battered parents involved with CPS, counseling for children, and supervised visitation programs. Most of these programs are still in the pilot stage, have limited funding, and have not been formally evaluated. Nonetheless, anecdotal evidence shows that they hold promise for improving court responses in cases involving children exposed to domestic violence. The programs described here were selected because they represent unique and promising strategies. However, there is no empirical evidence, to date, to show that these are the most successful approaches.

Professional Training and Parent Education

Professional training programs may focus on educating judges and/or may work with other professionals who interact with the children involved in domestic violence related cases. The Family Violence Prevention Fund and the National Council of Juvenile and Family Court Judges have been pioneers in the area of judicial education on domestic violence. Other programs in California, Hawaii, and New Hampshire emphasize training for volunteer and paid child advocates, as well as custody evaluators—that is, the mental health professionals who conduct assessments of parents and children and make custody recommendations to the judge. In Hawaii and New Hampshire, these trainings are required by, and conducted through, the courts, while in California they are mandated by statute and approved by the state judicial council. California also requires family court services personnel—the mental health professionals who meet with divorcing parents about parenting plans—to undergo formal training on the effects of domestic violence on children. Judges who have received training regarding domestic violence and its effects on chil-
Children are in an ideal position to educate batterers about these effects. Several judges have reported that they routinely speak with batterers in the courtroom about this issue. Courts in Hawaii also offer separate parenting classes for batterers and their victims.

**Mediation Programs**

Many states require or encourage mediation of custody cases, but some exempt cases involving domestic violence. This is a controversial issue. Some commentators argue that a history of domestic violence precludes mediation because the power dynamics between the batterer and the victim put the batterer at an unfair advantage and may compromise the victim's safety. Others argue that in some cases involving domestic violence, mediation can work. The Model Code on Domestic and Family Violence requires mediators to screen for domestic violence and recommends prohibiting mediation in certain cases and allowing for mediation in others, but only when there are safeguards for the victim in place.

A recent study of 200 court-based mediation programs found that while domestic violence is a factor in 50% to 80% of divorce cases nationwide, only about 5% of divorce cases are excluded from mediation because of concern for a domestic violence victim's safety. Thirty percent of mediation programs stated that their staff received no training on domestic violence issues. However, the study also noted that battered women's advocates are beginning to educate mediators. These mediators are implementing safeguards, such as separate sessions for the batterer and the victim, in their practices. (For more information regarding mediation in domestic violence cases, see the article by Matthews in this journal issue.)

**Coordinated Court Responses**

Cases involving domestic violence can appear simultaneously in multiple branches of the judicial system, involving the same families in multiple cases. Court systems in several states are experimenting with having one unified court that hears all the legal matters, including domestic violence related ones, of an individual family. Hawaii is using this approach. In its Honolulu court, for example, each family has one judge who hears all of the family's criminal, family law, and juvenile court matters. Courts in three California counties are now combining juvenile dependency (child abuse and neglect) and family law (divorce and custody) matters in cases involving domestic violence. In New Hampshire, all family law and juvenile court matters are assigned to one court, which works closely with the criminal court in handling the cases they have in common. For example, the family court judge works with the criminal court judge to ensure that a batterer who violates a protective order issued by the family court receives punishment for that violation.

The issue of whether criminal and civil matters should be heard in one court is controversial. Proponents argue that such a system promotes coordinated delivery of services, while opponents are concerned that criminal matters will not be taken as seriously in a unified family court, and that there could be violations of a criminal defendant's due process rights. Despite these concerns, a few states have passed laws giving family courts the power to decide criminal matters when these matters involve families who also have a related case in family court.

**Addressing the Overlap Between Domestic Violence and Child Abuse**

Through the leadership of Judge Cindy Lederman and others, the Dade County, Florida, juvenile court has implemented a program designed to address domestic violence issues that arise in the context of juvenile dependency issues. The program includes assessments of the impact of domestic violence on children involved in dependency cases, treatment protocols for mothers and children, support for battered mothers during the CPS investigation process, and the use of battered women's advocates. These advocates assist the battered mothers in getting restraining orders, developing safety plans, and find-
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The program also initiated domestic violence training for county CPS workers, who work with the program staff to coordinate services for battered women and their abused children.

Though the program is voluntary, only 15% of the battered women approached in Dade County have refused the services. As of October 1998, some 100 dependent children, ages 6 to 17, had been evaluated for exposure to domestic violence. Fifty-three of these children reported they were exposed to some domestic violence, and all but three reported that the level of violence was serious. (For more information regarding innovative programs that address the presence of both domestic violence and child abuse in families, see the article by Findlater and Kelly in this journal issue.)

**Other Court Programs**

Children who have witnessed domestic violence receive direct services through courts in some areas. For example, Santa Clara County, California, has pioneered a program to identify children in the foster care system who may qualify for state Victims of Crime Program funding for therapeutic services. In 1997 alone, 450 claims for funding were filed in that county. Florida has a similar fund to provide services for victims of crimes. Such funds have been used to support a court-based counseling program for children exposed to domestic violence. Hawaii courts sponsor a program that screens children in families where a restraining order has been issued, in order to refer the children who need therapeutic services to the appropriate resources. In Washington, D.C., the probation department sponsors counseling sessions for children exposed to domestic violence, when their abusing parent has been court-ordered to attend counseling.

Supervised visitation and visitation exchange centers are springing up around the country, often under the auspices of courts. Court-related programs are in place in New Hampshire; Miami, Florida; Maricopa County, Arizona; Honolulu, Hawaii; and in several California counties. Programs operate with trained, paid and volunteer staff who are present during the visitation, supervise exchanges of the children by the parents, and sometimes conduct the exchange so that the parents have no face-to-face contact. Some of these programs also offer parent-education classes.

**Law Enforcement Responses**

Historically, law enforcement responses to domestic violence have been poor, with many departments actually training officers to avoid making domestic violence related arrests. Numerous lawsuits against police
departments have been brought by battered women or their heirs, when the women were seriously injured or killed by the batterers, after inadequate police intervention. Law enforcement responses are improving, however, with departments adopting policies that emphasize that domestic violence is a criminal offense to be treated seriously. Law enforcement programs are also beginning to identify and respond to the needs of children who witness domestic violence.

In 1997, the International Association of Chiefs of Police held a law enforcement policy summit titled “Family Violence in America: Breaking the Cycle for Children Who Witness.” The report from the summit urges the police to acknowledge that children are real victims of domestic violence. It also states that law enforcement agencies must play a leadership role in galvanizing public awareness of the traumatic impacts of domestic violence on children, and in initiating local, collaborative responses to the problem.

**Professional Training and Public Education**

Police officers in many locations are now receiving training in ways to respond to children who witness domestic violence. This training includes instruction in how to explain to children that the domestic violence is not their fault and that they are not in trouble. One police department produced a video encouraging officers to remember that children are often aware of the violence even when parents think this is not the case. The video also emphasizes the importance of including data on child witnesses in evidence collection, explains how to screen for child abuse or neglect, and offers other suggestions for ways to intervene with child witnesses.

Some law enforcement agencies are also taking the lead in educating the public about domestic violence and its impact on children. For example, in 1997, the sheriff’s department of Santa Cruz County, California, produced a bilingual video on teen dating violence. This video, produced in conjunction with local police, the county district attorney’s office, the probation department, and local domestic violence shelters, is one product of an overall program to raise county awareness of domestic violence issues.

**Documentation of Children as Witnesses**

Documentation by police responding to domestic violence calls of children witnessing domestic violence is increasingly seen as an important part of law enforcement response. This information is useful because it can serve as evidence in a criminal case, facilitate referrals of the children to needed services, and assist policymakers in measuring the extent of the problem and developing solutions. Law enforcement agencies have recently begun to use special domestic violence reporting forms that include boxes to check, or data to enter, if children are witnesses. One officer in Santa Clara County, California, noted that if a box on the county’s report form is checked, stating that a child has witnessed domestic violence, then that child becomes automatically eligible for therapeutic services funded by the state’s Victims of Crime Program. Officers in law enforcement departments throughout the country are also being trained to include child witnesses in photographs of crime scenes. (For more information regarding police documentation of child witnesses to domestic violence, see the article by Fantuzzo and Mohr in this journal issue.)

**Working with Multidisciplinary Teams**

Police departments in several states work closely with domestic violence services providers, CPS workers, mental health professionals, child advocates, and others to meet the needs of children who have witnessed domestic violence. One program in Boston, Massachusetts, uses inter-agency teams to discuss child abuse cases involving domestic violence. These teams include CPS staff, police, battered women’s advocates, batterers’ intervention providers, court personnel, hospital staff,
and supervised visitation providers. Team members use each other’s expertise to design effective case plans and to improve case practice.89

Another multidisciplinary program involving police was established in San Jose, California, in 1997. This program, the Family Violence Center, offers families experiencing domestic violence or child abuse comprehensive services in one building.87 Police, prosecutors, mental health professionals, and local domestic violence agency staff participate in this multidisciplinary approach.90 The center includes a playroom in which children can stay while their parents attend counseling. Cross-agency participation in the program has resulted in greater collaboration generally between domestic violence advocates and police.91

The Child Development–Community Policing project in New Haven, Connecticut, represents an innovative collaboration between mental health professionals and law enforcement.92 As part of the program, police who respond to domestic violence calls receive child development training in order to be better able to respond at the crime scene to the immediate needs of child witnesses. Mental health clinicians provide consultation to police regarding the cases involving children, and provide follow-up mental health services to the children who need them. Police and mental health professionals meet weekly in order to ensure that each case receives the appropriate interventions. During the first three years of the program, neighborhood police referred more than 450 children to mental health services. The entire police department has received general training in providing on-call referral services, and, as of 1998, some 39 police supervisors and the assistant chief of police had received the specialized child development training. The program has not been evaluated as yet. However, data collection systems are in place, and a program evaluation is planned. In 1998, federal funds were made available to replicate this project in 12 to 15 cities throughout the country.

**Conclusion**

Through innovative court and law enforcement programs, as well as changes in laws and practice, the legal system is beginning to address the issue of children exposed to domestic violence. But much more work is needed. For these children to receive the interventions they need, comprehensive community responses that include law enforcement, domestic violence advocates, court personnel, and others must be in place. Professional training about domestic violence and its effects on children should be mandatory for everyone who comes in contact with these cases. This includes attorneys, judges, mental health professionals, child advocates, and police. Furthermore, for collaborative approaches to be successful, cross-discipline training is needed to develop greater understanding of the limitations and capacities of each response system.

Data on the incidence of child witnessing of domestic violence are still limited. Police and court personnel are in ideal positions to collect these data—this should be a
1. See, for example, the words of a Mississippi court: “Family broils and dissensions cannot be investigated before the tribunals of the country, without casting a shade over the character of those who are unfortunately engaged in the controversy. . . . Let the husband be permitted to exercise the right of moderate chastisement . . . without being subjected to vexatious proscriptions, resulting in the mutual discredit and shame of all parties concerned.” Bradley v. State, 2 Miss. (Walker) 156 (1824).


7. One national study found that 20% of contested child custody cases involved domestic violence. See National Center for State Courts, Domestic violence and child custody disputes: A resource handbook for judges and court managers. Williamsburg, VA: NCSC, 1997. A 1996 California study found that 62% of the state’s contested custody cases involved allegations of domestic violence. The Uniform Statistical Reporting System generated these data, which can be obtained by contacting Susan Hanks at the California Statewide Office of Family Court Services, (415) 865-7639. A state survey of restraining order applications in Massachusetts found that in 1994, some 43,000 children had witnessed domestic violence; 65% of these children were ages eight or younger. See Groves, B. Children without refuge: Young witnesses to domestic violence. Zero to Three (April/May 1996) 16:29–34.

8. In this article, the term witnessing domestic violence is used interchangeably with being exposed to domestic violence, or living in a home where such abuse is occurring, as children are deeply affected whether or not they are actually physically present when the specific incidents of domestic violence occur.

9. Reported appellate tort suits involving children who have witnessed domestic violence are rare, which is not surprising, given that it is unusual for adult victims of domestic violence to be involved in tort suits, and also that most such suits settle before trial. However, there are a few recent appellate cases in this area. See Waliser v. Tada, Ohio App. LEXIS 825 (1990); see also Larson v. Dunn, 460 N.W.2d 39 (Minn. 1990); and Courtney v. Courtney, 413 S.E.2d 418 (W. Va. 1991).

10. The cases discussed here were obtained primarily through queries in LEXIS-NEXIS, one of the two leading legal databases. The initial query resulted in several hundred cases, which were screened for those that actually involved children’s issues and adult domestic violence. Only cases decided by an appellate court since 1990 were included, except as indicated.


12. However, some legal journals, such as the New York Law Journal, publish a few local trial court decisions.

13. Many cases are not appealed due to lack of resources. For example, because attorneys’ fees for appellate civil cases can be extremely high, and access to low-cost attorneys can be very limited, many cases are not brought to the attention of the appellate courts. See note no. 11, Mason and Quirk, pp. 221–22.


16. See, for example, In re Custody of Vaughn, 664 N.E.2d 434 (Mass. 1996), in which the trial court’s decision was reversed because it had not provided written findings of fact regarding domestic violence.

17. See, for example, Farrell v. Farrell, 819 P.2d 896 (Alaska 1991), in which the mother was given legal and physical custody because the court viewed the presence of domestic violence as indicative of the inability of the two parents to share decision making in a joint-custody situation. See also Brainerd v. Brainerd, 523 N.W.2d 611 (Iowa 1994), in which the court determined that Iowa law permits courts to consider domestic violence when evidence is presented of harm to the child.


20. These include Alabama, Delaware, Florida, Hawaii, Idaho, Iowa, Louisiana, Minnesota, Nevada, North Dakota, Oklahoma, Texas, and Wisconsin. See note no. 15, National Council of Juvenile and Family Court Judges. These presumptions are recommended by the American Bar Association (ABA) and the American Psychological Association (APA). See Davidson, H. The impact of domestic violence on children. Washington, DC: American Bar Association, 1994;
see also American Psychological Association. Violence and the family. Washington, DC: APA

21. See, for example, Bruner v. Jaeger, 534 N.W.2d 825 (N.D. 1995), in which the appellate court
reversed the trial court's order giving custody to the batterer father, and sent the case back to
the trial court to be decided based on the statutory presumption against custody to a batterer.
See also McDermott v. McDermott, 946 P.2d 177 (Nev. 1997), in which the court found on
appeal that the trial court had abused its discretion by failing to consider a presumption
against perpetrators of domestic violence.

22. See, for example, O kla. Stat. Ann. tit. 10, § 21.1(D) (West 1995), requiring clear and
convincing evidence of abuse, rather than mere preponderance of the evidence.

23. See note no. 15, National Council of Juvenile and Family Court Judges, p. 201.


27. See, for example, Kahn v. Kahn, 654 N.Y.S.2d 34 (1997), in which the trial court's decision to
award unsupervised visitation to the father was reversed, because of his violence toward
the mother and because he had relocated outside the United States, making abduction of the
child a strong possibility.

28. See, for example, McCauley v. McCauley, 678 N.E.2d 1290 (Ind. 1997), in which the court held
that the mother could not use the fact that the father had been violent to her before the
divorce, to modify the visitation order from supervised visitation to no visitation at all.

29. See, generally, Bowermaster, J. Relocation custody disputes involving domestic violence.
University of Kansas Law Review (1998) 46:433–63; Coker, D. Domestic violence and
move-away issues. In Domestic violence law. N.K.D. Lemon, ed. Bethesda, MD: Austin and
Winfield, 1996.


31. See note no. 29, Bowermaster.

32. For a comprehensive overview of restraining order statutes and cases throughout the United
States, see Klein, C.F., and Orloff, L.E. Providing legal protection for battered women: An

33. See, for example, Cal. Fam. Code §§ 6200 et seq. (1993), the Domestic Violence Prevention
Act, which provides for many different types of relief through restraining orders.


35. Edleson, J.L. The overlap between child maltreatment and woman battering. Violence Against


38. See, generally, Haddix, A. Unseen victims: Acknowledging the effects of domestic violence on
84:757–815; Enos, V.P. Prosecuting battered mothers: State laws' failure to protect battered
Double binds facing mothers in abusive families: Social support systems, custody outcomes
Davidson, H. Child abuse and domestic violence: Legal connections and controversies. Family


41. In re Appeal in Maricopa County Juv. Action No. JD-6123, 956 P.2d 511 (Ariz. 1997); In re Sylvia


45. See note no. 43, In re Mark V.; and note no. 44, In re Adoption of John Doe.

46. See note no. 44, In re Adoption of John Doe and In re Hannibal Abdullah; note no. 43, In re H.L.T.; and In re Lutgen, 532 N.E.2d 976 (Ill. App. 1988).

47. See note no. 44, In re Adoption of John Doe and In re Adoption of M.J.H. But see also Bartasavich v. Mitchell, 471 A.2d 833 (Pa. Super. 1984), in which the court held that the father's incarceration and the fact that the murder had been a stabbing were not sufficient to terminate parental rights.

48. See note no. 44, In re Sara R.

49. See note no. 43, In re Mark V.

50. See note no. 46, In re Lutgen.

51. See note no. 43, In re H.L.T. and In re Mark V.; note no. 44, Nancy Viola R. v. Randolph W.; and note no. 46, In re Lutgen.


55. Even in states in which courts are required to include written findings regarding domestic violence, these findings may not include any statement about the effect of the domestic violence on the children.

56. See note no. 15, National Council of Juvenile and Family Court Judges.


62. Telephone conversation with Judge Mike Town, Honolulu, HI, June 15, 1998; telephone conversation with Judge Cindy Lederer, Miami, FL, June 16, 1998; see also the comments by Judge Peter Meeka, Municipal Court Judge of Rio Hondo, CA, in Making a difference: Domestic violence and the role of the court. A video produced by the Judicial Council of California, 1998. This video is available to judges by contacting Bobbie Welling, California Center for Judicial Education and Research, (415) 865-7822.


64. These include Louisiana, Maine, Minnesota, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, and Washington. See note no. 57, Lemon, p. 133.


69. See note no. 62, Town.

70. San Francisco, Butte, and Yolo Counties.


72. Telephone conversations with Dr. Gregory Lecklitner, then director of the program, June 17, 1998; and Sherry Aaron, social worker/ domestic violence advocate for the program, October 19, 1998.

73. E-mail correspondence with Dr. Neena Malik, current director of the program, October 20–21, 1998.

74. Telephone conversations with Judge Leonard Edwards, San Jose, CA; and Joe Yomtov, director of Santa Clara County’s Victim/ Witness Assistance Program, June 11, 1998.

75. See note no. 62, Lederman.

76. E-mail correspondence with Deborah Epstein, Georgetown University Law Center, Washington, DC, June 1, 1998.


78. Expedited visitation service. Produced by the Superior Court of Maricopa County, AZ. Video describes a court program that includes supervised visitation. To obtain the video, contact Kat Cooper, program director, (602) 506-5714.

79. See note no. 58, Kiehm; and note no. 63, Annual report.

80. For example, Family Court Services of Los Angeles and Contra Costa Counties provide trainings so that family members and others can be visitation supervisors.


84. See note no. 83, Redding Police Department.

85. The video, *RealLove*, is available from the Santa Cruz County Sheriff’s Department, Santa Cruz, CA, (831) 471-1121.

86. See, for example, standard reporting forms for Berkeley, CA, available by contacting Officer Bill Judis of the Berkeley Police Department, (510) 644-6848.


90. Telephone conversation with Donna Amoroso, deputy chief, San Jose Police Department, CA, June 17, 1998.
91. Telephone conversation with Shawn Smith, child advocate, Next Door Solutions to Violence, San Jose, CA, June 18, 1998.

92. See note no. 89, National Council of Juvenile and Family Court Judges, pp. 118–23.

93. See, for example, Cal. Penal Code § 1203.097 (1994) mandating a minimum of 52 weeks of counseling, in a group setting with other batterers of the same gender, for at least two hours each week, by certified treatment providers.