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Keywords

Juvenile violence, Domestic violence, Juvenile courts, Department of Children and Families

SPECIALIZATION HAS THE POTENTIAL TO LEAD TO UNEVEN JUSTICE: DOMESTIC VIOLENCE CASES IN THE JUVENILE & DOMESTIC VIOLENCE COURTS

By: Allison Cleveland¹

Rather than focus on process and precedent, problem-solving justice focuses on the outcome. Problem solving courts are “specialized courts that seek to respond to persistent social, human, and legal problems, such as addiction, family dysfunction, domestic violence, mental illness, and quality-of-life crime.” These courts adapt their processes to suit the sources of the problems, which are driving the actions that bring the wrongdoer to court in the first place. The focus is on the individual, and the courts provide particularized responses designed to change that specific offender’s future behavior.

- Kathryn C. Sammons²

I. Introduction

In October of this year, I observed an initial hearing at the Boston Juvenile Court for a care and protection case involving four children, all less than five years of age.³ The Massachusetts Department of Children and Families (“DCF”) presented evidence that the mother used cocaine during her pregnancy with the youngest of the four children—a newborn. This was the entirety of the DCF case. The other three children were present at the hearing and appeared to be very happy, energetic, and well-cared for. Though the children’s mother and father did not live together, they still saw each other socially and coordinated child care. Counsel for the mother argued that the DCF presented no nexus between the mother’s drug use and her ability to care for her older children. The older children, reasoned the mother’s counsel, should therefore remain in her care. The judge reviewed documents submitted into evidence and came to the father’s criminal record. Noting multiple restraining orders against the father for domestic abuse, the judge voiced concern about the mother’s failure to separate herself from a man with such an extensive history of domestic abuse. Accordingly, the judge ordered DCF to take custody of all four children.

Following the hearing, I spoke with another juvenile court judge. I admitted my surprise that all four children were removed from their mother’s home based on their father’s violent history against women. The judge was not surprised by the outcome and voiced his strong feeling that the outcome was correct. He noted that, based on the firm language used by the Supreme Judicial Court in *Custody of Vaughn*,⁴ juvenile court judges take no risks in situations involving domestic abuse. The court would rather remove a child from his or her

family than run the risk of abuse. As here, evidence of intimate partner violence is enough to remove children from the home. He underscored the harm that he believes can be done to a child by simply observing abuse and his belief that mothers are not likely to escape the cycle of intimate partner violence.

In the ensuing weeks, I observed more cases in which children were removed from their families and placed into DCF custody based largely on the mother’s status as a domestic violence victim. These decisions continued to strike me. Would the outcome be different in other courts? Would the outcome differ, specifically, in courts that specialize in domestic violence cases?

This paper examines the ways in which judges in the juvenile and domestic violence courts have dealt with, and are likely to deal with, cases of intimate partner violence where children live in the household. Specifically, this paper suggests that the divergent goals of these two specialty courts likely result in uneven justice. In juvenile courts, a judge’s focus is on the welfare of the child. Consequently, children are more likely to be removed from an abused parent’s custody to protect the child’s physical safety. In domestic violence courts, on the other hand, judges are likely to adopt a more favorable position toward domestic violence survivors, in that the abused party is seen less as a victim and more as a capable caretaker. This is especially true in jurisdictions where more services exist to help victims become self-sustaining, as custody in those jurisdictions appears more likely to be awarded to the non-abusive parent as part of the rehabilitation process.

II. Specialization: The Domestic Violence and Juvenile and Courts

Domestic Violence Courts

“Domestic violence courts,” as the name implies, are specialized courts that adjudicate cases involving domestic violence. The Violence Against Women Act (“VAWA”) (Title IV of the Violent Crime Control and Law Enforcement Act of 1994)⁵ routed substantial funds into the nation’s court systems and other areas of criminal justice to demand more accountability from domestic violence perpetrators and to provide help and safety to victims.⁶ Beginning in the 1990s, courts nationwide began to allocate special court sessions and other procedural resources for domestic violence cases.⁷ These “domestic violence courts” were deemed necessary, in part, to handle the growing number of domestic violence cases as arrests for partner abuse became mandatory and as district attorneys faced increasing pressure to prosecute such crimes.⁸ There are currently more than 300 courts

with special procedures in place to handle domestic violence matters.⁹ The goals of specialized domestic violence courts around the country have been relatively uniform and include protecting and empowering domestic violence survivors¹⁰ in addition to holding perpetrators accountable.¹¹ Improving case management efficiency is also often cited as a goal.¹²

Domestic violence courts vary greatly in structure.¹³ Some domestic violence courts may hear only requests for civil restraining orders, while others may adjudicate all issues—such as restraining orders, criminal charges, and divorce and custody issues—for a single family when domestic violence is involved. The term “domestic violence court” can encompass anything from specialized intake processes to an actual separate court system dedicated to domestic violence cases.¹⁴ For example, in 1987, the Quincy District Court in Quincy, Massachusetts began its Domestic Violence Prevention Program, a procedural system designed to efficiently address domestic violence cases. Although not a separate court, the program integrated a network of judges, clerks, police officers, prosecutors, perpetrator’s intervention programs, and other agencies to streamline the system in which victims and perpetrators of domestic violence would have their problems addressed.¹⁵ In 2001, Massachusetts instituted its first (and only) domestic violence court in Dorchester.¹⁶

Generally, domestic violence courts will, at a minimum, hold specialized sessions for restraining orders and other civil matters involving intimate partner violence. Special attention will also be afforded to victims. Elena Salzman describes what a victim can expect in the Quincy District Court:

When a woman comes to the Quincy District Court seeking a restraining order, her first contact will likely be with a domestic abuse clerk in the Restraining Orders Office. The Quincy Program innovators felt that the establishment of a separate restraining orders office would be more conducive to providing the one-on-one assistance women need to fill out the proper paperwork. . . . A woman entering the court is often confused, scared, and uncertain. The clerks help provide the security a woman needs to embark on the intimidating process of requesting a restraining order.

Many of the domestic abuse clerks in Quincy are volunteer interns from law schools and social work programs at local universities. Their duties include disseminating: a sheet listing the critical information the woman should provide to the assisting clerk;

a sheet detailing procedures on how to file a drug/alcohol petition; and an informational brochure entitled “Help and Protection for Families Experiencing Violence in the Home,” which includes a list of emergency resources.

After the initial intake procedure, domestic abuse clerks refer the woman to the daily briefing sessions hosted by the District Attorney’s Office. During these sessions, women not only receive information about referral services and their legal rights, but they also receive emotional support. After the briefing, a clerk accompanies a woman to the courtroom for her emergency hearing, which is usually conducted *ex parte*, without the batterer or his counsel present. Often the clerk will stand with the woman before the bench to provide moral support.¹⁷

Domestic violence courts have received widespread praise for reducing case filings related to violence between intimate partners.¹⁸ Victims also appear to be generally satisfied with their court experiences and the adjudication process.¹⁹ However, specialized domestic violence courts are not without critics. Some argue that such courts are victim-oriented and focus so heavily on holding perpetrators accountable that there is a bias in favor of alleged victims.²⁰ The criminal defense bar has been especially concerned, complaining that “judicial education about family abuse and extended tenure on a calendar devoted to such cases creates a pro-victim, anti-defense bias.”²¹

I interviewed a local Boston defense attorney who represents alleged abusers. She strongly echoed the sentiment that Dorchester Domestic Violence Court judges are “much harder” on defendants than their district court counterparts, often denying bail or setting bail much higher than defendants can afford. In her opinion, this placed an unreasonable burden on defendants and resulted in differential treatment across courts.²² It is perhaps unsurprising that a local prosecutor in the Suffolk County Domestic Violence Unit held a different opinion. Domestic violence courts, she reasoned, appropriately recognize the danger that perpetrators of domestic violence pose to victims and to society-at-large. In her view, the seriousness with which domestic violence crimes have been treated in these specialized courts is a model for the district courts to follow.²³

Internal criticism also exists. Domestic violence judges themselves have cited increased workloads and emotional burnout as disadvantages of specialization.²⁴ Externally, some have expressed concern that domestic violence courts usurp

the power of the legislature by enforcing court-made domestic violence policy.²⁵

Finally, confusion sometimes arises where district court domestic violence programs lack jurisdiction over certain matters, resulting in conflicting orders between courts. Massachusetts, for example, solved this problem by giving the Dorchester Domestic Violence Court jurisdiction over criminal and civil matters in domestic violence cases.²⁶

Juvenile Courts

Juvenile courts are not new to the judicial system. Special courts to adjudicate child neglect and delinquency cases originated more than one hundred years ago, in Cook County, Illinois, and all states now have a juvenile court system.²⁷ Juvenile courts have broad jurisdiction over matters involving children. The special subject matter jurisdiction of any particular state's juvenile court system is proscribed by state statute,²⁸ and usually includes adjudicating child welfare cases (regarding child care and protection), delinquency cases, and issues involving children in need of services.²⁹ In all contexts, the mandate of the juvenile court is to protect the best interests of the subject child.³⁰

The juvenile court system is grounded in the philosophy that “when parents are unable to care for or discipline a child, it becomes the state’s duty to intervene on the child’s behalf. This is the [concept] called *parens patriae*.”³¹ The ultimate goal of the juvenile courts, therefore, is to protect the interests of the child, even when the child’s interests conflict with the fundamental liberty interest of parents in the care, custody and control of their children.³² This emphasis on the child’s interest in remaining safe from harm is especially important in the context of intimate partner violence, where one parent, though “fit” in other ways, may be viewed as unable to protect the child.³³

The Importance of Specialized Knowledge in Domestic Violence Cases

Domestic violence cases can present special problems to judges.³⁴ Because domestic violence is common and likely to be relevant to many legal actions,³⁵ it is advisable that judges and court staff receive specialized training.³⁶ Because decisions about custody are among the most important decisions made in the judicial system,³⁷ and there is a strong probability that domestic violence will be considered as a factor in those decisions, training in domestic violence is especially important for judges³⁸ who make decisions regarding custody and visitation.³⁹ Most states require the court to consider domestic violence issues when awarding custody and visitation rights.⁴⁰ Without knowledge of the particular dynamics of each situation involving intimate partner violence, judges may be misled by information received in court. Victims of domestic violence often make poor witnesses.⁴¹ The trauma experienced by victims may manifest itself as nervousness, timidity, and body language that may be perceived as suspect

or deceptive by the judge.⁴² In addition “[w]ithout . . . understanding of the dynamics of intimate partner violence, a judge may question the ability of an individual to tolerate such severe acts of violence. . . . As a result, a judge may question the actual level of violence or the victim’s motives if she remained in the abusive relationship. . . .”⁴³ Abusers, on the other hand, are often confident and self-controlled, giving an appearance of reliability and truthfulness in court.⁴⁴ Despite appearances, abusers can be, and often are, “master manipulators.”⁴⁵ Domestic violence includes “tactics [that] are more than physical violence and include a penumbra of threats and actions to induce fear, humiliation, social isolation and resource deprivation. Batterers cast aspersions on the moral character, parenting and mental health of battered women to discredit them with those who might intervene.”⁴⁶ Moreover, although a batterer may appear calm and trustworthy on the stand, he likely still presents a danger to his victim, even when they no longer reside in the same home. Indeed, the most dangerous period for an abused woman⁴⁷ is immediately after separation, when her abuser may—in a panic—take desperate measures to regain control.⁴⁸

Victims may also not be seen in a favorable light when a judge evaluates the best interests of the child for custody purposes.⁴⁹ Best interest factors focus on the stability and security of the child’s environment, putting domestic violence victims at a disadvantage.⁵⁰ Victims are often dependent on their abusers for housing, income and other forms of support.⁵¹ Consequently, separation from her batterer may leave a mother without immediate access to a job and financial resources. As noted by Betsy McAlister Groves:

When a mother decides to leave her partner, the children’s situation may actually worsen. Mothers (and children) are at continued or increased risk of being harmed after they make the decision to leave the relationship. The batterer often reacts with anger, disbelief, and increased attempts to control the woman’s relationship. Many women we have seen in the Child Witness to Violence Project described escalating danger as their partners attempted, sometimes through desperate means, to find them and persuade them to return home.⁵²

Taken together, these patterns are not intuitive. Special knowledge on the part of judges and others in the criminal justice system is therefore needed to effectively address the special problems of families affected by domestic violence.

III. The Domestic Violence Courts

As noted above, the domestic violence courts are victim-oriented. These courts protect and empower victims and hold abusers accountable for their violent behavior.⁵³ In

addition, because judges in domestic violence courts have specialized knowledge regarding domestic violence, they are much more likely to grasp the patterns and complexities involved where violence occurs in the home.⁵⁴ This is not only because judges and other court officers hear domestic violence cases so frequently, but also because judges often receive specialized training and tend to engage in frequent dialogue regarding the functioning of the courts, how parties are being served, and how the court system could do better.⁵⁵

As a result of specialized knowledge, judges in domestic violence courts are likely to perceive victims as logical and capable people, rather than as “battered women” trapped in a “cycle of violence.” While the learned helplessness concept of Battered Women’s Syndrome⁵⁶ still pervades the general court system, judges in the domestic violence courts have greater exposure to the currently recognized variation in survivor personalities, capabilities, and resources. They are less likely to become caught up in the mental trap described by two legal scholars below:

Lawyers and judges subscribing to the ‘Why doesn’t she just leave?’ theory too often ignore the battered woman’s experience-based determination that leaving may be more dangerous to her and the child than staying. As a result, battered women seeking justice in a family law context may well face two unnerving consequences: more abuse from the batterer and state coercive authority to remove her children against her will on grounds that a ‘traumatized’ person is less fit to care for her children than the parent who is responsible for the abuse. The critical family law assumption clouds the legal system’s capacity to see that the victimized parent’s decision may have a secure foundation – that the victimized parent is indeed capable of complex thinking and acting, including performing subtle acts of compliance, resistance, and direct action to further her own and her children’s safety and autonomy in the world in which she lives.⁵⁷

In practice, it is certainly much easier to allow custody to remain with the logical, capable mother described above than with a helpless victim. In this light, survivors are more likely to

be seen as capable caretakers. Domestic violence courts tend to adopt the “criminal law facet of domestic violence,” which “recognizes that one intimate partner is a perpetrator and one is a victim . . . and seeks to hold the perpetrator accountable.”⁵⁸ In contrast, family law views conflict in terms of two intimate partners who must find ways to cooperatively regulate their relationship and their family affairs. Because the juvenile court focuses so intently on the child, it is reasonable to believe that juvenile court judges are more inclined toward the “family law” perspective.

IV. The Juvenile Courts

As noted above, the goal of any case in the juvenile court is to protect the best interests of the child. As one Boston juvenile court judge indicated,⁵⁹ he and his fellow judges make the physical and emotional safety of the child paramount. They act on the demands articulated in Vaughn,⁶⁰ removing the child where it is possible that the child may suffer physical or emotional harm as a result of domestic violence in the home.⁶¹

Given the ways in which the juvenile court typically functions, it is not surprising that children would be removed from homes in which domestic violence occurs. First, the juvenile court relies strongly on department of social services expertise.⁶² The department is invariably a party in abuse and neglect cases, and will take a position on whether it believes the child should be removed from the home. As one commentator notes, child welfare departments often have a checkered history in terms of domestic violence cases,⁶³ at least from the point of view of domestic violence victims.⁶⁴ She describes these views as follows:⁶⁵

[O]pponents claim that child protective involvement in cases of childhood exposure to domestic violence typically has not served the best interests of children or their abused caregivers. Opponents argue that such intervention traditionally has been ineffective, discriminatory, and destructive, endangering the safety of adult victims and their children, blaming battered women for their children’s exposure, and reflexively removing children from their abused parent’s custody. Finally, opponents argue that not all children exposed to domestic violence are harmed by their exposure, and thus intrusive government intervention and its negative concomitants will be extended to many families where such intervention is unnecessary.

My own conversations with local attorneys support this view. One victim advocate opined that the Massachusetts Department of Children and Families (“DCF”) is extremely quick to take custody of children whose mothers are abused following a report of a domestic disturbance.⁶⁶ A local defense attorney vigorously agreed, saying that “DCF seems to show up as soon as an incident is reported to the police. Before a victim can even get a restraining order, her kids are in DCF custody.”⁶⁷ Whether or not these accounts exaggerate, it is

logical to assume that child welfare agencies, like the courts, err on the side of caution to prevent physical harm to the child. It is not unlikely that judges are heavily influenced by child welfare departments in court, particularly when the alternative is to risk putting a child in a dangerous environment. Courts and child welfare agencies have a shared policy goal to protect the child,⁶⁸ suggesting that judges defer to agency expertise where the legitimacy of a child removal action is considered. It is reasonable to assume that this would be particularly true where the alternative to removal is to leave a child at risk in a dangerous environment.

Scholar Lois Weithorn⁶⁹ argues that courts have generally deferred to child welfare agency removal actions and have historically

“blame[d] these women for any negative ramifications of their abuse for their children; remove[d] children from their mothers’ custody when doing so [was] not necessary for the child’s protection; fail[ed] to hold the abuser accountable for his conduct; and fail[ed] to provide any services that contribute to the short-or long-term well-being of the child or the nonabusive parent.”⁷⁰

However, juvenile court judge concerns for the safety of the child are based in fact. For example, children in homes in which intimate partner violence occurs are at increased risk for physical harm.⁷¹ Between 30 % and 60 % of children whose mothers are abused are likely to suffer abuse themselves.⁷² It is also true that children who witness domestic violence are more likely to develop emotional and psychological problems, show aggressive behavior, and are more likely to exhibit signs of post-traumatic stress disorder and depression.⁷³ It is unclear whether these effects occur as a result of the child witnessing violence, from the abuser’s dysfunctional parenting patterns in general, or from a combination of both.⁷⁴ However, social science studies seem to support the proposition that these problems can be counteracted to a great extent by a stable and loving relationship with the non-abusive parent.⁷⁵ If the goal is to secure the best possible situation for each child, a pattern of removing children from both parents, rather than just the abuser, seems counterproductive.⁷⁶

V. Conclusion

Domestic violence courts and juvenile courts, while both “specialty courts,” approach issues of child custody and domestic violence from very different perspectives. Juvenile courts, charged with protecting the child’s best interests, are likely to err on the side of caution by removing children from homes in which domestic violence is evident. These orders are based largely on social science data showing the emotional and psychological harm to children who witness violence in the home, and on a desire to safeguard the child from physical harm. Domestic violence courts, on the other hand, are strongly victim-oriented and are more likely to provide services meant to facilitate continued custody with the non-offending parent. This approach more accurately reflects the social science understanding of domestic violence phenomena, the strength and resilience of survivors, and their competence as caregivers. More broadly, since the divergent perspectives of these two specialty courts are likely to result in very different decisions regarding child custody in domestic violence situations, family integrity very much depends on the court in which each family finds itself.

Endnotes

¹ Allison Cleveland is a third-year law student from Boston College Law School.

² *Therapeutic Jurisprudence: An Examination of Problem-Solving Justice in New York*, 23 ST. JOHN’S J. LEGAL COMMENT, 923-25 (2008) (citations omitted).

³ The hearing took place in the Suffolk Juvenile Court, Boston.

⁴ *Custody of Vaughn*, 422 Mass. 590, 595-96, 600 (1996) (holding that the Probate Court erred in failing to make detailed findings about domestic violence in a custody case); *Id.* at 595 (“Quite simply, abuse by a family member inflicted on those who are weaker and less able to defend themselves—almost invariably a child or a woman—is a violation of the most basic human right, the most basic condition of civilized society: the right to live in physical security, free from the fear that brute force will determine the conditions of one’s daily life.”).

⁵ Violence Against Women Act (V. A. W. A.) of 1994, 18 U.S.C. §1902.

⁶ See Anat Maytal, *Specialized Domestic Violence Courts: Are They Worth the Trouble in Massachusetts?*, 18 B.U. PUB. INT. L.J. 197, 200 (2008) (explaining that Special Training Officers and Prosecutors (“STOP”) grants were administered to state for the purposes of strengthening domestic violence intervention programs and policies).

⁷ See Robyn Mazur & Liberty Aldrich, *What Makes a Domestic Violence Court Work? Lessons from New York*, JUDGES’ J., Spring 2003, at 5-6 (observing that domestic violence was historically perceived as a private matter that did not warrant court invention, which is why courts did not address domestic violence in any serious way until the 1990s). See also Amy Karan, Susan Keilitz, & Sharon Denaro, *Domestic Violence Courts: What Are They and How Should We Manage Them*, JUV. & FAM. CT. J., Spring 1999, at 71 (noting that as domestic violence cases substantially increased to be the fastest domestic relations caseload that courts implemented special procedures, such as mandatory arrests and victimless prosecution policies, to help survivors).

⁸ Between 1989 and 1998, domestic violence filings in state courts increased 178 percent. Maytal, *supra* note 5, at 207.

⁹ *Id.* at 209. The first specialized domestic violence court was located in Brooklyn and heard felony-level domestic violence cases, beginning in 1996.

¹⁰ *Id.* at 214 (explaining that one major goal of the Quincy Program in Massachusetts, for example, is to “empower victims” of domestic violence). *See also id.* (reporting that the Quincy Program strongly enforces its orders on abusers to ensure compliance); Sammonds, *supra* note 1, at 961 (arguing that a primary difference between domestic violence courts and other courts is the former’s intense focus on victims); JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, DOMESTIC VIOLENCE COURTS: A DESCRIPTIVE STUDY 15 (2000), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/dvreport.pdf> (reporting that California domestic violence courts often refer domestic violence victims to support services including victim advocates, children’s services, substance abuse services and services for immigrants, among others).

¹¹ *See, e.g.,* Sammonds, *supra* note 1, at 958-59 (asserting that New York domestic violence courts’ commitment to enhance victim safety and hold perpetrators accountable). *See also* Maytal, *supra* note 5, at 214 (describing the first dedicated domestic violence court in Brooklyn to incorporate defendant monitoring technology to ensure court order compliance); JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 9, at 15-16 (nothing that in the California court system, 36 of the 39 domestic violence courts regularly ordered abusers to participate in batterer’s intervention programs and 24 of the 39 courts had regularly scheduled judicial review calendars to monitor the abusers’ progress in these programs).

¹² *See* JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 9, at 18-19 (finding that representatives of the domestic violence courts in California, for example, placed greatest emphasis on (in the following order): victim and child safety, providing services to victims, holding perpetrators accountable, and improving case management). *See also* Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention* (Note), 74 B.U. L. REV. 329, 342 (1994) (noting that the Quincy Program established “fast track” procedures to expedite domestic violence hearings).

¹³ *See* Maytal, *supra* note 5, at 214 (claiming that a domestic violence court classification is difficult due to significant specialization differences among domestic violence courts across jurisdictions).

¹⁴ *See* JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 9, at 3 (explaining that in the study that “domestic violence court” referred to “those courts that assign judicial officers to hear a special domestic violence calendar, regardless of whether the judicial officers hear those cases exclusively or as part of a mixed assignment” in which 39 court locations in 31 counties met the definition within the study); *Id.* at 11 (stating that of the 39 courts with dedicated domestic violence calendars, 17 always referred custody cases with an associated protective order or open domestic violence case in the criminal courts to the domestic violence court, while the remaining 22 courts never did so; fifteen courts always referred divorce cases to domestic violence sessions when a restraining order or criminal case was involved, while 24 never did); *Id.* (concluding that domestic violence misdemeanors were more likely to be referred to special domestic violence sessions than were felonies; in misdemeanor cases, 19 courts always referred, 4 sometimes referred, and 9 never referred; in felony domestic violence cases, 9 always referred, 4 sometimes referred, and 26 never referred); *Id.* at 12 (concluding that more than half of the 23 courts with special screening departments reported screening for domestic violence in family law cases; courts were least likely to screen criminal cases and child abuse and neglect cases; only 5 out of 23 courts reporting screening for domestic violence in abuse and neglect cases).

¹⁵ *See* Maytal, *supra* note 5, at 209.

¹⁶ *See id.* at 217.

¹⁷ Salzman, *supra* note 11, at 340-41.

¹⁸ Recently in Idaho, for example, the sharpest decline in domestic violence case filings occurred in the judicial districts with domestic violence courts. *See* Fred G. Zundel & Patrick D. Costello, *Domestic Violence Trends and Topics*, 52 THE ADVOCATE: THE OFFICIAL PUBLICATION OF THE IDAHO STATE BAR 1 (Jan. 2009) <http://isb.idaho.gov/pdf/advocate/adv09jan.pdf>. But see EVE BUZAWA, GERALD HOTALING, JAMES BYRNE & ANDREW KLEIN, RESPONSES TO DOMESTIC VIOLENCE IN A PRO-ACTIVE COURT SETTING 31, available at <http://www.ncjrs.org/pdffiles1/nij/grants/181427.pdf> (finding that between 1995 to 1996 at the Quincy Court, 86 of 353 accused abusers were ordered into batterer treatment programs, however, successful completion of these programs was not associated with significantly lower re-offense rates after one year compared to offenders who did not complete batterer’s intervention). *See also id.* at 18 (noting that recidivism rates remained high despite the aggressive system to address domestic violence in the Quincy District Court).

¹⁹ *See* BUZAWA ET AL., *supra* note 17 (indicating that 81% of victims were satisfied with their contacts with victim advocates). *See also id.* at 15 (arguing that victims also perceived the court experience as increasing their personal safety, felt that the court experience motivated them to no longer tolerate a violent relationship, and felt that the court provided them a sense of control in the relationship).

²⁰ *See, e.g.,* Maytal, *supra* note 5, at 226 (explaining that some domestic violence court critics claim that court impartiality is compromised by specialization).

²¹ *Id.*

²² Interview with Boston-area defense attorney (anonymous by request), Boston College Law School (October, 2009).

²³ Interview with Boston-area prosecutor (anonymous by request), Boston College Law School (November, 2009). *See also* Maytal, *supra* note 5, at 229 (“Prior to specialization, the criminal court system arguably was biased against victims, denying them the complete justice they deserved. Victims often could not afford proper counsel, and the fear of retribution loomed very large when seeking help from the courts.”).

²⁴ Maytal, *supra* note 5, at 220.

²⁵ *See id.* at 224-25.

²⁶ *Id.* at 218.

²⁷ *See* Ira M. Schwartz, Neil Alan Weiner, & Guy Enosh, *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 535 (1998).

²⁸ Paul M. Coltoff, John R. Kennel, Anne E. Melley, Carmela Pellegrino & Wendy Schack, Annotation, Infants, II. Protection and Control, A. In General, 3. Courts and Their Jurisdiction, 43 C.J.S. INFANTS § 11 (2009). Although several federal statutes impact the procedures of the juvenile court, there is no unified statute that has been considered to influence the workings of the juvenile courts as V.A.W.A. has for domestic violence. *See, e.g.,* the Child Abuse and Prevention Act, 42 U.S.C. §§ 5101 et seq. (1974) (requiring appointment of guardians ad litem in dependency and neglect cases). *See also* the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §§ 5601 et seq. (1974) (requiring, among other things, that incarcerated juvenile offenders be separated from adults).

²⁹ *See, e.g., id.* Children in need of services cases are referred to as “CHINS” cases in Massachusetts. These are also known as truancy cases, or may take on other names, depending on the state.

³⁰ *See, e.g.,* Schwartz et al., *supra* note 26, at 535-36.

³¹ *Id.* at 535.

³² *Id.* See also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (noting that the right to raise one's children has been repeatedly held a fundamental due process right).

³³ See, e.g., *N.J. DYFS v. S.S.*, 855 A.2d 8 (2004); *D.D. v. Dep't. of Children and Families*, 773 So. 2d 615, 618 (Fla. App. 5 Dist. 2000).

³⁴ See, e.g., *Sammonds*, *supra* note 1, at 959 (arguing that domestic violence cases are among the most "demanding" and "heart-wrenching" cases for judges because many victims are reluctant to seek legal intervention due to love, fear or economic dependence on the offender).

³⁵ Twenty to thirty percent of all women are assaulted by a partner or ex-partner during their lifetime. See Betsy McAlister Groves, *Children without Refuge: Young Witnesses to Domestic Violence*, 16 ZERO TO THREE 11, 11 (1996). Moreover, in many cases, children witness the violence. Based on restraining order forms filled out by women seeking protection from the courts in 1994, 43,000 Massachusetts children were exposed to domestic violence in that year. Of these, 65% were 8 years old or younger. *Id.* at 11. Also, in a survey of 115 mothers with a child under the age of six, one study found that one in ten children had witnessed a knifing or shooting and another eighteen percent had seen pushing, hitting or shoving. Half of these incidents occurred in the home. See *id.* at 11-12.

³⁶ The American Bar Association supports special education for the judiciary in the area of domestic violence. See generally THE AMERICAN BAR ASSOCIATION COMM'N ON DOMESTIC VIOLENCE, REPORT NO. 2 (1996). See also Dana Harrington Connor, *Abuse and Discretion: Evaluating Judicial Discretion in Custody Cases Involving Violence Against Women*, 17 AM. U. GENDER SOC. POL'Y & L. 163, 165-66 (2009) (arguing that many legal remedies involving violence against women, including custody decisions, require special knowledge and do not lend themselves to unrestricted discretion of a trial judge).

³⁷ See Connor, *supra* note 36, at 165.

³⁸ See, e.g., Maria L. La Ganga, *Nevada Judges Must Attend Domestic Violence Forum*, L.A. TIMES, September 9, 1993, available at http://articles.latimes.com/1993-09-09/news/mn-33232_1_domestic-violence (last visited April 9, 2009).

³⁹ In Massachusetts, for example, "[i]n determining whether temporary shared legal custody is or is not in the child's best interests, the Court must consider all relevant facts including but not limited to whether any family member has been the perpetrator of domestic violence, or abuses alcohol or drugs, or has deserted the child and whether the parties have a history of cooperating in matters concerning the child." MASS. GEN. LAWS ch. 208, § 31 (2010).

⁴⁰ See, e.g., Harrington Connor, *supra* note 35, at 189. See also AMERICAN BAR ASSOCIATION COMM'N ON DOMESTIC VIOLENCE, CHILD CUSTODY AND DOMESTIC VIOLENCE BY STATE (2008), available at <http://www.abanet.org/domviol/docs/Custody.pdf> (showing all the states that consider domestic violence as a factor influencing the child's best interests).

⁴¹ See Chet K. W. Pager, *Blind Justice, Colored Truths and the Veil of Ignorance*, 41 WILLIAMETTE L. REV. 373, 383 (2005).

⁴² *Id.*

⁴³ Connor, *supra* note 36, at 177.

⁴⁴ See Linda E. Neilson, *Assessing Mutual Partner-Abuse Claims in Child Custody and Access Cases*, 42 FAM. CT. REV. 411, 420 (2004) (noting that perpetrators purposefully present public images); Joan S. Meier, *Domestic Violence Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 690 (2003) (stating that custody judges tend to find abusers more credible than those their victims).

⁴⁵ See LUNDY BANCROFT AND JAY G. SILVERMAN, *THE BATTERER AS PARENT* 15-16 (2002).

⁴⁶ Andrea C. Farney & Roberta L. Valente, *Creating Justice Through Balance: Integrating Domestic Violence Law into Family Court Practice*, 54 JUV. FAM. CT. J. 35 (2003).

⁴⁷ This particular law article only addresses abused women, although men are be abuse victims who may seek legal intervention.

⁴⁸ See Tina Hotton, *Spousal Violence After Marital Separation*, 21 JURISTAT 1 (June 2001) (documenting increased risk of violence immediately after separation). Domestic violence after separation may sometimes result in homicide. Women in the US and Canada at greatest risk for homicide are those with partners who have a history of domestic abuse. See Neil Websdale, H. Moss & B. Johnson, *Domestic Violence Fatality Reviews: Implications for Law Enforcement Community*, THE POLICE CHIEF 65, 65-74 (July 2001). See also Tracee Parker, Kellie Rogers, Meghan Collins, & Jeffrey L. Edelson, *Danger Zone: Battered Mothers and Their Families in Supervised Visitation*, VIOLENCE AGAINST WOMEN, November 2008, at 1313, 1318-1320 (describing how abusers continue to attempt to manipulate and control survivors at supervised visitation centers, by using children to convey messages, by sending gifts with children, by attempting to gain information about the survivor from support staff, and by creating difficulties with appointment times).

⁴⁹ In custody and visitation cases, the best interest standard is applied nationally. See, e.g., *Harrington Connor*, *supra* note 35, at 195.

⁵⁰ See Jennifer L. Woolard & Sarah L. Cook, *Common Goals, Competing Interests: Preventing Violence Against Spouses and Children*, 69 U.M.K.C. L. REV. 197, 212 (2000) (explaining that abused women are likely to lack financial resources, may have trouble procuring housing, and are more likely to remove the child from the marital community).

⁵¹ See BUZAMA ET AL., *supra* note 17, at 31.

⁵² See McAlister Groves, *supra* note 34, at 13.

⁵³ See *supra* notes 7 and 8.

⁵⁴ See Lawrence Baum, *Probing the Effects of Judicial Specialization*, 58 DUKE L. J. 1667, 1671 (2009) (arguing that judicial specialization may improve judge decision-making because specialists fare better than generalists).

⁵⁵ See, e.g., Maytal, *supra* note 5, at 219-220 (stating that the Dorchester Court Roundtable allowed judges to come together to share ideas and deliberate about relevant issues).

⁵⁶ See Lenore Walker, *Who Are Battered Women?*, 2 FRONTIERS: A JOURNAL OF WOMEN STUDIES 52 (1977) (describing the learned helplessness exhibited by many "battered" women).

⁵⁷ Farney & Valente, *supra* note 45, at 39. See also BUZAMA ET AL., *supra* note 17, at 16 (explaining that victims in Quincy Court cases were accurate in predicting future offenses by their abusers, and victims who feared serious injury were almost three times more likely to be re-victimized).

⁵⁷ Farney & Valente, *supra* note 45, at 39.

⁵⁸ Interview with Judge of the Juvenile Court (anonymous), Suffolk Juvenile Court, Boston (October, 2009).

⁵⁹ See Vaughn, 422 Mass. at 595-96, 600.

⁶⁰ Interview with Judge of the Juvenile Court (anonymous), Suffolk Juvenile Court, Boston (October, 2009).

⁵⁸ "Department of social services" is used here as a generic term to refer to state child welfare agencies. Names of the department vary by state.

⁵⁹ See Lois A. Weithorn, *Protecting Children From Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment*, 53 HASTINGS L.J. 1, 32-33 (2001) (arguing that protection system authorities often

remove children from the custody of both the abusive and non-abusive parent, citing the non-abusive parent's "failure to protect" the child from either direct abuse by her batterer, or from exposure to the domestic violence).

⁶⁰ See *id.* at 27.

⁶¹ *Id.*

⁶² Interview with Boston-area prosecutor (anonymous by request), Boston College Law School (November, 2009).

⁶³ *Id.*

⁶⁴ See, e.g., Schwartz et al., *supra* note 26, at 535-36.

⁶⁵ See Weithorn, *supra* note 59, at 29.

⁶⁶ Many of these concerns are exactly, in fact, what prompted the creation of special domestic violence courts.

⁶⁷ See EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSON LIFE 42 (2007) (stating that domestic violence is the most common context for child abuse and neglect).

⁶⁸ See Jeffrey L. Edelson, *The Overlap Between Child Maltreatment and Woman Battering*, VIOLENCE AGAINST WOMEN, February 1999 at 134, 134-54.

⁶⁹ See Katherine M. Kitzmann, Noni K. Gaylord, Aimee R. Holt & Erin D. Kenny, *Child Witnesses to Domestic Violence: A Meta-analytic Review*, 71 J. CONSULTING CLIN. PSYCH. 339 (2003); Wanda Mohr, Megan J. Noone Lutz, John W. Fantuzzo & Marlo A. Perry, *Children Exposed to Family Violence: A Review of Empirical Research from a Developmental-Ecological Perspective*, 1 TRAUMA, VIOLENCE, AND ABUSE 264 (2000). Children are at risk for the same problems when a divorce occurs. See Judith S. Wallerstein and Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L.Q. 305, 309-310 (1996) (explain that in general, after divorce, many children and adolescents exhibit depression, aggressive behavior, decreased self-esteem, and a sense of loss associated with the break-up of their families, whether or not they have access to both parents); Judith S. Wallerstein and Joan B. Kelly, *The Effects of Parental Divorce: Experiences of the Child in Later Latency*, 46 AMER. J. ORTHOPSYCH. 256 (1976); Judith S. Wallerstein and Joan B. Kelly, *The Effects of Parental Divorce: Experiences of the Preschool Child*, 14 J. AMER. ACAD. CHILD PSYCH. 600 (1975); Judith S. Wallerstein and Joan B. Kelly, *The Effects*

of Parental Divorce: The Adolescent Experience, 3 THE CHILD IN HIS FAMILY: CHILDREN AT PSYCHIATRIC RISK 479 (1974).

⁷⁰ See Emily J. Salisbury, Kris Henning & Robert Holdford, *Fathering by Partner-Abusive Men: Attitudes on Children's Exposure to Interparental Conflict and Risk Factors for Child Abuse*, CHILD MALTREATMENT, August 2009 at 232, 236, 240 (concluding that among a large sample of more than 3,800 convicted abusers surveyed in Tennessee, 84.6% had some type of parenting role. It is known that children in intimate partner violence (IPV) environments show maladjustment, but little research has examined how this effect might be attributable to the parenting style of the abuser). See also Emily F. Rothman, David G. Mandel & Jay G. Silverman, *Abusers' Perceptions of the Effect of Their Intimate Partner Violence on Children*, VIOLENCE AGAINST WOMEN, November 2007 at 1179, 1184-1187 (concluding that abusers seem relatively oblivious to harm they might cause their children, in which even among men who had completed a significant portion of a batterers' intervention program, only 73% believed their violence negatively impacted the parent-child relationship, and only 53% worried about the long-term impact of intimate partner violence on their children).

⁷¹ See Wallerstein & Tanke, *supra* note 73, at 310-311 (stating that research at the Center for the Family in Transition on children following divorce has revealed several factors predictive of positive outcomes for children in divorced families and that these are particularly striking for domestic violence cases with the first and paramount factor being a close, sensitive relationship with a stable parent; other factors include reasonable cooperation with parents and whether the child has pre-existing psychological difficulties; importantly, the minimization of conflict between parents is vital to the child's well-being as the potential for future parental conduct can threaten a child's sense of security and undermine his feelings of trust).

⁷² See Maureen Collins, *Nicholson v. Williams: Who is Failing to Protect Whom? Collaborating the Agendas of Child Welfare Agencies and Domestic Violence Services to Better Protect and Support Battered Mothers and Their Children*, 38 NEW ENG. L. REV. 725, 750 (2004) (noting that children removed from the non-abusive parent suffer psychological harm).