One of the thorniest issues facing child protection systems is how to protect children when their parent is the victim or the aggressor in domestic violence in the home. Because of concern that domestic violence against a parent places children at risk of being abused themselves, a common reaction of child welfare systems is that children should be removed from their homes.

This approach, while seeming to protect children, often does much more harm than good. As the discussion of the seminal case *Nicholson v. Scoppetta* documents (page 6), removing children from parents who allegedly “allow abuse” of themselves is legally and emotionally harmful. In many cases, a parent who is the victim of abuse becomes the real target of state intervention while the violent perpetrator is not held accountable. Illinois policy, while containing some very positive principles on paper, does not sufficiently protect against the removal of children from their non-offending parents who are domestic violence victims themselves (page 3). There are many different kinds of cases involving domestic violence allegations, which raises the need for nuanced responses (page 7).

Clearly, DCFS and other agencies should be sure of the facts before presuming that children need protection from their parents (see Executive Director’s Message, page 10).
**Family Defense Center Second Annual Meeting Will Focus on Our Families**

The second annual membership meeting of the Family Defense Center will take place at 6 p.m. Tuesday, Nov. 27 at the offices of Reed Smith, on the 40th floor at 10 S. Wacker Dr., Chicago. Members in good standing as of Oct. 28 are invited to attend, and prior members who have not yet renewed will have an opportunity to do so at the meeting. Anyone planning to attend must RSVP to Heather White at heather@familydefensecenter.net or 312-356-3202 no later than Nov. 23. The meeting will highlight our many achievements of the past year and will include the election of an individual personally impacted by child welfare policies to our board of directors. Parents whose lives have been touched by child welfare policies and practices will speak about their experiences.

**Cy Pres Award and Family Foundation Bring Vital Funds to Family Defense Center**

Sept. 10, 2007, will go down as a great day for the Family Defense Center. First came the news that one of our new Resources Committee members was recommending a special $20,000 grant from her family’s foundation, with a bonus of $5,000 in additional funding if we could match that amount by contributions from our own donors.

Executive Director Diane Redleaf was still basking in her euphoria when Dan Edelman, Jim Latturner and Cathy Combs called later that day, notifying her that the Family Defense Center would be receiving a “cy pres” award of close to $90,000! A cy pres award is a litigation fund created from unclaimed awarded damages; lawyers and judges use the awards to contribute unclaimed funds to charitable causes.

The news of these two awards couldn’t have been better timed: the FDC had been trying to raise sufficient funds to hire a new staff attorney. Thanks to these gifts, we are now confident we can grow and sustain our staff at this critical junction. Our new staff attorney (see next brief) will be able to take on numerous individual cases, develop our pro bono referral program, and work on a number of advocacy projects with our parent advocates, including several training programs we will be announcing in our winter newsletter. Who says lightning doesn’t strike twice in the same spot?

**Welcome Alison McIntire!**

Our first staff attorney, Alison McIntire, joined the FDC on Oct. 17, 2006, after a very competitive hiring process (with more than 110 applicants). Alison’s wide range of experiences includes working for two years as an assistant public defender with indigent juvenile clients in Virginia, working on legislative policy related to human trafficking, serving as executive editor of the *Suffolk Transnational Law Review* and working on affirmative plaintiff civil rights litigation and a host of other social justice activities. Her credits even include successful fundraising work on behalf of two service organizations. To top it off, Alison is fluent in Spanish. We are very excited that Alison is now turning her talents and experience to helping families in the child welfare system.

**Board Member Salvador Cicero Honored**

On Oct. 2, 2007, FDC board member Salvador Cicero was honored with the El Humanitario Award from the Cook County State’s Attorney in celebration of Hispanic Heritage Month. The award honors individuals who have made special contributions to the Hispanic community as lawyers and citizens. Sal is currently the principal of the Cicero Law Firm, following his service as director of the Project to Combat Trafficking in Persons in Ecuador, and his previous role as a member of the diplomatic corps for Mexico and the chief of legal affairs for the Mexican Consulate in Chicago. Congratulations, Sal!

**Thanks to Our Contributors**

Due to the large number of contributions we have received and are continuing to receive, the FDC is establishing a special donor recognition page at our Web site, www.familydefensecenter.net. Thank you to our hundreds of members and contributors at every level in our first full year of operations.

**Editor’s Note**

Next year, *The Family Defender* will be sent to members, subscribers and policymakers. Please join the FDC to ensure your continued receipt of this newsletter. Please use the return envelope or go on-line to www.familydefensecenter.net to join. If you prefer to receive the newsletter in an on-line version only, please e-mail Heather White at heather@familydefensecenter.net.
How the Illinois Department of Children and Family Services Responds—on Paper—to Domestic Violence

by Sara B. Block

More than 5.3 million instances of domestic violence reportedly occur every year. Between 3.3 million and 10 million children witness this abuse. Unfortunately, heightened awareness of domestic violence has resulted in a punitive policy toward battered women in the child welfare system. Child protection systems often re-victimize battered women and their children when they remove children who witness domestic violence from the care of the non-offending parent.

In response to this unfair and harmful treatment, the Illinois Department of Children and Family Services (DCFS) has implemented new policies for child welfare workers in cases in which domestic violence is present or suspected. The stated purpose of the policy is to “provide guidance” to child welfare workers “when assessing safety and risk to children” in families where domestic violence exists. This role is too limited for a child welfare agency whose duty is to do more than merely “assess risk.” The goal of any child welfare agency must be more expansive. A child welfare policy should place culpability on the batterers while promoting the well-being of the family and ensuring safe environments for children and non-abusive parents.

There are three assumptions child welfare agencies sometimes make regarding domestic violence: First, where domestic violence exists, there is often child maltreatment. Second, research has found that children are at risk for unhealthy development when they witness abuse that occurs in their home. Third, abuse can compromise a battered mother’s ability to parent. However, child protection workers should not jump to the conclusion that the only way to keep children safe is to take them from their homes.

Child protection workers must not assume that all children who witness domestic violence will experience adverse consequences. Each child and family should be assessed individually. Despite the fear that domestic violence will affect children throughout their lives, problems are often alleviated when children and their mothers are offered safety and adequate social, emotional, and material support.

Child protection workers should question the assumption that abused mothers are incapacitated parents. Even among the most severely abused women, the vast majority exhibit unimpaired capacities. That response bothered me at the time and it still does. I grew up in rural Iowa where almost everyone had large families. Parents were engaged in the very labor intensive jobs of farming and raising livestock. It was not uncommon for children to share those tasks, and for older sisters (yes, it was sisters, not brothers) to become responsible for many “parenting tasks” concerning younger siblings—feeding, bathing, playing with them, or reading to them. I know a number of adult friends and colleagues who grew up in large, Catholic families engaged in the very labor intensive jobs of farming and raising livestock. It was not uncommon for children to share those tasks, and for older sisters (yes, it was sisters, not brothers) to become responsible for many “parenting tasks” concerning younger siblings—feeding, bathing, playing with them, or reading to them. I know a number of adult friends and colleagues who grew up in large, Catholic families in the Chicago area. Depending on where they fell in the family, they either took on the responsibilities of older siblings or were cared for by an older sister or two (in addition to mom and dad). We had no professionals telling us that there was something wrong with the way we functioned as a family.

My own experience of growing up with seven siblings impacted my interest in this issue of sibling relationships when I worked for the Office of the Public Guardian. It prompted me to work with other attorneys in the office to file the *Aristotle P.* case on behalf of all children with siblings in care in Illinois.

Thank you for focusing on the rights of siblings.

Yours truly,

Mary Bird

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LETTER TO THE EDITOR

As a former employee of the Office of the Cook County Public Guardian, I was familiar with the case of April Curtis and her siblings. I was delighted to read about her extraordinary story in the second issue of *The Family Defender*. Her ability to get connected with leaders in the child welfare field, including Diane Redleaf of the Family Defense Center, Patrick Murphy, Mark Testa, and Emily Buss is very impressive. Her statements about sibling relationships and her work on behalf of siblings in care are examples of not only her resilience, but also the strength of sibling bonds.

Reading the newsletter reminded me of the first case I handled in which the treatment of siblings made a big impression on me. I represented a teenage female client who returned from school off campus to a shelter, only to find that her three-year-old brother had been removed from the shelter and sent to another home. My client called me, crying hysterically. The separation from her mother at the time of her placement had been very emotional; she had not expected to face still another family loss. Her caseworker at the time told my client that she had to “think about herself.” She defended the younger brother’s removal by stating that it was not “right” for the older sister to be so concerned about her brother, as she had assumed a “parenting role.”
ties to parent. There is considerable evidence, however, that battered women experience depression, post-traumatic stress disorder, substance abuse and other mental health disorders. For many battered mothers, the well-being of their children is one of the highest priorities. Many cite concerns for their children as controlling factors in making decisions regarding the abuse. It is important to view the decisions of battered mothers through the lens of a parent who is trying to do what is best for her family under the circumstances.

A battered mother can be held liable for neglect when she makes these choices because society seems to value her effort to protect her children only if she decides to leave. The most common allegation against a battered mother is that, by remaining in the abusive home, she failed to protect her children. Although this implies that these mothers have fallen short of their parental obligations, battered women protect their children through a variety of means, borne of desperation, terror, creativity and love. In the words of a child whose mother was abused, “failing to protect” does not describe the actions or sacrifices of many battered mothers:

*I always knew she stayed for us. She endured the pain and hell to provide for my sister and me. She feared we would end up like her—stuck, dependent … I cannot comprehend how the justice system can charge a battered mother with failure to protect and label her a “bad mother.” They say a good mother is one who forgets about her needs and desires and puts everyone before herself. Is that not what a battered mother does … when she throws herself in the midst of a violent blow, or distracts the batterer’s attention by causing a diversion? Or when she lives twenty years in a loveless marriage so the children grow up with a male figure in the house? Or when she’s raped just to have health insurance to care for a sick child? These all seem extremely selfless to me.*

From these poignant words, it is clear that the mother being referred to did nothing wrong towards her children but suffer the abuse of her partner. If the primary dangers to children are the violent acts the perpetrator commits, then the primary liability for any of the harmful effects of such acts upon exposed children should rest with the perpetrators.

**Inherent Challenges**

For decades, advocates have treated domestic violence and child abuse as separate issues. This separation has created seemingly different approaches, goals and solutions. As a result, it is difficult to create policies and procedures that marry the goals that domestic violence advocates promote and the objectives that child protection systems endorse. There are four inherent challenges:

1) The child protection system intrudes into a battered woman’s life when she may not be ready to confront the domestic violence.

2) In providing services, domestic violence advocates focus on the woman; child protection workers are concerned with the child.

3) Once a battered woman is involved in services, domestic violence advocates try to enable the woman to regain control in her life, while child protection workers generally take control away from her by mandating that she leave the batterer and comply with services.

4) While domestic violence advocates say the victim is not to blame, child protection workers focus on the woman as the solution to the problem without necessarily holding the batterer accountable.

To bridge these barriers, it is necessary to see that the needs of children and their mothers are rarely in conflict, because children can only be as safe as their mothers are.

Because of these challenges, advocacy organizations have recognized the importance of creating models and guidelines for state child welfare agencies regarding domestic violence, the most well-known of which is the *Greenbook*. The National Council of Juvenile and Family Court Judges published the *Greenbook* in 1999.

*The Greenbook* promotes child-centered interventions that focus on supporting the strengths of the non-offending parent to keep children in a safe environment. Any child protection intervention into a home with domestic violence should likewise promote safety, stability and the well-being of children. The *Greenbook* asserts that children should remain with the non-offending parent except when they are in imminent danger.

Caseworkers can promote safety by conducting individualized risk assessments and creating safety plans to respond to the risks.

It is imperative to avoid mandating services that disregard potential dangers. Protecting the privacy and confidentiality of the mother and children also is integral to keeping them safe. Stability in the home can be achieved by holding the batterer accountable and building upon the capacities of the mother and children. The well-being of the family is improved by providing needed services in collaboration with other service providers. In order to build resilience, survive and heal, children need to be nurtured by their non-offending parent. Illinois will truly have a child protection system when it can provide the services that enable children to remain with their mothers, because removing children who witness domestic violence harms children much more than it protects them.

**Assessment of DCFS’s Protocols Regarding Domestic Violence**

Comparing DCFS’s policy and procedures to the *Greenbook* tenets shows that DCFS protocols effectively focus on risk assessment, safety planning and maintaining confidentiality. DCFS also emphasizes holding the batterer accountable. However, DCFS has not adopted the presumption that removing children from their non-offending parent is contrary to their best interests. DCFS also has not instituted services that build up the protective factors in children’s lives by supporting the strengths of their mothers and mitigating the effects of the domestic violence on their development. Neither has it fostered collaboration with other service providers. Although each step of the intervention furthers one of the *Greenbook’s* three goals, without support for each step, none of the goals will be fully realized.

The spirit of the DCFS protocol is to hold batterers accountable for the abuse they inflict and to provide services to the non-offending parent that enhance the safety of herself and her children. As a step toward accountability, workers must refer batterers to an approved intervention program. One factor in the worker’s assessment of the child’s safety is the batterer’s compliance with services. But if the bat-


1. Educate, Train and Change the Attitudes of Caseworkers

Child protection workers need to understand domestic violence and know the requirements set forth under the protocol. Often workers are not skilled in dealing with domestic violence. A suggested training curriculum is Domestic Violence: A National Curriculum for Child Protection Services by Anne L. Ganley, Ph.D., and Susan Schechter, M.S.W. This two-day training program teaches workers how to protect children living with domestic violence. Educational efforts must emphasize that domestic violence affects children differently, and some very little. Workers must also receive specific training on the protocol so they know what to do and how to use the tools.

To change workers’ attitudes about non-offending parents, the protocol should adopt the Greenbook’s presumption against removing children from their homes. Although DCFS favors a policy of removing children from their homes as a last resort, a statement explicitly protecting families from within would shape the ways that workers approach cases.

2. Recognize a Category of “Families in Need of Services”

An allegation of “failure to protect” is the most common reason families experiencing domestic violence become involved with DCFS. This allegation targets the non-offending parent. This means that the cause of the risk—the abuser—is not being addressed. DCFS should create, or lobby the Illinois legislature to create, a category of “families in need of services.” Both New Jersey and North Dakota have such categories. The category does not require DCFS to blame one parent for maltreatment, and acknowledges that services are needed to protect the children.

3. Provide Comprehensive Services to Children

DCFS must build resilience in children by promoting protective factors in their lives. Protective factors that buffer children from adversity and ameliorate the impact of violence include child’s positive temperament, intellectual capacity and social competence; secure attachments to caregivers; strong relationships with others; and cultural, ethnic or community factors, such as living in a supportive, safe communities. Strengthening these protective factors would require DCFS to provide services for children as well as for the parents. If DCFS kept more children in their homes, it would have more money to spend on effective interventions that promote children’s safety, stability and well-being. It is also imperative to collaborate with other organizations.

4. Collaborate

The needs of families that experience domestic violence exceed the capacity of DCFS to provide adequate services. Caregivers, families and communities must support children who have been exposed to domestic violence. To maximize resources, build on strengths and avoid duplication, DCFS should collaborate with other service providers. There are models across the country that demonstrate the benefits of collaboration. For example, the Massachusetts Department of Social Services has domestic violence specialists who work with caseworkers from the point of initial risk assessment through service delivery. Michigan’s Family First Domestic Violence Collaboration Project is a collaboration between shelter and family preservation programs. The Michigan project provides intensive services designed to keep children safe and with their mothers. Florida’s Dade County has another groundbreaking collaborative program called the Miami Dade Dependency Court Intervention Program (DCIPFV). DCIPFV is the first court program to recognize the co-occurrence of child maltreatment and domestic violence. In a comprehensive case management system, DCIPFV psychologists assess children to determine their cognitive, emotional and developmental progress so services can help prevent long-term difficulties.

DCFS could also make use of an innovative program in Chicago called Safe Start. Chicago Safe Start is a new federally-funded, five-year initiative to prevent and reduce the impact of exposure to violence on children up to five years old. It serves young children and those responsible for their care by preventing violence before it occurs and minimizing the consequences of violence when it does occur. The program offers systemwide and community-based prevention and response services that build on existing resources, engage additional resources and build partnerships among all parties involved. DCFS workers need to be aware of such programs and DCFS administrators need to build bridges between community organizations serving women, children and families.

5. Recognize the Offensive Use of the Child Protection System as a Tactic of Power and Control

Missing in the policies of both DCFS and the Greenbook is recognition that batterers often use the child protection system to assert control over their partner. Batterers instill the fear that if the mother leaves him, she will lose the children. Batterers also threaten to call DCFS against the battered mother. Domestic abuse victims believe that because they are powerless, the system will punish them no matter what they do. Because the system has this reputation—often justifiably—many battered women resist the intrusion of DCFS into their lives. This may make it harder to protect the safety of the children.

To fulfill its obligation to protect the safety, stability and well-being of children who witness domestic violence, DCFS must help, not hurt, women and families. DCFS must not play into the hands of abusers.
The Nicholson Case: What Happens When Children Witness Abuse?

By John Migliarini

O

n the evening of Jan. 27, 1999, Sharwline Nicholson, mother of Destinee and Kendell, lay in a Brooklyn emergency room with a broken arm, head injuries and fractured ribs resulting from an altercation with Destinee’s father, Mr. Barnett. Hours later, her children were taken away by the Administration of Children Services (ACS), the child welfare agency in the City of New York. Five days after ACS had taken custody of Destinee and Kendell and placed them in foster care, the agency alleged in court that Ms. Nicholson had neglected her children as a result of Mr. Barnett’s abuse—even though neither child witnessed the incident. In 2002, after a three-year court battle, Ms. Nicholson settled her lawsuit against ACS, which stemmed from her efforts to regain custody of her children.

Ms. Nicholson and two other named plaintiffs sued on behalf of two classes of people consisting of at least 80 families per year in New York City who had their children removed because their parents allegedly had been “engaging in domestic violence” and the children may have witnessed their mothers’ abuse.

Like many other parent-plaintiffs in the class, Ms. Nicholson had not been charged by ACS with abuse or neglect before the incident in 1999. The agency’s only previous contact with her was the result of reported minor violence by Mr. Barnett against Kendell. At that time, ACS noted that “Ms. Nicholson seems very attentive to child’s needs … outside intervention is not necessary.” Mr. Williams, the ACS worker assigned to Ms. Nicholson’s case, testified that “he did not believe that Ms. Nicholson was actually neglectful,” but he hoped that “once she got before the Judge, the Judge would order her to cooperate with realistic services to protect herself and the two children.” He asserted, however, that Ms. Nicholson was “an inadequate guardian, because she was ‘refusing to deal with the reality of the situation.’”

Despite Williams’s testimony acknowledging that “under ACS policy, victims of domestic violence are permitted to make decisions about who will care for their children,” Williams elected to place their children in foster care. Days later, Ms. Nicholson attended her first court hearing without an attorney. When ACS allowed Ms. Nicholson to visit her children for the first time, she had to file a police report on behalf of her son, who had a swollen eye and claimed his foster father hit him. Four days later, Kendell had his sixth birthday, and ACS did not allow him to see or speak to his mother on that day.

Ms. Nicholson sued in federal court after a year-long battle with the agency. During that period, ACS had taken her children without good cause, the police had arrested her while she was picking up mail at the post office, and she saw her children suffer abuse at the hands of foster parents. She had either no legal representation or inadequate court-appointed counsel, and an indicated finding of neglectful parenting was on her record.

The Nicholson complaint raised constitutional claims that ACS “inappropriately removed their children from their homes on the basis of reports of domestic violence without adequate pre- or post-removal investigation, and often where the children were not in danger of harm.” The complaint alleged that this practice violates parents’ fundamental right to raise their children free of governmental interference, as protected under the Fourteenth Amendment.

In a 107-page opinion by Judge Jack Weinstein, the federal district court ruled that ACS had indeed violated parents’ constitutional rights. The court was very critical of ACS, noting “long and unnecessary delays in returning children to the mother. The adverse effect [is] often disastrous to the physical and emotional well-being of the children unnecessarily separated from their abused mothers.” The court also criticized ACS’s underlying motivation: “Many of the actual policies applied by ACS are driven by fear of an incident of child abuse that will result in criticism of the agency. The concern over institutional self-protection, rather than children’s best interests, explains a good deal of ACS’s predisposition toward counterproductive separation of abused mothers and their children.”

The judge found an agencywide practice of removing children from their mother without evidence of a mother’s neglect and without seeking prior judicial approval. The court issued a preliminary injunction order prohibiting ACS from taking children from their mothers based solely on their having witnessed domestic violence.

The City and ACS appealed the preliminary injunction order to the Second Circuit Court of Appeals. The Second Circuit subsequently sought clarification of New York’s Family Court Act from the State’s highest court, the New York Court of Appeals.

The state court then made clear that, under New York law, a child’s mere exposure to violence against his or her caretaker is insufficient to constitute “neglect.” It directed family court judges to “do more than identify the existence of a risk of serious harm. Rather, a court must weigh … whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child’s best interest.” Importantly, the court made clear that “it must be a rare circumstance in which the time would be so fleeting and the danger so great that emergency removal would be warranted.”

The state court clarified that the legislature did not intend the Family Court Act to impose strict liability (liability without regard to fault) for neglect charges. It held that there must be a nexus between the harm to the child and the parent’s failure to exercise the minimum standard of care. The court further said actual neglect must occur—not just the threat of neglect. Finally, the court noted that removal of a child by a child welfare agency can cause “more harm than good,” and that “particularized evidence,” beyond mere witnessing of abuse, is needed to justify removal.

As a result of the New York state court decision, the federal appeals court refused to vacate the preliminary injunction and remanded the case back to the district court in light of the state court findings.

Fortunately for Ms. Nicholson, the federal and state court decisions in her favor led to a speedy resolution to her individual case for dam-
A Survey of Domestic Violence Issues within the FDC’s Docket

The staff of the FDC have seen cases that run the gamut of domestic violence issues, including these examples in our current or past caseload:

1. Cases in Which There Is Dispute as to Whether Domestic Violence Occurred. Tony (not his real name) is an FDC client accused of causing a “substantial risk of harm” to his daughter due to domestic violence. It is unclear whether the victim of this domestic violence is Tony or his wife. From the record developed at a full DCFS hearing, it is not clear if the alleged domestic violence even occurred. Tony’s wife has accused him of choking her during a fight, but she has given three different dates when this incident occurred and she tried to retract her allegations after DCFS intervened. Tony went to domestic violence counseling, but he concluded that he, not his wife, is a domestic violence victim. Tony testified that his wife has thrown objects at him, punched him and verbally abused him. He denies striking her. After an order of protection was entered against Tony (without any legal counsel for him) and DCFS “indicated” him as a perpetrator, he was barred from contact with his two children. The basis for the finding by DCFS is that his 5-year-old daughter allegedly witnessed the alleged choking incident. DCFS’s assumption of Tony’s guilt caused him to have no contact with his children for more than a year, but his actual guilt was never established.

This case is pending in an Administrative Review Action that seeks to overturn the findings DCFS registered against Tony.

2. Cases in Which There Was Domestic Violence in the Home Prior to Juvenile Court Intervention. Vivian (not her real name) is another FDC client. She was the victim of extensive spousal abuse before DCFS intervened to place her two children into foster care. Because of her own victimization and deteriorating mental health, Vivian was unable to care for the children when DCFS took custody of them. Disabled and impoverished, Vivian faced conflicting demands from the child welfare caseworkers as to how she should relate to her now estranged husband. Her attempts to raise concerns about his behavior fell on deaf ears, and for several years she had limited supervised visits with her children, while he had lengthy unsupervised visits. Vivian has tried to have caseworkers recognize that she is being treated unfairly, but none of the agencies assigned to provide foster care services to the children have helped her.

3. Cases in Which True Domestic Violence Is Hidden from the Child Welfare System. One of the named plaintiffs in Dupuy v. McDonalda faced an allegation that she or her husband (or both) caused a skull fracture to their child when he fell from a couch. Eventually they were both cleared of this accusation, but the investigation and ensuing appeals took more than a year. Throughout this period, the mother kept secret the fact that she was a victim of domestic abuse herself, because she believed that revealing her own abuse would have resulted in the removal of the children from both her and her husband. After the allegations regarding the skull fracture were declared unfounded, she was able to extricate herself from her abusive marriage.

4. Cases in Which a Child Was Hurt During a Domestic Violence Incident, but the Domestic Violence Victim Does Not Want DCFS’s Intervention. Pam S. (not her real name) was holding her baby when the child’s father threw a bottle at her, cutting the baby’s forehead. The police were called. Pam did not take the child for medical attention, since the cut was not deep. Later, DCFS insisted that the father leave the home. Now Pam is being indicated for “substantial risk of harm” (though no one claims she is a perpetrator) and for medical neglect. DCFS insists that unless she keeps the baby’s father out of the home, her children may be taken from her. While Pam fears violence from her husband, she did not want to deprive him of contact with the children because he has a good relationship with her older daughter. DCFS is forcing her to take action against him that she believes will make matters more difficult for her family. Pam also worries about supporting herself and her children.

5. Cases of Domestic Violence Allegations in a Foster Home. The FDC currently represents Kim Stevens, a foster mother for special-needs children (see article on page 1). This case demonstrates that allegations of domestic violence are not unique to biological parents. In this case, a long-term foster care placement was disrupted based on a single five-minute episode of fighting, neither party needing medical attention, during the couple’s now-disintegrating marriage. Rather than allow the children to return to their foster mother, the agency insisted on continuing their placement elsewhere even though the foster parents have separated and the foster mother, a special education teacher, has pressed for the children’s return. In Kim’s case, domestic violence allegations appear to have been exaggerated by the husband in order to pursue an agenda in a divorce.

6. Cases in Which Child Welfare Intervention, Handled Correctly, Benefits the Family. Sometimes alcohol abuse is a cause of domestic violence. So it was with the O. family: the father, Randy (not his real name), was calm and caring when sober, but abusive when he drank too much. Eventually the police were called and Randy was ejected from his home pending completion of an inpatient alcohol treatment program. DCFS indicated him for substantial risk of harm, but monitored his treatment while the case was on appeal. Because Randy continued in treatment and his wife saw his progress, DCFS agreed to expunge the findings against Randy and he returned to the home. In this case, DCFS intervention motivated Randy to recognize his problem and get help. And DCFS chose not to keep a stigmatizing finding on his record.

These cases illustrate a proposition that guides the Family Defense Center’s advocacy: appropriate state intervention into families must start with the facts. Is there domestic violence in the home? If so, how serious is it? The child welfare system should not interject itself into cases in which there is little history of violence or very low severity. On the other hand, cases involving real domestic violence (cases 2, 4 and 6) require interventions that can be accepted by the victims. Similarly, cases of domestic abuse that seriously endanger children (beyond the impact of witnessing such abuse) require vigorous assistance for parent and child victims.
Discrimination case continued from page 1

Also very troubling is the fact that LSSI refused to allow the children and Ms. Stevens even to say goodbye to each other. Instead, LSSI arranged for a mock goodbye session between a therapist and the children. Later, LSSI caseworkers allowed one of the children to visit her former preschool after she was taken from the Stevens home, but gave this toddler no opportunity to see the only mother she had ever known.

Ms. Stevens has now filed a civil rights complaint that alleges race discrimination in placement under the Multi-Ethnic Placement Act of 1994/Interethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. 1996(b). MEPA-IEP prohibits any federally-supported program from denying or delaying placement of a child on the basis of race. She has also asked the DCFS Inspector General to investigate alleged misconduct in the handling of this case.

Kim Stevens has found this experience both disturbing and illuminating. She has not been willing simply to “roll over” and surrender her rights, for she sees fighting for the children and her own family as central to her own mission as an educator and a parent. She believes in caring for African-American children with special needs, giving them the chance to grow into successful adults. While willing to participate in any form of neutral clinical assessment that is recommended by a fair evaluation, she does not accept the dictates of LSSI on what is in the children’s best interests.

Stevens strongly supports the interests of the foster children in maintaining ties with their biological families. She notes that removing them from her care did not serve that purpose; rather, “It seems as if the agency is going out of its way to take sides with my husband, who doesn’t even want to care for the children, rather than helping me when I have been devoted to them for three years.”

Vigorous legal advocacy for Kim Stevens’s rights may already be paying off. In September, an initial resolution was reached that provides for a new neutral psychological assessment of Ms. Stevens with the children. And the experience of fighting for the return of the foster children has also inspired Ms. Stevens’s daughter Danielle, who has said that after this experience, she may become a lawyer herself.
Our first president, Briggitte (B.B.) Carlson, didn’t need to conduct much research to understand the problems families face in the child welfare system. One case—that of the Zapata family—exposed B.B. to the myriad problems parents face when their children are wrongfully taken from them by the State.

The Illinois Department of Children and Family Services removed Jose Zapata’s two girls from their mother’s custody due to drug use and other problems. He begged the court to allow him to raise his children. The court and DCFS refused and held him responsible for a delay of less than one month in getting his oldest daughter immunized while she was in her mother’s custody. “This allegation sufficed to keep these girls out of their father’s home for several critical and formative years. It was appalling,” B.B. says.

At first, B.B. thought awareness of the facts would end Jose’s ordeal. “Jose was clearly a loving father who had never harmed either of his girls,” B.B. notes. “I was naïve. It took over five years, two costly appeals, and three law firms to finally secure the return of Jose Zapata’s girls. The day the court declared the children would go home to him is a day that I will never forget.”

As a second-year attorney at Katten Muchin Rosenman, B.B. became lead counsel in the case, when B.B. moved to Sachnoff & Weaver (now Reed Smith Sachnoff & Weaver), she brought Jose Zapata’s case along. “Both firms were incredibly supportive. Sachnoff added supervisory staff and the attorneys at Katten continued working as co-counsel,” comments B.B. She was lead counsel in part because she is fluent in Spanish—at the time, the only language Mr. Zapata could speak. But when she called Mr. Zapata to testify at the final hearing, “Jose testified in English,” B.B. recalls. “We just knew we had to prevail when Jose explained he had learned to speak English ‘because I want to be able to talk to my girls.’ ”

At that hearing, B.B. made a critical decision. The Office of the Court Appointed Special Advocate (CASA), the children’s voice in the courtroom, consistently had sided with the foster parents against Mr. Zapata. A long-term CASA representative refused to even visit Mr. Zapata’s home or speak with him. But a new CASA representative, who spoke Spanish and met with Mr. Zapata, realized he was an excellent father. “I knew it would mean a lot to the judge to hear from the children’s appointed advocate what we, as B.B.’s client, had learned to speak Spanish ‘because I want to be able to talk to my girls.’ ”

On the spot, B.B. decided to call the court-appointed advocate to the stand. “I knew I was running a risk, but it was one I thought could make a huge difference in the outcome of the case.” The CASA representative gave a glowing account, and her testimony impressed the judge. “That was a brilliant stroke,” recalls Diane Redleaf, Executive Director of the Family Defense Center. “B.B. was just a second- or third-year lawyer at the time, but she acted as if she had been trying cases for decades!”

A second pro bono case confirmed B.B.’s commitment to the principle that families deserve protection. As B.B. explains, “My second pro bono client rarely, if ever, took responsibility for her own and her son’s mistakes, but this mother loved her son and had never once hurt him.” B.B.’s client worked three jobs, and her son skipped school when she was busy trying to put food on the table. DCFS took him away because of his truancy. “She wasn’t the sort of mother I intended to be, but she was his mother,” B.B. says. “The State couldn’t do better than she did at raising her boy. In fact, after being taken away from her mother, my client’s son, eventually ended up in jail. None of her other four children had ended up there.”

In both cases, access to skilled legal counsel was a necessity for family reunification. B.B. explains that while neither of her clients had physically or sexually harmed their children, “to get their kids back these parents were being asked to prove they were perfect, and that is impossible for any parent. Parents should never have to meet such a standard in order to have the right to raise their children.” And B.B. adds, “The cost to these law firms of representing Mr. Zapata amounted to more than $100,000 in hourly billings. If Jose hadn’t had pro bono counsel, his kids wouldn’t have known him today.”

B.B.’s savvy, determination, decisiveness and empathy for families led Ms. Redleaf to ask B.B. to be one of three founding board members for the FDC in 2005. And B.B.’s position at Reed Smith enabled her to help recruit colleagues to work on Dupuy v. Samuels and to assist the FDC. In addition, Reed Smith often hosts FDC meetings. (See page 2. Members in good standing as of Oct. 28 are all invited to attend the Nov. 27 FDC Annual Meeting.)

B.B. took on an even greater challenge by agreeing to become the FDC’s first president. Board members are unanimous in praising her in that role. Says Rene Heybach, “B.B. is a master at getting the board to reach consensus and make sound decisions.”

B.B.’s dedication to the interests of families took a more personal turn with the birth of her first daughter, Riley, in 2006. B.B. now works primarily from home, but manages to catch up on FDC matters while Riley naps.

B.B.’s dedication to her family prevents her from continuing to serve on the board. B.B. is expecting her second child in January and will step down then. “I hope to stay involved with the FDC as much as I can with two kids under two,” B.B. assures us.

“She’s a model board member, an ideal president, and a marvelous lawyer,” says Ms. Redleaf. “I’m planning to do with her impending departure what I say I’m going to do when my best law students leave at the end of the summer: I’m just not going to allow it!”
The very first client I interviewed as a brand new lawyer at the 18th Street legal services office of the Legal Assistance Foundation Chicago in June 1979 was a battered woman whose husband had torn out her hair and tried to gouge out her eyes. She spoke Spanish, and I struggled through an interpreter to understand her experience and to counsel her. She was terrified her husband would find out she had sought legal help. I tried to call her back after the initial appointment to start the plan for a domestic violence order of protection on her behalf, but when I called her home (worried myself that her husband might answer), her phone was dead. I couldn’t safely write her either, given her fears of her extremely violent husband.

Her case haunts me still, 28 years later. Whatever happened to her? No one can assert that domestic violence is harmless to children. Domestic violence is very dangerous. The problem is that state intervention in the face of domestic violence can be very dangerous too.

Responding correctly to a claim that domestic violence puts children at risk requires accurate fact-finding. Vague categories like “substantial risk of harm,” “allowing abuse” and “failure to protect” cast wide nets that fail to identify serious abuse and make it possible for any marital squabble to rise to a level that justifies caseworkers, services and threats of child removal. The resulting demands often backfire, making it harder for victims to receive help they would want and accept.

Denial of the real experience of abuse victims is too common in the child welfare system, for once children are taken from their parents, the perpetrator often seems advantaged and the plight of the victim (usually the mother) is not the agency’s problem.

Cases like Nicholson v. Scoppetta have shown these dynamics at work systemically. Yet, for the huge benefit it has brought in the New York City child welfare system and the national precedent it has set, Nicholson has yet to be fully applied nationally. Empowering parents who want help in extricating themselves from domestic abuse rather than imposing that help on them, and refraining from trying to “help” in cases in which there is no genuine or urgent need would be two good places to start in addressing the issues that domestic violence presents to child welfare systems.

Yours in the struggle for justice,

Diane