Chapter 25

CLINICAL ISSUES IN STATE INTERVENTION CASES

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Scope Note

This chapter addresses the variety of clinical issues that arise in child welfare cases and the impact of abuse, neglect, removal, placement, and visitation on children. It also examines the issues of attachment and the relationship between the parent and the child. The chapter concludes with a checklist for effective communication between counsel and a child client.

§ 25.1 INTRODUCTION

Attorneys working in the areas of child protection and Children In Need of Services (CHINS) are faced with a wide range of clients. The work of understanding a parent or child and bringing his or her perspective into court is challenging. When these clients have numerous family stressors, limited social and economic resources, or a history of abuse and neglect, the work of gathering information and formulating a case theory may become more complicated. Several areas of psychology have something to offer the attorney practicing in this field. This knowledge can help counsel do the following:

- gain a more accurate understanding of the families involved in the child welfare and CHINS systems;
- develop a logical, persuasive theory of the case;
- counsel a client sensitively and effectively about his or her case;
- make better use of evaluations and other clinical records;
- bring accurate, relevant, useful information to the court's attention; and

- more effectively advocate a client's position before DSS, the court, and other parties.

For example, counsel advocating for postadoption contact on behalf of a parent or child must understand and present to the court information about the nature of the preadoption attachment and the broader relationship between parent and child. Similarly, understanding the specific developmental needs of children in state intervention cases can assist counsel in advocating for more frequent parent-child visitation. Further, counsel seeking to prove or defend against a claim of parental unfitness will be aided by knowledge concerning the basic parenting functions necessary to meet the fundamental needs of all children. This chapter discusses these and other clinical issues relevant to state intervention practice. In addition, counsel should review Chapter 22, Special Considerations in Representing Parents, and Chapter 23, Special Considerations in Representing Children, which discusses strategies for working effectively with child and parent clients.

§ 25.2 THE IMPORTANCE OF ATTACHMENT

The nature and quality of the child's attachment to his or her parent is an important consideration at almost every stage of a care and protection case. Attachment plays a role in determining the following:

- the extent to which separation from the birth parent would harm the child;
- how well the child would fare in foster care;
- the quantity and quality of visitation necessary to maintain the parent-child relationship;
- the ability of the parent to meet the child's needs;
- whether termination of parental rights is in the child's best interests; and
- if parental rights must be terminated, whether the child would benefit from postadoption contact.

Consequently, a working knowledge of attachment theory is essential in these cases.

Attachment is the fundamental relationship that a child has to his or her primary caregiver (who is typically one or both parents), which should begin to develop in the first phase of life. Children typically begin to have a special relationship with, or an "attachment" to their primary caregivers between six and nine months of age. This attachment provides the infant and growing child with a core sense of safety and security. A securely attached child has learned that a caregiver will be emotionally and physically reliable and responsive to his or her needs. This means that the parent has been available to read the child's signals with reasonable sensitivity, and has warmly and consistently responded to them. The quality of the child-parent attachment is one of the few powerful predictors of good versus poor developmental outcomes. One researcher explains as follows:

> In the secure attachment case . . . the child develops generally positive and trusting attitudes toward others. Along with this, the child takes forward a sense of his or her own effectance and personal worth. Being able to effectively elicit responsiveness and care from the parent, they expect to master challenges and to have power in the world. They believe in themselves. Likewise, they value relating and have an internalized template for empathy and reciprocity in relationships.

A. Sroufe, "Psychopathology as an Outcome of Development," 9 *Dev. & Psychopathology* 251, 262 (1997).

Securely attached children have the tools to go out into the world and make discoveries. They trust that positive things are likely to happen when they make choices and take actions. When things do not go as they wish, they have a safe haven to return to, and from which they can launch again for new explorations. This security allows children to go to school with optimism and hope, and therefore to learn. They will feel the pull to build relationships with peers and teachers and other authority figures. They will feel drawn to test their skills and explore their interests. Parents will be encouraging and offer respite, and then allow them to go off to their next adventure. *See generally* Mary Ainsworth et al., *Patterns of Attachment: A Psychological Study of the Strange Situation* (Lawrence Erlbaum Associates 1978); R. Marvin et al., "The Circle of Security: Attachment-Based Intervention with Caregiver-Preschool Child Dyads," 4 *Attachment & Hum. Dev.* 107–24 (2002) (hereinafter Marvin).

Mary Ainsworth and subsequent researchers identified three, and later four, categories of attachment: secure, anxious-ambivalent, anxious-avoidant, and disorganized. *See* M. Main et al., "Security in Infancy, Childhood, and Adulthood: A Move to the Level of Representation," *in Growing Points of Attachment Theory and Research, Monographs of the Society for Research in Child Development*

50, 66–104 (1-2, Serial No. 209) (I. Bretherton & E. Waters eds., 1985); *see also* Marvin.

Securely attached children are those for whom it matters when the primary care provider leaves and returns, and can be helped to cope with the separation with a soothing response. These children have learned that a parent will help them out into the outside world, and welcome them back for reassurance, nurturance, or protection when needed. As children get older, they are able to respond adaptively to a separation from the parent, secure in the knowledge that the caregiver will be there to respond. They are generally positive when the parent returns.

Insecure attachments take three forms, and reflect the nature of the unreliable parenting style provided to the child. "Anxious-ambivalent" infants and young children have been given the message that the outside world is scary and is something to be wary of. Their caregivers' early patterns of interactions are inconsistent or unreliable. These children can be clingy, afraid to explore their environment, anxious, easily agitated, and very ambivalent upon the return of a caretaker who leaves them for a spell. These children are sometimes difficult to soothe.

"Anxious-avoidant" infants and young children have been given messages to minimize emotional caregiving interactions. These children look much more unaffected by the departure of a primary caregiver. They appear more independent, as if they do not rely on the caregiver, but have greater trouble with intimacy or sharing their feelings. There is often little response when the parent returns.

The last form of insecure attachment is "disorganized." In this type of attachment, the parent, who may be afraid of the child's neediness, has responded to the child's attachment behaviors (seeking safety or security) with rejection and hostility. As a result, the child's interactions with the caregiver are disorganized or unpredictable. These children do not have a consistent strategy for responding to their parent's presence or departure. As they get older, many of these children exhibit controlling behaviors in an attempt to manage an unpredictable environment. Violence and danger can be critical features of these unpredictable environments. Some researchers have suggested that chronically traumatized children who have experienced frightening interaction patterns with their caregivers are much more likely than other children to develop this last disordered form of attachment. *See* C.C. Ayoub et al., "Analyzing Development of Working Models for Disrupted Attachments: The Case of Hidden Family Violence," 5 *Attachment & Hum. Dev.* 97–119 (2003).

Very early attachment patterns exert an important influence on child development. Children who have lived with neglectful or abusive parents are very likely to have suffered the negative impacts of insecure attachments. Poor attachment

experiences can have significant deleterious effects on various aspects of the child's social, emotional, and cognitive development (described in § 25.1, below). Actual brain development (i.e., the growth and reinforcement of neuropathways) can be compromised in the context of a chronically fear-inducing or neglectful environment.

Yet, importantly, an insecure attachment is an attachment nonetheless. Children do not give up their parents easily. A child learns the nuances of the "dance" with his or her particular parents. Significant separation from a parent is likely to be difficult, even when it promotes greater safety for the child.

§ 25.3 THE IMPACT OF ABUSE AND NEGLECT ON THE CHILD

The ways children respond to abuse and neglect are as varied as children themselves. Not all children with abuse or neglect in their backgrounds will manifest a traumatic response. Trauma in this case is not defined by the actual event or series of events (e.g., abuse history); instead, it is defined by the child's response to these terribly stressful events. Abuse and neglect (and other seriously stressful life events) may create such fear, anxiety, and threat to the child as to overwhelm the child's ability to cope constructively in his or her everyday life.

A disturbance of normal functioning is natural and appropriate in the aftermath of a traumatic or crisis event. When dealt with effectively, most people return to normal adaptive functioning after a period of time. Many resilient children have a host of coping strategies that allow them to work their way through life and relationships in many constructive ways. They do not manifest the same trauma or traumatic response as the child without these resources. Whether or not a child has a traumatic response depends upon a number of factors, including the nature and severity of the abuse or neglect, the child's internal resources, whether adult figures are available for support, and what community resources buffer and support the child and family.

For children who do manifest a traumatic reaction, it can be helpful to understand the range of difficulties they may face. The rest of this section briefly describes the relationship, emotional, and cognitive difficulties many traumatized children experience.

Children whose parents have failed to meet their needs in fundamental ways—either through various forms of neglect or by overt acts of abuse—often manifest significant problems in relationships. Some children manifest these problems by becoming off-putting, oppositional, and avoidant of closeness and emotion.

Some manifest these difficulties in neediness, clinginess, anxiety, inappropriate boundaries, immaturity, and lack of exploration of the world. A third group appears to have an approach-avoidance pattern, with difficulties in closeness and tendencies toward irritability and aggression in relating to the caregiver. Many develop highly controlling patterns of behavior. It is this foundation that might make it difficult for children to trust and to believe that a new foster or preadoptive placement has their best interests at heart or will not reject them, as they have come to expect.

Abused and neglected children often have many emotional struggles. They may feel angry, anxious, guilty, ashamed, vengeful, or worthless. These children may not understand why they are having these feelings and may not even be able to separate or identify them. Further, these children may be unable to convey to the adults around them what they are feeling. As a result, the feelings become disconnected from the precipitating events. For example, children who have not learned to tolerate and manage intense feelings may not know what to do with the sadness and hurt they feel about their mothers' absence. They are irritable and oppositional much of the time, but cannot connect their feelings to their loss or frustration. In addition, the adults around them may find it difficult to understand what these children are experiencing.

This disconnection between experience and feelings may make it difficult for children to describe the events of the past with the appropriate emotional response, both emotional content (i.e., which feelings) and intensity (i.e., how much feeling). These children also have trouble regulating their emotions. Their emotions may appear to be disproportionate to events, or they may simply appear numb to their experiences. When children have trouble managing their arousal level and anxiety, their behavior is likely to suffer.

Finally, abused or neglected children may exhibit a range of cognitive and language processing difficulties. Because traumatized children spend much of their time in a chronically hyperalert state, they may neither pay attention to, nor process, significant information. Thus, they may miss important messages conveyed to them by parents, lessons taught at school, or information provided by their attorneys. They are also likely to have some problems with "pragmatic" language skills, meaning they have difficulty using language in a social context (i.e., knowing what to say, how and when to say it, how to interact with other people, and how to understand others' communications). Traumatized children often misunderstand verbal content and distort nonverbal cues because they are overattending to, and overinterpreting, any hint of a potential threat.

Other cognitive difficulties result from the unpredictable, unstable environment of the abusing or neglectful household. Some children have trouble appreciating cause-and-effect relationships. Their unpredictable environments may not have

taught them the very basic notion that certain actions have outcomes. *See* B.A. van der Kolk, "Developmental Trauma Disorder," 35 *Psychiatric Annals* 401–08 (2005). This directly impacts children's ability to see themselves as able to make things happen and to effect outcomes. Their sense of competence may become impaired. These children also have difficulty organizing a narrative line of the events of their lives. The development of sequential or narrative memory is dependent on children having order and predictability in their lives. Thus, traumatized children may not be able to provide a linear account of the traumatic events they have experienced or explain in a coherent narrative what they might like to have happen in their cases.

Traumatized children may also be challenged when asked to see things from multiple perspectives or to anticipate multiple outcomes. For example, it may be difficult for these children to evaluate the pros and cons of staying in foster care with an eventual return home, versus returning home more immediately, versus never returning home. An already complex situation is often exacerbated because traumatized children simply cannot focus their attention to process all the information.

Because of these various cognitive difficulties, the attorney must pay special attention to what children mean when they share information or answer questions. Are they responding only to their immediate anxiety, or can they reason and process information to form an opinion? Some children cannot provide much information about their circumstances because they cannot organize the information. Some children cannot focus their attention long enough to engage in this kind of conversation. For some, a relationship with an unknown, or "system-related" adult creates too many anxieties to share or receive information.

§ 25.4 THE IMPACT OF REMOVAL, PLACEMENT ISSUES, VISITATION, AND SERVICE NEEDS

During the pendency of a care and protection or CHINS case, child's counsel is often called upon to determine and advocate the client's position with respect to whether the child should be removed from his or her parents, where the child should be placed, what services the child needs, and the level of contact between the child and parents, siblings, and other family members. The variables that factor into these decisions are complex and multifaceted. This section addresses a few areas for consideration: the impacts of age and development on a child's experience in the state intervention system, making transitions less distressing, the maintenance of important relationships, and services for children and parents.

For most children, especially younger children, the prospect of being taken away from their parents is terrifying—even if the parents are abusive or otherwise less-than-adequate caregivers. As already mentioned, children become attached to their primary caregivers, even if that attachment is insecure or of a disordered nature, and thus removal is not without consequences for the child. When children are removed from their homes, they are often provided with little information, little that they can predict or count on, many shifts in living arrangements, and erratic contact with adults who are supposed to be their protectors. They experience innumerable losses, including contact with parents, siblings, and other family members; contact with familiar institutions and activities (e.g., school, daycare, or after-school activities); contact with friends; and a sense of familiarity in their world. In short, removal nearly always comes with significant cost to the child. Compounding these difficulties, the child often is provided little opportunity to deal with his or her reactions to the separation. Even when the child is able to share his or her inner world with a caring adult or therapeutic provider, the discussion is often around the issues of abuse or neglect, rather than the subsequent separations or dissolution of the family. *See, e.g.*, R.S. Eagle, "The Separation Experience of Children in Long-Term Care: Theory, Research, and Implications for Practice," 64 *Am. J. Orthopsychiatry* 421–34 (1994).

§ 25.4.1 Young Infants

The needs of young infants (those who are approximately under the age of six to eight months) are consuming but basic. They have begun the attachment process, but are unlikely to have solidly formed selective attachments to their primary caregivers. Thus, a removal, while potentially disorienting, may be less disruptive for a tiny infant than for an older infant or toddler. However, once a young infant is removed, the parent will have little to no opportunity to meet the child's basic needs on a routine daily basis. It is the parent's engagement in the everyday care of the child (feeding, soothing, diapering, etc.) that is the basis for the development of an attachment. Without this opportunity, it would not be expected that a child would develop, or continue to form, a primary attachment to his or her parents. Contact with biological parents would need to be quite frequent (possibly daily) to preserve hope of an initial selective attachment to the parent.

When this is not possible, the next alternative is to ensure that the child is able to generate a secure attachment to whoever will serve as the caregiver. A child who has developed a solid, secure attachment to a substitute caregiver is likely to carry the benefits of this attachment into other relationships, whether the child will be returned to the biological parent or placed with another permanent caregiver. However, secure attachment development requires reliability and consistency of the primary caregiver over time. A young infant who is moved from

placement to placement and who experiences multiple caregivers is far less likely to develop a secure attachment to anyone.

For a child of this age, there are few ways to prepare or assist with transitions. The new caregiver must be prepared for the infant's confusion and disorientation. The child's eating and sleeping patterns may be disrupted and he or she may be more fussy and difficult to soothe. It will be helpful if the caregiver establishes predictable routines for the child and responds sensitively to the child's patterns and needs.

§ 25.4.2 Older Infants and Toddlers

Older infants and toddlers are likely to have greater difficulty with removal because they will have formed selective attachments to their parents. The separation has much more meaning to them, yet they have few cognitive and emotional resources with which to cope. They have limited language skills with which to understand their overwhelming emotions, to express their thoughts, or to understand from others what is happening to them. The loss of family members, routines, and other child-care providers is likely to be experienced in powerful and confusing ways.

Older infants and toddlers also need frequent contact with parents to maintain a sense of security and connection. While physical safety is of course paramount, emotional safety for these children is often dependent upon contact with parents, even when the parents are troubled. It becomes important not to lose track of this when parents are limited from seeing their children for reasons other than the child's best interests (i.e., because of limited resources, inconvenience, or a sense that the parent "does not deserve" or "has not earned" visits).

Structures to promote frequent contact, once safety is established, are very important. In an ideal world, finding ways for parents and foster parents to work together would be most effective. This would facilitate the greatest level of contact between parent and child while a child is separated from his or her caregiver. For example, the Fresh Start Project in the DSS central region places infants who are from zero to twelve months with foster parents who are specially trained to provide intensive mentoring and support to birth parents. The goal of the Fresh Start Project is reunification. In addition, placement of the child with relatives often allows for more frequent contact and interaction between children and their birth parents. Attorneys should advocate for as much contact between parent and child as possible. Frequent visits, even if brief, keep the parent alive in the child's mind.

The caveat to this is if the frequent separations at the end of visits cause too much distress for the child, or if the visits are causing other adverse impacts, contact may need to be less frequent. However, even with children on the younger end of this age group, the transition may be eased by providing a predictable routine and by explaining to the child what is happening (e.g., "Your mommy will come for a visit after your nap," or "We're going to visit for ten more minutes and then Daddy is going to go home; he'll see you again in a few days."). Even if children do not fully appreciate time frames, they are likely to get the gist of what will happen next. Giving children a chance to talk about their thoughts and feelings is helpful, especially when a caring adult can be supportive.

At such young ages, disturbances are likely to be noted along developmental lines. Either the child does not progress along expected developmental trajectories in one or more areas (e.g., language, motor, social, or self-care), or the child regresses in the face of the trauma and the subsequent separation, losing previously acquired skills or milestones. Information from parents, foster parents, pediatricians, and child-care providers can be helpful in making these determinations. Services often come in the form of early intervention assessments and treatment, or might include play or art therapy for the very young child. If more severe delays are noted, medical, speech, or occupational therapy interventions may be warranted.

§ 25.4.3 Preschool and Elementary School Children

As children get older, their relationships with primary caregivers become more solidified, as do their skills, abilities, and coping resources for dealing with their experiences. These coping resources allow for greater time gaps between visits with their parents. Generally speaking, older children can deal with longer windows of time. Determining how much warning a child should have before a visit depends on the child's age, how well the child manages anxiety, the reliability of the parent, and other idiosyncrasies of the situation. Despite increased coping abilities, preschool and elementary school children will need significant support in managing their reactions to abuse and neglect as well as the distress and logistical consequences of removal. Notably, abused and neglected children are often compromised in many areas, such as emotional regulation and language processing (see § 25.3, The Impact of Abuse and Neglect on the Child, above), which otherwise might assist them in managing these difficult experiences.

School-aged children may manifest difficulties in their behavior, in mental health symptoms, or in learning and school-based problems. The older the child, the more complex it becomes to tie the problems specifically to their sources (e.g., the original trauma, the disrupted attachment, losses, multiple placements, or negative experiences in foster care). Children's feelings are likely to be quite

multifaceted and puzzling to them. They may be more likely to express ambivalence in either words or actions toward their parents. As noted above, giving children the time and space to talk about their inner experiences, to mourn the loss of previous attachments, and to be supported in their affection for their parents (and/or foster parents) not only helps children make transitions, but also helps them maintain a sense of trust in the outside world and form new relationships.

As the child waits out the lengthy state intervention process for decisions to be made about placement and level of contact with parents, it is very important that the child's attorney be an advocate for appropriate services for the child. The child may need to be evaluated for special education, medical or psychological care, speech and language services, or other specialty needs. It is important to remember that many biological parents are a very good source of information about their children's needs, and their involvement should not be neglected simply because they have lost custody of their children.

§ 25.4.4 Middle- and High-School-Aged Children

Finally, older school-aged children and preteen and teenaged children present special challenges. Older children can have a wide variety of responses to removal from their parents, but are often quite determined to ultimately return to the care of their parents. These children quickly become aware that it is difficult for them to be adopted, and thus they wish for the only family they know and have. Goals for these children should take into account not only their thoughts and opinions, but also the reality that these children need connections to their past, to the source of their identity, to their extended families, to what is known and familiar to them, and to the fact that certainty, even with troubled parents, may be better than the lingering uncertainty of protective plans.

The potential range of services for these children is quite broad. Children who have been in the system for long periods are often multiply involved (e.g., have a delinquency charge or an active CHINS case). They may receive or be in need of school-based services or need to be evaluated for such services. Many of these children do well with physical and creative outlets (e.g., sports, art, or music), which give them both a form of expression and enrichment activities. Children who have spent time on the streets because they have run away from home or from foster homes need to be medically evaluated. Issues such as substance use, eating disorders, sexual activity, or other self-harming behaviors may also require medical and psychological intervention.

The longer the child remains in out-of-home care, the more consideration must be given to the negative effects of removal, long-term separation and foster care, multiple transitions, placements, and losses. While hard to parse, these effects

should be recognized as the consequences of participating in the foster care system. It is important for parents to receive education and assistance so they are better able to respond to their older child's special needs. In addition, older children and teens should be provided opportunities to discuss the complexities of their situation. Therapy is often necessary for this group of children. Therapy in groups with children in similar situations could be very helpful.

Contact remains important between parents and children, even when the children are older. While memory, language capacity, and emotional resources should be much better developed in older children, the losses accompanied by removal from a parent and the multiple transitions typical of the foster care system make the maintenance of safe connections to parents paramount. Teens, in particular, are addressing the psychological issues of identity: Who are they? Who are they connected to? Who do they wish to become? Connections to parents can be important as teens navigate this developmental phase.

Finally, throughout development, it is also important to ensure the child maintains contact with other significant family members. Grandparents or close aunts and uncles can offer solace regarding losses of parents, continuity in the face of many changes, and an ongoing connection to the child's biological family. Ties between siblings are very important. The sibling relationship offers one way in which the child can have a sense of his or her biological family identity and keep some connection to it. Depending upon the nature of the relationship to the sibling, this relationship may serve important security functions. Siblings can provide supportive resources, an insider's understanding of family nuances, and validation of both the good and bad aspects of the biological family. Siblings can offer an anchor of stability for children at any age who are adrift in the child protection system. Preserving these relationships also preserves family connections for future generations.

§ 25.5 COMMUNICATING WITH CHILD CLIENTS

Perhaps no responsibility of the CAFL attorney is more daunting than talking to the child client. Gathering information and explaining what is going on in the case is challenging with parents, and even more difficult with child clients. Counsel must make special efforts to communicate with the child in a way that maximizes the child client's ability to participate in and direct the course of the litigation. *See* CAFL Perf. Std. 1.6(a), cmt. This section provides some practical strategies for effectively communicating with child clients. See **Exhibit 25A**, Checklist for Communicating with Children. In addition, Chapter 23, Special Considerations in Representing Children, discusses the particular responsibilities of child's counsel in this area, including how frequently counsel should meet

with a child client, where to meet the child, and the topics counsel should discuss with the child.

§ 25.5.1 A Lay Assessment of the Client's Developmental Level

The task of meeting and speaking with children of varied ages and skill levels requires some forethought and planning. Karen Saywitz and Lorinda Camparo have provided a set of guidelines for interviewing child witnesses that may be useful for attorneys interviewing child clients in care and protection and CHINS cases. *See* Karen Saywitz & Lorinda Camparo, "Interviewing Child Witnesses: A Developmental Perspective," 22 *Child Abuse & Neglect* 825–43 (1998) (hereinafter Saywitz & Camparo). Saywitz and Camparo stress the importance of first doing a developmental assessment of the child client in order to best formulate questions and interpret answers. This does not require a degree in mental health, but does require some planning and attention to the information and cues the child is providing.

Maxine Weinreb, Ed.D., of the Child Witness to Violence Project at Boston Medical Center, stresses that it is essential that attorneys think about how they will approach children *before* the initial meeting. This includes being aware of the age of the child and any known limitations the child might have, identifying what information the attorney needs and wants from the child, and contemplating strategies to assess the developmental level of the child upon meeting him or her.

In the process of first meeting the child client, the attorney is engaging and getting to know him or her, building some trust, and allowing the child to get to know the attorney. Conversations about everyday events can help the lawyer understand some basic developmental information about the child. For example, while asking the child specific questions—"what did you do today?," "what do you like about school?," or "what are your favorite sports teams?"—counsel can also be taking note of the following:

- the intelligibility of the child's speech;
- the average number of words in the child's sentences;
- the average number of syllables in the words the child uses;
- the complexity of the grammar the child uses;
- the child's understanding and correct usage of verb tenses (i.e., using past and present properly);

- the child's correct use of pronouns (i.e., does the child accurately reference others?); and
- the sophistication of the child's vocabulary.

See Saywitz & Camparo.

While it is unlikely that the attorney will be tabulating this information in strict detail, attention to the quality of a child's communication can help a lawyer construct questions that parallel the child's language usage (similar length of sentence, sentence structure, and word choices). It also helps an attorney do a quick assessment of what aspects of a child's descriptions are reliable, where the attorney will need to ask clarifying questions, and what kind of statements may not bear any factual fruit. If a child is constantly confusing pronouns or cannot give a linear account because he or she merges time frames and distorts past and present, the attorney will better understand the limitations of the child's perspective, or (more importantly) know what kind of questions to ask to get a clearer picture.

The attorney should also pay attention to clues about the child's memory. Can the child describe things that happened earlier in the day, a few days ago, or last summer? Does richness, accuracy, or the tendency to elaborate or fabricate change with the time frame? Do particularly salient events receive better descriptions, or do they sound rehearsed, scripted, or rigid? Are there certain time periods or events about which the child simply will not or cannot talk?

What a child can describe often depends on his or her concept of time. Very young children do not have a clear concept of time, so getting accurate dating of events, sequences, and distances in time (e.g., how long ago?) is likely to be difficult. Children may be more likely to reference time periods to salient events like holidays, birthdays, school events, weather, before they went to sleep last night, or when they had breakfast yesterday. When a child is asked how many times something happened, the answer requires accurate understanding of both counting and keeping track over some period of time. Children may not have a firm grasp of the meaning of numbers (e.g., that something happened on three separate occasions) even if they can count, or of measurements (e.g., how big?, how far away?, how often?).

Counsel should also conduct a brief assessment of other concepts. What colors, shapes, or other descriptors (big, small, fat, skinny, etc.) does the child understand? Does the child correctly use spatial or relational concepts, such as under, behind, next to, or close to? This will help give the attorney a better sense of the child's ability to provide accurate detail when describing people or events.

Young children tend to be concrete thinkers. Children can describe what they see, hear, touch, and do. They have more difficulty with abstraction tasks that require them to categorize, classify, evaluate, or conjecture about their experiences. Abstraction ability, which should increase with age, also includes imagining the future, imagining alternative outcomes, holding two ideas at the same time, describing and anticipating feelings, understanding intangible concepts (values, beliefs, emotions, time, etc.), and taking another's perspective. Greater levels of abstraction should appear in adolescence. However, traumatized children often have difficulty with many abstraction skills and concepts. The child may have difficulty understanding abstract concepts, such as "court" and "laws," as well as understanding the different roles of the judge, attorneys, and social workers. Taking a position on whether to return home or live with an unfamiliar foster parent requires imagining two potential outcomes and weighing their merits. These are difficult tasks for young children, particularly those with backgrounds of abuse or neglect.

§ 25.5.2 Strategies for Communicating Effectively with Child Clients

Interactions between children and unfamiliar adults can be difficult. It is safe to assume that children may have some trouble trusting a new adult. One way to improve communication between the child and counsel is to help the child feel safe and comfortable with the attorney. As Ann Tobey, Ph.D., formerly of the Youth Advocacy Project, has advised in past CAFL certification training programs, demonstrating "warmth and respect" for the child is a key ingredient to establishing a solid and trusting relationship. Meeting the child at his or her physical and linguistic level demonstrates warmth and respect for the child and shows that the attorney is listening and cares. Being considerate of the child's needs and feelings (e.g., consider how much the child can discuss, whether he or she can talk at all, the pace of conversation, and the child's physical needs) also demonstrates warmth and respect. Many children prefer playing to having a conversation. Making sure to play with the child not only helps put a child at ease, but also allows the attorney to observe the child being a child. Having some fun "tools" in a briefcase (e.g., markers, animal puppets, travel checkers, a deck of cards, or a game of UNO) can facilitate the child's comfort and willingness to talk.

Children are unlikely to talk about their case in a linear fashion or on an adult time frame. A meeting with a child is likely to go more like this: a discussion of the school day, a game of cards, some questions about where the child lives, a game of Connect 4, a discussion about a movie, a demo of a remote-controlled race car, and some questions about the child's mom. Counsel may need to make

repeated visits to the child to obtain the information required and to advise the child about the case.

Trust is also enhanced when counsel is clear about his or her role and expectations of the child and does not make promises that cannot be kept. While most adults know this, it can be enormously tempting to offer a child a sense of greater certainty than exists. Instead, counsel should acknowledge the uncertainty and assure the child that counsel will be there to help him or her understand what is happening.

Recognizing and respecting a child's feelings can be supportive, validating, and reassuring to a child. It can be very helpful to acknowledge the difficult position a child is in or the ambivalent feelings the child may experience. Recognizing a child's real feelings includes attention to his or her anxiety and fears. How anxious is the child? Is he or she obviously nervous—unable to separate from a caregiver, hiding behind furniture, clammed up, overtly fearful, or crying? Is the child more subtly anxious—giggly, trying to distract from the task at hand, simply unwilling to engage in substantive topics, or otherwise avoidant? Sometimes anxiety manifests itself in "spilling" information or being overly clingy or trusting with someone the child does not know well. Saying out loud that an attorney knows the child might be worried, might not like talking, or is afraid of what might happen can be very supportive and reassuring.

Communication is also improved when an attorney is attentive to what the child understands. A child's comprehension of his or her situation in a child protection matter is likely to vary with many factors: development, emotional state, cognitive limitations, complexity of the circumstances, what others have told the child, and day-to-day idiosyncrasies. The child who has been exposed to trauma will have more trouble maintaining a consistent understanding of the situation than the average child. Thus, what a child understands at one meeting may not be the same at another meeting. Comprehension may be cumulative with time, but often it is not, especially if there are long gaps between attorney-child meetings. Therefore, information must be provided in a developmentally appropriate way, and also needs to be explained in different ways and multiple times to increase comprehension. Asking a child to put things in his or her own words, using age-appropriate references and analogies, and returning to previously reviewed material are all strategies that help. Meeting with the child on more than one occasion is necessary. This gives the attorney a sense of what a child is comprehending. For example, is the child

- understanding the relationships between events (antecedents and consequences, choices and outcomes, etc.)?;
- able to remember previous information provided?;

- accurately interpreting the information provided?; or
- allowing feelings to override all other factors in weighing decisions?

Understanding the "ins and outs" of a court matter is extremely complicated. Children should be provided only the information that is salient to their personal circumstances. The information should be stripped of extraneous details, and put into simple, concrete, age-appropriate terms. Children need to know where they will be living, when and if they can see important people in their lives (e.g., parents or siblings), who will be keeping them safe and taking care of their needs, and what obligations or responsibilities they must fulfill. They may also want to know if they can keep going to their school or see their friends. When this information is not available, it becomes important for the child to have someone whom they can ask ongoing questions and from whom to get reassurance that their concerns have not been ignored or forgotten.

Sometimes it is important for children to know that grown-ups are making the decisions, so children are not caught in loyalty binds. For younger children, the judge may be explained as a person who thinks long and hard about what helps children grow up healthy and strong, and then makes decisions about where children will live. Similarly, it is important for children to understand the different roles and responsibilities of their attorneys, social workers, therapists, and other adults.

When an attorney represents a child, the CAFL Performance Standards require that counsel consider whether the child can formulate an "adequately reasoned decision." *See* CAFL Perf. Std. 1.6(b). In making this determination, the following considerations may be helpful:

- What is the level of the child's cognitive functioning (see above), including level of abstraction (e.g., perspective taking, anticipating consequences, seeing multiple outcomes, or evaluating outcomes)?;
- If the child has some of these skills, can the child apply them to the facts in his or her own situation, e.g., can the child
  - weigh the pros and cons of returning home to a mother that is struggling with a mental illness?,
  - envision what it might be like to live with a grandparent?, or
  - imagine being adopted by a family the child has not yet met?

Counsel must also consider the reliability of what the child is saying. Younger children might make up information to please the questioner, to avoid the embarrassment

of not knowing the answer, or because they wish a different answer were true. Some older children might be motivated to deliberately not tell the truth to avoid hurting someone's feelings or for other reasons. Further, counsel must consider the capacity of the child's memory. The ability to store, process, and recall can influence what goes into the child's reasoning. Does the child accurately remember what life was like at home with the parent prior to removal, or has the child fabricated a view of prior home life that is influencing his or her decision? Have others deliberately or unwittingly influenced the child's perspective? Finally, the child's ability to communicate his or her thoughts, their nuances, and their shifts over time can be helpful. *See* D. Whitcomb, "Competency of Child Witnesses," *in When the Victim Is a Child* (National Institute of Justice 1992).

§ 25.6 THE PARENT-CHILD RELATIONSHIP

§ 25.6.1 Evaluating the Attachment Between Parent and Child

In Massachusetts, it is common for attorneys in care and protection cases to seek a "bonding study" from a mental health professional to demonstrate that the child is attached to the birth parent (or not), or that the child is attached to a substitute caregiver. A few problems arise with these requests. The first is that the wrong question is being asked. With respect to parents, most children are attached to them if they have served as the primary caregivers, either during developmentally salient periods of the child's life (e.g., ages zero to eighteen months) or for a significant duration of time in the child's life. Thus, in most cases, there will be an attachment. Second, a "bonding study" suggests that the "bond" or attachment is the only ingredient relevant to describing the relationship and the fit between parent and child. The term has taken on a weight and meaning that belies its value. A focus only on the attachment can redirect the evaluator and potentially the factfinder away from other essential features of the case (e.g., characteristics of the child, parental background factors, the fit between them, and environmental factors) that are necessary for a full and accurate evaluation of the best interests of the child in a child welfare matter.

Thus, the important questions in any evaluation include the following:

- What is the *quality* of the attachment between parent and child?;
- Along with the attachment system, how do the characteristics of the child and the characteristics of the parent interact to shape their relationship?;

- How does that relationship affect the child?;
- What is the broader context in which the relationship exists?; and
- Does the total picture serve the needs of the child?

When the relationship between a child and someone other than a parent is evaluated, the questions are similar, but the basic assumption of an attachment is not made.

Once attachment has been put in the proper context, it is of course important to assess the attachment. How can the nature of the attachment be determined? At present, there is no technology to "measure" attachment. (Note: There are laboratory techniques to classify attachment qualities, but they are used in only very rare cases and only in clinical, not forensic, contexts.) Instead, inferences must be drawn about a child's attachment style. This is done by carefully describing the nature of a parent or caregiver's style and the quality of the parent's responsiveness to the child over time, in multiple situations. In turn, an evaluation describes the way the child has come to rely on, view, and relate to the parent in terms of attachment functions (source of security, support for exploration, and safe haven of return). It is the very mundane, daily interactions that contribute to the quality of the attachment, and it is the subjective, psychological attributions by the parent and child about the other that define the attachment.

The process of such an assessment involves several things, including direct observations of the child and parent, observations made by third parties about the child and parent together, a history of parenting (strengths, patterns, or obstacles), the parent's descriptions of the child or children, and, when appropriate, descriptions by the child of daily routines and interactions with caregivers.

Observations vary with the age of the child. In very young children, an evaluator watches for the caregiver's ability to observe and assess a child's needs, the caregiver's manner in responding to those needs, the caregiver's ability to soothe a distressed or uncomfortable child, the caregiver's ability to tolerate an appropriate level of independence in the child, and the latitude the caregiver grants to the child to lead an activity or conversation. The evaluator watches the child for the degree to which the child uses the parent for comfort, to help the child negotiate unfamiliar terrain, and as a base from which to explore new surroundings.

The older the child gets, the harder it becomes to link strengths and deficits specifically to his or her early attachment style. The evaluation, therefore, is an attempt to describe patterns of relationship between the parents and the child and their implications for the child's overall well-being. For parents with older children, an evaluator watches the parent for his or her level of engagement with the

child, his or her ability to let the child lead or follow in an activity or conversation, appropriate limit setting, and responsiveness to the child's emotional expression. In the child, the evaluator looks for his or her level of independence and willingness to explore the world, level of anxiety, sense of competence, confidence and mastery of common tasks and areas idiosyncratic to the child, abilities to relate to outsiders, and ways the child uses the parent to negotiate the world.

As a child gets older, it becomes more important to look at his or her ability to function in the outside world (e.g., behavior, relationships to others [including peers and adults], or competencies). Finally, in adolescents, relationships are the most salient area for exploration. Does the child have friends and the ability to relate to authority? Is the child more or less trusting of the world around him or her? Is the parent cognizant of the developmental changes in the child, of the changes in the parent-child relationship, and of the parent's contribution to the dynamics between child and parent? Is the caregiver adequately engaged with the child, active in communicating important information, available to answer questions, and able to supervise the teenager and set appropriate boundaries and limits?

A good source of information about how the parent views the child is the parent's own account. How distinctly and accurately can the parent describe each child? Are descriptions bland, generic, and overgeneralized, or thoughtful, balanced, idiosyncratic to each child, and personal to the parent? How self-focused are a parent's descriptions of the child? How knowledgeable is the parent of the child's particular needs, current circumstances, and future directions? Third-party collaterals can help to verify or discredit either an evaluator's observations or a parent's personal accounts.

Finally, in a child protection matter, where parental fitness and best interests of the child are the standards, attachment and parenting capacity must be assessed in a greater context. This context includes understanding environmental factors such as poverty and the various cultures from which a family might come; parental background factors (e.g., mental and physical health, abuse history, or substance abuse) that exert influence on parenting capacity and also shed light on types of remediation for problematic parenting; the child's temperament and special needs, which speak to the specific fit between the parent and the child; and the weighing of risks and benefits as to the disruption of these relationships.

§ 25.6.2 What Is Parenting Capacity?

Parenting capacity is a concept that encompasses more than just the attachment system between child and parent—it reflects a full range of parenting functions necessary to basic caregiving. The following list of parenting functions is a compilation of actions and activities deemed necessary to meet the fundamental

needs of children of all ages. It is not, however, a simple checklist from which a "black or white" determination of parenting competence can be drawn. It is a guideline from which to thoughtfully describe parenting abilities and areas in which support and remediation may be helpful.

Massachusetts case law directs that a consideration of parental fitness factor in the specific needs of each child and the parent's ability to meet those needs. The fit between a child's needs and a parent's abilities is likely to differ for each parent-child dyad. Thus, for example, a severely depressed parent may well be able to manage a resilient older child with solid cognitive skills and a range of emotional coping resources, while having much greater difficulties with a more emotionally vulnerable younger child.

Parenting is not done in a vacuum. Thus, parenting capacity cannot be assessed in a vacuum. The context in which the family operates is very important. Extended family, neighborhood, culture, and existing services all can shed light on the resources the parent has for meeting the child's needs.

Parenting is a complex series of tasks. Different tasks take on different priority at different times. The following list provides a framework from which to evaluate a parent or other potential care provider's basic skills. While such a list provides a framework for summarizing parenting skills, there is no mathematical formula to determine "how much" of a given capacity or "how many" of these skills are adequate to meet the basic threshold for acceptable parenting. The list below was originally generated by staff at the Children and the Law Program at Massachusetts General Hospital, and has been modified and revised over time. Overall, its purpose is to offer a means to look for patterns in parenting and then relate those patterns to impacts on the specific children in question.

1) A parent must be able to meet the basic material and educational needs of a child, including food and nutrition, shelter, clothing, and medical attention. This is the most fundamental and rudimentary threshold criterion of parenting. For preschool and school-aged children, a parent must also be able to get a child enrolled in the education system, and ensure appropriate attendance and the child's most basic participation.

2) Beyond a child's most fundamental material and educational needs, a parent must be motivated and capable of understanding a child's special needs (e.g., education, mental health, medical, speech/language, and physical disability) and be able to advocate and intervene on the child's behalf where necessary. This implies being able to identify a child's problems, to use outside resources to help identify a child's problems, and to learn and understand the implications for the child and his or her

needs, as well as having the competence, initiative, ability, and willingness to advocate on behalf of the child and his or her needs.

3) Structure and discipline constitute a third fundamental domain of parenting. A parent must be able to create structure and stimulation for a child based on the developmental level and particular needs of the child. A parent must be able to structure and organize a child's time at a developmentally appropriate level. This includes helping the child meet various needs and obligations (e.g., school attendance, homework, home obligations, leisure time, social contacts, personal health, and hygiene responsibilities). This also includes ensuring an adequate amount of interaction between parent and child. In response to nonconstructive behaviors, parents establish limits for a child and respond with appropriate discipline methods. This requires the ability to find alternative discipline techniques as the child moves through different developmental stages.

4) Parents must be able to reasonably and accurately perceive danger or potential harm to their child, and be motivated and capable of taking steps to adequately protect the child from both physical and emotional injury. While no parent can foresee all possibilities or even protect a child from all knowable potential dangers, a parent must be oriented toward trying to keep the child safe.

5) The management of emotions is another necessary set of parenting skills. Parents must learn their children's emotional signals (e.g., discomfort, fear, pleasure, hunger, need for nurturance, need for approval, anger, loyalty binds, feeling overwhelmed, or confusion) and find appropriate ways to respond. Attunement to a child's feelings and reasonable empathy and support for those feelings create a sense of security for children. Parents also assist children by helping them manage feelings that may be scary or hard to regulate (e.g., anger, fear, or sadness). Parents must also find ways to manage their own emotions so children do not become overwhelmed, frightened, or overburdened by a parent's emotional state.

6) Parents must be able to maintain clear boundaries between themselves and their children. The maintenance of boundaries refers to several areas: emotional boundaries, physical/sexual boundaries, clearly separate identities and roles in the family, and the ability for adults to differentiate their children's needs from their own. Boundaries protect children from several things: inappropriate exposure to aspects of the adult world, overwhelming experiences that children are not equipped to handle, and behavioral expectations that are unacceptable for children.

Parents must have the flexibility to evaluate appropriate boundaries for children, and shift those boundaries as children mature. Parents' and children's needs often conflict and parents must be able to adequately prioritize their children's needs, at times over their own.

7) Parents are responsible for the socialization of their children. Socialization is the process of teaching children ways of interacting in the world around them, so they function adaptively, can get their needs met, and lead socially appropriate lives. This process requires conveying a parent's moral system to the child, and is often comprised of many of the parenting aspects above (managing emotions appropriately, setting limits, helping the child to understand and organize the child's experiences, etc.).

8) Finally, parents must be able to experience and express affection, nurturance, and respect for their children. Children need to feel their parents' warmth, joy, and love through direct and indirect expression and demonstration.

§ 25.6.3 The Influence of Substance Abuse, Mental Illness, and Domestic Violence on Parenting

Many of the parents involved in the child welfare and CHINS systems suffer from one or more social, psychological, or medical difficulties that potentially compromise their parenting. These problems include domestic violence, mental health diagnoses, substance abuse issues, medical disabilities, and cognitive limitations. The framework presented above should still be used when evaluating parents with these difficulties. Within this standardized framework, parental background factors and conditions can be evaluated for their impact on parenting. In what ways do these problems impact parenting? What options exist for the remediation of both the problem itself and the subsequent parenting difficulties? How do the particular difficulties of the parent impact each child in question given the child's unique qualities? Are there particular features of a parent's difficulties that might alert an evaluator to specific parenting questions?

Once involved in state intervention cases, these problems take on the disparaging qualities of allegations. It is imperative that an evaluation of these parents utilize a systematic approach to understand the impacts of these problems on parenting and to avoid making stereotypic assumptions about people with these problems. In addition, the evaluator must assess the extent to which there is a connection between these problems and the impact on the child. If that nexus cannot be drawn, or if there are no known impacts on parenting capacity or on the child, then it cannot be assumed that parenting capacity is impaired by these problems.

(a) *Substance Abuse*

Parents with substance abuse problems often face significant bias and stereotypes. The Massachusetts courts have made it clear that evidence of substance abuse alone, in the absence of any evidence of harm to the child, does not constitute parental unfitness. (*See* Chapter 14, The Adjudication and Disposition of Care and Protection and Termination of Parental Rights Proceedings, at § 14.2.2(d).) It becomes essential to determine how the use of substances and the lifestyle surrounding the use of substances impact on the parenting of the child.

When evaluating a substance-abusing parent, it is necessary to be realistic about the recovery process. Recovery is not a short-term process or a "one-shot deal." Most substance-addicted individuals require multiple attempts at achieving sobriety and participation in ongoing treatment or aftercare before reaching consistent sobriety. Setbacks or "failed" treatments are often the norm. Despite setbacks, the parent may well be pursuing a course of recovery for a substance abuse problem.

When evaluating the nexus between a parent's substance abuse and its potential impacts on parenting, an evaluator should consider the following. Persons with severe addictions live lives that are primarily oriented around the use of substances. Are there ways that this lifestyle jeopardizes the well-being of the child? For example, some parents with severe addictions may use the family's money or other resources to buy drugs instead of providing for the child's needs. Drug-seeking or drug-using behavior may interfere with the parent's ability to provide adequate supervision. Lack of supervision might include using drugs while the child is under the parent's care, impairing the parent's judgment or attention to a child's needs; passing out or blacking out; or not showing up to pick up a child from school, daycare, or another designated activity. Another form of risk to children is the potential for substance-induced disinhibition, increasing a parent's potential for violence or threatening behavior either toward the child or the other parent.

Other risks might include children observing the use of drugs, finding drug paraphernalia, or being exposed to drug-involved people, whose behavior does not keep the children's welfare in mind. It is particularly important to draw links between these risks and the actual impacts on the child. A child who discovers hypodermic needles in the home may or may not suffer an adverse impact.

Other potential consequences of substance abuse include showing poor consistency or reliability at home, becoming emotionally volatile, leaving children to take on parental functions or adult roles that are inappropriate, or generally demonstrating impaired judgment about children's needs or abilities. Substance-abusing parents at times experience guilt about their difficulties, manifesting this

guilt in leniency, overindulgence, and generally poor boundaries, structure building, or limit setting with their children.

Many individuals who abuse substances also have underlying emotional problems, such as depression, anxiety, or posttraumatic responses. These problems might contribute to the parent being emotionally unavailable or poorly attuned to the children's needs. They might make the parent angry or highly erratic in responding to the child. The parent might be lethargic and have little energy to deal with the child. Or the parent's emotional problems might simply manifest in idiosyncratic parenting styles that have particular consequences for the children.

Some children are more resilient to their parents' drug and alcohol problems. It is essential to link the substance abuse to problems in parenting (if they exist) and to the impacts on each child (if they exist). Some parents are able to segregate their substance use from their children, and the links to parenting and child impacts are far less problematic.

(b) *Mental Illness*

Mental illness causes immense stigmatization for parents in the child protection system. As with substance abuse, mental illness alone does not constitute unfitness; rather, there must be a connection between the parent's condition and harm to the child. (*See* Chapter 14, The Adjudication and Disposition of Care and Protection and Termination of Parental Rights Proceedings, at § 14.2.2(d).)

Mental illness is a very broad term that covers a host of disorders of varying magnitudes, characteristics, range of impacts, and ultimate levels of disability. Parents with some forms of mental illness can be flagrantly psychotic, completely out of touch with reality, and unable to care for themselves, much less care for a child. Some parents with mental illness have periodic bouts with the disorder, which are managed in such a way as to have limited or negligible impacts on parenting and limited impacts on the child.

There is a wide range of mental health disorders. Each comes with a panoply of symptoms and presents slightly differently for any given individual. The evaluator should look carefully at the particular symptoms of the client and how those symptoms could have impacts on parenting capacities. For example, some mood disorders, like depression, can deplete a parent's energy, cause some withdrawal or turning inward, or create apathy or a pessimistic outlook. The questions to ask are whether these symptoms impact a parent's willingness or ability to engage with a child in activity, ensure that a child meets obligations (e.g., goes to school, completes homework, and attends appointments), attend to the child's emotional states, or accurately interpret a child's feelings.

Some mental health symptoms, such as psychotic paranoia or posttraumatic hypervigilance, might cause parents to be frightened of imagined threats and cope in ways that are overly cautious or maladaptive. The level of detachment from reality might impact a parent's behavior. Can the parent leave his or her home to make it to appointments? Does the parent keep the child from activities or relationships inappropriately? Is the parent conveying a fearful approach to the world that is harmful to the child? These are simply examples of two types of symptoms and the questions an evaluator might consider if the symptoms were present.

More generally, when evaluating the potential impacts of parental mental illness on the parent and child, it is important to understand what, if any, functional deficits the parent presents. What daily functioning tasks is the parent able and not able to do? In what ways do these areas of difficulty bear on parenting? A parent's ability to understand, monitor, and manage mental illness is a measure of his or her insight. Can the parent understand what the impacts are on himself or herself and the child when the illness is active? Some parents have great resources for coping, managing their illness (both with treatment and in everyday life), and getting assistance for their children when the illness is active. Some parents do not have a strong network or are not aware of or able to access supportive resources that would bolster their parenting in times of active illness.

In addition, the impact of parental mental illness on the child will vary depending on the child's personal characteristics. Some children are highly aware of their parent's illness and have many strategies for coping, both emotionally and practically. Other children may lack understanding about the parent's illness and about why the parent is less available at certain times. In addition, some children may have fewer internal and external resources to cope with the emotional and other impacts of the parent's mental illness. For example, a depressed parent who has difficulty getting up in the morning may not be able to get a kindergartener dressed, fed, and ready for the school bus in the morning, whereas an older child may be able to get ready for school without the parent's assistance. Similarly, a child who has strong, nurturing relationships with other adults may be better able to cope emotionally with a withdrawn or inattentive parent than a child who lacks such adult support.

(c) *Domestic Violence*

Children who are exposed to the emotional controls and physical abuse of their caregiver by another adult are at particular risk for negative outcomes. Long-term consequences are common, even when the child is not the direct victim of the physical or emotional abuse. *See* M.A. Straus, *Children as Witness to Marital Violence: A Risk Factor for Lifelong Problems Among a Nationally Representative Sample of American Men and Women, Report of the 23rd Ross Roundtable*

(1992). Research over the past two decades has demonstrated that the impact of exposure to domestic violence yields trauma-related symptoms similar to those of victims of child physical, emotional, and sexual abuse. *See* M. Kenning et al., "Research on the Effects of Witnessing Parental Battering: Clinical and Legal Policy Implications," *in Woman Battering: Policy Responses* 237–61 (M. Steinman ed., 1991); K.L. Kirpatrick & L.M. Williams, "Post-Traumatic Stress Disorder in Child Witnesses to Domestic Violence," 67 *Am. J. Orthopsychiatry* 639–44 (1997). The research supports the notion that domestic violence has negative implications both for the basic development of the child and the relationship of the child to the child's caregivers (victim and abuser). Partner abuse complicates the evaluation of parenting. While the victim parent may have compromised parenting abilities, the victim may have a good chance for improving these abilities when the victim and the children are safe.

For very young children, the effects of domestic violence can compromise the primary caregiver's abilities to reliably and predictably meet the child's needs—shaping the nature and quality of the attachment. When the primary caregiver is being victimized, the child may not develop a sense of safety and security, both because the child's needs may not be consistently met, and because there are overtly frightening things happening in the home. This lack of security can become the foundation for the insecure attachment discussed above. At older ages, the aggressive and controlling behaviors of the abuser and the responses of the victim teach a child that relationships and conflict resolution are negotiated by force, intimidation, control, and violence.

One developmental goal for children is gaining emotional controls. A violent household teaches little about emotional controls. Children in this type of household are often on chronic alert, with high rates of emotional arousal. Their brains learn to pay much greater attention to nonverbal signals for threat than almost any other cue. They learn little about identifying, modulating, or using feelings to participate in relationships. Instead, they learn about the extremes of emotions, volatile outbursts, or numbing and shutting down. There is substantial literature suggesting that children who have been traumatized have great difficulties processing information, which translates into a range of learning problems. *See* A. Streek-Fischer & B.A. van der Kolk, "Down Will Come Baby, Cradle and All: Diagnostic and Therapeutic Implications of Chronic Trauma on Child Development," 34 *Australian & New Zealand J. Psychiatry* 903–18 (2000). Finally, children gain very distorted understandings of cause and effect. Rather than gaining a sense of independent agency, traumatized children are often more dependent, less exploratory of their environments, and less self-motivated than other children. These children also learn that cause-and-effect relationships are governed by arbitrary, capricious, and unpredictable rules.

Domestic violence has great potential to interfere with a child's relationships to both the offending and victim parent. The victim parent's actual abilities can be sabotaged by constant undermining of his or her parenting decisions, criticism of his or her methods, and erosion of any sense of competence. There may be several reasons that the victim parent is unable to keep the children safe, including denial of resources by the batterer (e.g., money, transportation, or contact with family and friends) or emotional consequences of the battering (e.g., depression, lack of confidence, or distortion of risk). The child may lose trust and reliance on the primary caregiver, or become angry because of the parent's compromised ability to protect the child or provide adequate care.

With regard to the battering parent, the relationship may be governed by a sense of terror. The child's instinct for self-preservation may cause the relationship with the batterer to be driven by hypervigilance and overcompliance. On the other hand, an abusive partner can single out the victim partner for all of the abuse. The batterer then indulges the child, creating distorted images in the child's mind of the abusive partner's superiority over the victim partner's weaknesses. In essence, the batterer comes to isolate the victim parent from the child, further compromising the victim's parenting. Finally, children can overidentify with the battering parent, becoming abusive themselves, either to the victim parent, siblings, or peers.

Finally, being exposed to domestic violence can leave children with a host of mental health and psychosocial symptoms ranging from depression or anxiety to posttrauma symptoms like dissociation, numbing, nightmares, and hyper-vigilance, as well as a range of learning and attention problems, authority problems, peer relationship problems, and aggression.

As with mental illness, substance abuse, or other forms of parental problems or limitations, the assessment of domestic violence requires an appraisal of its impacts on the children. The difficulty in these cases is that because the behavior is often shrouded in such secrecy, and there may be few "hard" indicators that might be identified in other cases (e.g., actual reports of physical abuse or documented injuries, a high volume of visitors unknown to the children in the home of a known cocaine abuser, or inappropriate reliance on an older sibling to care for younger siblings during an active episode of mania), there is the chance for missing the potential harm to children. It is reasonable to assume that children should be protected from ongoing domestic violence. This implies increasing the safety of children, which necessarily implies increasing the safety of the victim parent. The complexity of evaluating a family where there has been domestic violence requires a careful exploration of the victim parent's strengths. When the victim is not in a chronic state of danger and threat, functional parenting skills are likely to improve.

§ 25.7 CONCLUSION

The attorney in the state intervention case is in an unusual position. While counsel plies his or her trade as an advocate and protector of human rights, he or she comes quite close to the territory of the mental health professional. Because families involved in state intervention cases require a careful and thoughtful way of meeting their needs, and because their particular needs require some basic understanding of human behavior, the attorney is invited and encouraged to dip into the wells of mental health knowledge. Girded with this information, the attorney will deal with new kinds of data and make better sense of the complicated presentations of these families and their needs.

EXHIBIT 25A—Checklist for Communicating with Children

I. SETTING THE STAGE

- Meet frequently, particularly early on in the case to develop a relationship with the child
- Be cognizant of child's physical and emotions needs (e.g., hunger, thirst, naptime, boredom, anxiety, etc.)
- Get down to the child's eye level
- Take frequent breaks or switch to more neutral topics
- Provide the child with some rules for talking to you:
  - The child should tell you if he or she does not understand the question
  - The child should tell you if he or she does not know the answer
  - The child should tell you if he or she does not want to answer a particular question or does not want to talk any more
  - The child should tell you if he or she needs a break (to play, to go to the bathroom, to have a snack)
  - Let the child know that you may ask the same question twice. It does not mean the child's answer was wrong, but that you forgot or did not understand the answer.
- Don't make promises you can't keep

II. EVALUATE THE CHILD'S DEVELOPMENTAL LEVEL AND USE OF LANGUAGE

- Be aware of the number of words in the child's sentence. Construct sentences of similar length and structure.
- Consider whether the child uses pronouns correctly

- Does the child understand numbers, time, etc. (remember the child may use numbers or time in conversation without understanding these concepts)
- Does the child understand abstract concepts
- Does the child understand concepts of space, size, directionality (next to, underneath, larger than, nearer, etc.)

III. USE SIMPLE LANGUAGE

- Avoid legalese (e.g., allegations, charges, status or pre-trial conference, care and protection)
- As necessary, explain common legal terms using simple concrete words (court, hearing, judge, lawyer)
- Use short, simple sentences
- Use simple question forms
  - No complex syntax (e.g., My role as your attorney is to advocate for your best interest, so do you have any guidance for me? Were it not for your mother's boyfriend, would you want to go home? The court granted custody of you back to your mom, albeit with certain conditions.)
  - No compound questions (e.g., NO: What was your visit like with your mom and where did you go? YES: I know you saw your mom on Tuesday. Where did you see her? Can you tell me about your time together? What did you do? How did you feel about the visit?
  - No double negatives
- Avoid many syllables
- Avoid why, when, how, time, numbers with youngest
- Use concrete terms rather than abstract or categorical terms (e.g., NO: The Court will determine what is in your best interests. YES: The judge will decide where you can live.)
- Use proper names instead of pronouns such as he, she, him, her
- Use the active voice instead of the passive voice

IV. ENSURE COMPREHENSION

- Ask child to repeat back what you said in own words
- Ask follow-up questions
- Ask the same question in different ways to see if you get the same answer
- Repeat important information
- Recheck comprehension and memory at subsequent meetings

V. DEBRIEF AT END OF VISIT

- Help children regroup by ending meeting with neutral topic
- Check in with caretaker before you leave if child seems anxious or upset