

Section 5

Is It Illegal And An Unconstitutional Practice For CPS To Remove Children Solely Because They Witnessed A Parent As A Victim Of Domestic Violence?

Yes it is illegal and an unconstitutional practice to remove children which results in punishing the children and the non-offending parent. In a landmark class action suit in the U.S. District Court, Eastern District of New York, U.S. District Judge Jack Weinstein ruled on *Nicholson v. Williams*, Case No.: 00-cv-2229.

This suit challenged the practice of New York's City's Administration for Children's Services of removing the children of battered mothers solely because the children saw their mothers being beaten by husbands or boyfriends. Judge Weinstein ruled that the practice is unconstitutional and he ordered it stopped.

Are Parents Guilty Of Maltreatment Or Emotional Neglect If The Child Witnesses Domestic Violence?

Not according to Judge Weinstein's ruling and to the leading national experts.

During the trial several leading national experts testified regarding the impact on children of witnessing domestic violence, and the impact on children of being removed from the non-offending parent. The views of experts on the effects of domestic violence on children, and defining witnessing domestic violence by children as maltreatment or emotional neglect is a mistake.

"Great concern [regarding] how increased awareness of children's exposure [to domestic violence] and associated problems is being used.

Concerned about the risk adult domestic violence poses for children, some child protection agencies in the United States appear to be defining exposure to domestic violence as a form of child...Defining witnessing as maltreatment is a mistake. Doing so ignores the fact that large numbers of children in these studies showed no negative development problems and some showed evidence of strong coping abilities. Automatically defining witnessing as maltreatment may also ignore the battered mother's efforts to develop safe environments for their children and themselves." Ex. 163 at 866.

Effects Of Removals Of Children And On The Non-Offending Parent

Dr. Wolf testified that disruptions in the parent-child relationship might provoke fear and anxiety in a child and diminish his or her sense of stability and self. Tr. 565-67. He described the typical response of a child separated from his parent: "When a young child is separated from a parent unwillingly, he or she shows distress ... At first, the child is very anxious and protests vigorously and angrily. Then he falls into a sense of despair, though still hyper vigilant, looking, waiting, and hoping for her return ..." A child's sense of time factors into the extent to which a separation impacts his or her emotional well-being. Thus, for younger children whose sense of time is less keenly developed, short periods of parental absence may seem longer than for older children. Tr 565-65. See also Ex. 141b.

For those children who are in homes where there is domestic violence, disruption of that bond can be even more traumatic than situations where this is no domestic violence. Dr. Stark (Yale New Haven Hospital researcher) asserted that if a child is placed in foster care as a result of domestic violence in the home, then he or she may view such removal as "a traumatic act of punishment ... and [think] that something that [he] or she has done or failed to do has caused this separation." Tr. 1562-63.

Dr. Pelcovitz stated that "taking a child whose greatest fear is separation from his or her mother and in the name of 'protecting' that child [by] forcing on them, what is in effect, their worst nightmare, ... is tantamount to pouring salt on an open wound." Ex. 139 at 5.

Another serious implication of removal is that it introduces children to the foster care system, which can be much more dangerous and debilitating than the home situation. Dr. Stark testified that foster homes are rarely screened for the presence of violence, and that the incidence of abuse and child fatality in foster homes is double that in the general population. Tr 1596; Ex. 122 at 3-4. Children in foster care often fail to receive adequate medical care. Ex. 122 at 6. Foster care placements can disrupt the child's contact with community, school and siblings. Ex. 122 at 8.