III. Direct Proof

Most judges prefer to base a finding of abuse on direct proof – eyewitness testimony concerning parental behavior. First-hand observation of abusive behavior is devoid of the ambiguity that sometimes surrounds circumstantial proof. Therefore, anyone who has seen the parent seriously assault a child (or attempt to do so) should be called as a witness. As described above, the parent's observed behavior need not have caused serious injury to be considered abusive.[1] A finding can be made when the reasonably foreseeable consequence of the parent's behavior could have been the child's serious injury.

Testimony from Family Members

Since most child maltreatment, like most child rearing, occurs at home, eyewitnesses to abusive or neglectful behavior are usually family members. They are an important source of evidence, although the testimony of disgruntled spouses or other relatives seeking to gain custody of the child must be weighed with great care. New York City Family Court Judge Nanette Dembitz described the problems that *sometimes* arise when one parent testifies against the other:

> If there is anyone present at the time of the injury besides the parent suspected of abuse, it generally is the other parent, and his testimony usually must be discounted because of his self-interest. One parent may accuse the other to deflect blame from himself; or the accusation of child abuse may be used vindictively in a deteriorated relationship, like the sometimes exaggerated or false complaints by one parent against the other in a child-custody case.[2]

Other Eyewitnesses

Nonfamily members rarely see parents abuse their children. Abusive parents usually do not assault their children in the presence of outsiders, so that even visits to the home may reveal only the consequences of maltreatment on the child or, perhaps, young children left alone or placed in dangerous situations.[3] There are, though, some exceptions to this general rule: (1) a neighbor may see (or hear) the child being abused; (2) a neighbor or someone else may enter the home unexpectedly, and come upon a parent beating a child; (3) the parent may so completely lose control that he or she becomes oblivious to the presence of outsiders; or (4) the parent may have an unconscious desire to be discovered; allowing abusive behavior to be observed may be an unconscious "call for help."

Professionals who are in the home for some other reason also may see a child being maltreated. Visiting nurses attending to the needs of a child or parent, caseworkers making a home visit for public assistance matters, police officers called to settle a domestic dispute, and firefighters responding to an alarm are but only a few of the outsiders who may observe a parent's inability to care for a child, or who even may see a parent physically harm a child. Judge Dembitz described one such case:

> One of the most heart-sickening neglect and abuse trials I have ever held concerned . . . Somala S., 7 months . . . . A policeman who was climbing up a fire escape chasing a suspected mugger, by chance heard Somala crying and saw her lying in a room by herself in a dresser drawer. When he took her to Bellevue Hospital, she was in such a state of malnutrition and dehydration that she is permanently blind and braindamaged. . . .[4]

Although most observed acts of maltreatment occur in the home, they can be seen in other settings as well. If such behavior occurs in a public

1. See the section entitled 'Seriously Harmful' Parental Conduct, on *supra* p 3.
2. Dembitz, "Child Abuse and the Law – Fact and Fiction," 24 *Record of the Bar Association of the City of New York* 613, 620 (1969).
3. The child's condition may be circumstantial evidence of abuse, as described in the next section.
4. Quoted in: N.Y.S. Assembly Select Committee on Child Abuse, *Report* p. 93 (April 1972).

place, it reveals a severe lack of control; it signals serious danger to the child, requiring prompt action. In one particularly notorious case, which occurred in suburban Westchester County, a public assistance worker observed a mother beat her child in the agency's waiting room. (The mother was there to inquire about public assistance, and her child became restless and fidgety while they were waiting.) The worker reported the incident to the agency's child protective unit, only two floors above the waiting room, but no action was taken. Two months later, the child was taken to the hospital convulsing and bleeding from the mouth. The child died in the hospital.[5]

Sometimes, there is hesitancy to call as a witness a family member (for fear that the testimony will disrupt already tenuous family relations) or a person easily accessible to an apparently dangerous parent (for fear that the witness may be placed in jeopardy). Such concerns are real, and they should be weighed in case planning. However, it is hard enough to prove most cases of child abuse. In fact, it is a rare case indeed where it is clear that other evidence is more than sufficient to establish the abuse. Hence, a decision to forego obviously persuasive evidence should be made with great care, lest concern over family relations or a witness' safety further endangers an abused child. Even when a decision is made to dispense with such crucial evidence, the advocate should structure the presentation of evidence to allow the eyewitness to be called, should the case not be going as planned.

The Child's Statements

Children are often the best source of information and testimony concerning home conditions and any possible maltreatment. They can give moving and frequently decisive evidence about the allegations against their parents. Subject to the exceptions discussed below, *all children should be interviewed* and, if they are of sufficient maturity, they should be called to testify.

Sometimes, the value of interviewing a particular child (in preparation for court action) will be apparent. Children often seek help from an adult whom they know and trust. A school teacher who seemed concerned about the child, a social worker that the child got to know, a worker in a runaway shelter in which the child sought refuge, a friendly neighbor, in fact, any approachable adult may have been told about acts of abuse or neglect in the home. This avenue of assistance is an important aspect of child protection; cases of sexual abuse, for example, usually come to light only after the child has told an outsider about the situation.

Children who have not sought help for themselves also may be willing to tell outsiders what is happening at home.[6] Therefore, even very young children should be interviewed. Although what they say may not be of sufficient reliability for use in court, their answers may shed light on ambiguous situations or provide additional leads for exploration.

There is always the danger that a child's description of having been abused is untrue. Like some adults, some children lie, exaggerate, or fantasize. Or, a distorted version of the incident may have been fixed in the child's mind by others who questioned the child about the possibility of abuse. If there is no independent corroboration of the child's statements, these possibilities must be kept in mind when assessing a child's description of being abused.

Nevertheless: "When a child readily indicates that a particular adult hurt him, it is almost always true," according to Dr. Barton Schmitt.[7] A child's otherwise credible statements should not be disregarded simply because of the child's age. Unless there is a specific reason for disbelieving or questioning a child's statements, they should be presented to the court.

On the other hand, the child may dispute the allegations of maltreatment. Once again, the child's statements must be assessed within the

5. McLaughlin, "A Girl, 2, Dies – Victim of Abuse . . and Red Tape," *N.Y. Daily News*, Dec. 3, 1971, p. 3, col. 1

6. *See, e.g., In the Matter of Rose "B,"* 79 A.D.2d 1044, 435 N.Y.S.2d 185, 185-186 (3rd Dept., 1981), describing how the school nurse teacher observed scratches and bruises about the face and neck of Rose "B", an eleven-year-old student, and upon examination discovered numerous open sores and scabbed surfaces on her buttocks, thighs and shoulders. When queried as to the cause of this condition, Rose answered that it was the result of beatings administered by her father, the respondent, through the use of his belt.

7. Schmitt, "The Physician's Evaluation," found in. *The Child Protection Team Handbook*, p. 39, 40 (Schmitt, B., ed., 1978).

context of the overall situation. For example, a child's description of an accident or a fight with a playmate that is consistent with the injuries sustained may be strong evidence against a finding of maltreatment, and good reason not to file a petition in the first place. Conversely, a child's explanation which is inconsistent with the injuries sustained may be further evidence of abuse.[8]

Generally, any child who can give the judge information bearing on the alleged maltreatment can be called to testify. Even children too young to be sworn as witnesses can be called. Family Court Act §152(b)(1983) authorizes the judge to "dispense with the formality of placing a minor under oath before taking his testimony." (Ordinarily, in a civil action, the unsworn testimony of a child is inadmissible.)[9]

So long as the child's testimony is coherent and seems reasonably reliable, the judge will allow it. However, when a child is too young to understand and appreciate the nature of an oath, his testimony, even when credible, will understandably be accorded less weight. The judge should not be expected to make an adjudication based *solely* on a child's unsworn testimony. But this does not mean that such evidence is not decisive in certain situations, and it should be introduced when appropriate.

The experience of testifying in court is inherently traumatic – for witnesses of all ages. For a child who is already hurt, fearful, or confused, it can be deeply upsetting. For this reason, many lawyers are hesitant to call young children to testify. However, the traumatic effects of the court process on young children are easily exaggerated.[10] Like adults, children possess different degrees of self-confidence and resiliency. A decision against calling a young child as a witness should not be made without a careful and individualized assessment of the child's ability to withstand the stresses of testifying. Furthermore, many older children can handle the experience if certain precautions are taken. Indeed, they may have a strong desire to know what is happening and to express their wishes to the court.

Before the child testifies, the lawyer or agency representative who will conduct the direct examination should explain the nature and purpose of the court proceeding to the child and should describe what to expect in direct and cross examination.[11] Without rehearsing the child, a mock direct and cross examination should be conducted to give the child confidence and to gauge how well the child will do in court.

Even though the rules of evidence allow leading questions to be asked in the direct examination of young children, questions that can be answered by a simple "yes" or "no" should be avoided. A series of "yes" and "no" answers from the child is not effective testimony, and it should not be expected to persuade the judge. The direct examination should be structured around a sequence of open-ended questions designed to let the child tell the judge what happened in his or her own words. The child should be encouraged to give responsive answers, but the child should not be pressed to give information he or she seems unwilling or unable to give.

Cross examination, of course, is usually the most upsetting aspect of testifying. In general, counsel should be expected to exercise sound judgment in conducting the cross examination. If necessary, though, the judge should be asked to protect the child from an overzealous cross examination.

In most cases, though, the child cannot be called to testify in open court. Despite precautions, it may appear that the experience will be unjustifiably traumatic, or there may be a danger of parental retribution against the child, or the child may be too young to participate in a formal direct and cross examination, or the child may simply refuse to testify in front of the parents. There are two possible solutions to such situations: (1) an *in camera* interview of the child by the judge, or (2) the introduction into evidence of the child's previous out-of-court statements relating to

8. See the section entitled "Ambiguous Situations," on *infra* p 43

9. *Richardson on Evidence* § 409 (Prince, 9th Ed., 1973)

10. *See In the Matter of S. Children*, 102 Misc. 2d 1015, 424 N.Y S.2d 1004, 1006 (Fam. Ct., Kings Co., 1980), describing how psychiatric evidence failed to "demonstrate that the [six year old] child would suffer a traumatic detrimental effect if compelled to testify in the [respondent parent's] presence" about alleged parental acts of sexual abuse.

11. When a lawyer interviews the child, an attempt should be made to have present the child protective worker assigned to the case.

the alleged maltreatment. Each is discussed below.

In *child custody* cases, Family Court Judges are permitted to interview children in chambers rather than have them testify in open court. The judge can do so (and can exclude the parents and their attorneys) even if the parents object. In approving the procedure, the Court of Appeals, in *Lincoln v. Lincoln*, stated:

> It requires no great knowledge of child psychology to recognize that a child, already suffering from the trauma of a broken home, should not be placed in the position of having its relationship with either parent further jeopardized by having to publicly relate its difficulties with them or be required to openly choose between them. The trial court however, if it is to obtain a full understanding of the effect of parental differences on the child, as well as an honest expression of the child's desires and attitudes, will in many cases need to interview the child. There can be no question that an interview in private will limit the psychological danger to the child and will also be far more informative and worthwhile than the traditional procedures of the adversary system – an examination of the child under oath in open court.[12]

Lincoln v. Lincoln was a custody case. Nevertheless, most Family Court Judges believe that it also applies to child protective proceedings.[13] Thus, almost all judges will interview children in chambers, often with a court stenographer present, and sometimes with the lawyers present. However, few judges will base an adjudication solely on the child's *in camera* statements. To make a finding, they require corroboration of what the child said in chambers.[14]

Interviewing the child in chambers is not without problems, as the Court of Appeals recognized in *Lincoln*:

> [T]here are grave risks involved in these private interviews. A child whose home is or has been torn apart is subjected to emotional stresses that may produce completely distorted images of its parents and its situation. Also its feelings may be transient indeed, and the reasons for its preferences may indicate that no weight should be given the child's choice. Without a full background on the family and the child, these interviews can lead the most conscientious Judge astray.
>
> The dangers, however, can be minimized. We are confident that the Trial Judges recognize the difficulties and will not use any information, which has not been previously mentioned and is adverse to either parent, without in some way checking on its accuracy during the course of the open hearing. The entire issue is a most delicate one, but in weighing the competing considerations, we are convinced that the interests of the child will be best served by granting to the trial court in a custody proceeding discretion to interview the child in the absence of its parents or their counsel.[15]

This last point bears repeating. The judge should not use information gained in chambers to reach a decision in the case without first sharing it with all parties and then giving them the opportunity to rebut (or amplify) it. (It is good practice to tell the children that this will be done.)

Subdivision 1046(a)(vi)(1983) authorizes the introduction into evidence of the "previous statements made by the child relating to any

12. *Lincoln v. Lincoln*, 24 N.Y.2d 270, 247 N.E. 2d 659, 299 N.Y.S.2d 842, 843 (1969).

13. *See In the Matter of Bernelle P.*, 45 N.Y.2d 937, 383 N.E. 2d 1154, 411 N.Y.S.2d 561 (1978), approving the judge's *in camera* discussion with the child during an emergency removal hearing (where hearsay is allowed) but expressly not determining the property of such discussions as part of a fact-finding hearing; *But see In the Matter of S., supra* n. 10. *citing* both *Lincoln v. Lincoln, supra* n. 12 and *In the Matter of Bernelle P., supra*, but holding that the possible trauma to the particular child did not justify an *in camera* interview and that, in addition, "there is no statutory provision permitting the court to take a child's testimony *in camera* or in any manner other than as sworn testimony in court and in the respondent's presence."

14. In effect, this procedure treats the child's *in camera* statements as a "previous statement" made admissible under subdivision 1046(a)(vi)(1983).

15. *Id.*, 299 N.Y.S.2d at 844-845(citation omitted).

allegations of abuse or neglect." This provision is, in effect, an exception to the hearsay rule which generally prohibits the introduction of out-of-court statements to prove the truth of the matters asserted in them.[16] Under the hearsay rule, the child's out-of-court statements would be inadmissible, unless they fell under some recognized exception to the hearsay rule, such as the *res gestae* exception.

The child's previous statement can be introduced: (1) through the testimony of someone who was present and heard it; (2) through an agency case record that is placed into evidence pursuant to Family Court Act §1046(a)(iv)(1983); or (3) through a video tape of an earlier interview. This latter method, by the way, obviates many of the weaknesses associated with the use of a child's prior, out-of-court statements; the video tape provides a graphic record of the child's actual words and demeanor.

Obviously, a child's in-court testimony would be more persuasive than having a witness relate a previous statement that was made under ambiguous circumstances or that cannot be elaborated upon. But if the child cannot testify and if an in-chambers interview with the judge is not possible, subdivision 1046(a)(vi) can be used to get what the child has to say before the judge. This provision can also be used when the child refuses to repeat (either in court or in chambers) what he said closer to the events in question or in a more informal situation. For example, in one case a six year old deaf child gave apparently important information to an interpreter for the deaf. The appellate court ruled that the deaf child's "statements" to the interpreter should have been admitted into evidence.[17]

In addition, even if the child testifies, there may be good reason to use this provision to introduce the child's previous statements. Since the child's credibility is crucial to how his testimony is received, previous similar statements may demonstrate a consistency that lends great weight to the child's testimony.

Subdivision 1046(a)(vi) can also be used when a child retracts a previous description of being maltreated. Obviously, there is strong reason to disbelieve a statement that has been retracted. On the other hand, many children retract an earlier statement, not because it was untrue, but because they have been coached or threatened by their parents. For example, one court described how, on "at least four instances . . . caseworkers observed bruises or welts on the child's ankles, hands and on other parts of her body. Upon questioning, the now seven-year-old child either attributed the injuries to her mother, remained silent, or remarked that 'mommy says not to tell.'"[18] Other children change their minds about testifying against their parents when, after having been placed in foster care, they decide that they want to return home to their family, friends, and accustomed environment. One manual for child protective workers, for example, explains that "a child who has fabricated sexual abuse allegations in order to punish or get even with the caretaker may be less likely to retract her statements than the child who is upset with negative repercussions of her acknowledgment and who reverses her position in an attempt to return life to normal."[19] Therefore, a retracted statement is not an automatic reason to decide that the child has not been abused, and, depending on the circumstances, it may be crucial for the court to know about the child's previous contrary statement. (Moreover, the fact that a child has made an untrue or fabricated allegation of parental abuse may be a sign of emotional problems in the child or family dysfunction that merits further exploration.)

Without further evidence, though, the accuracy of the child's out-of-court statements is difficult to assess.[20] Therefore, subdivision 1046(a)(vi) does not allow the child's previous statements to be the *sole* basis of an adjudication; they must be *corroborated* by independent evidence before the court can rely on them.

The phraseology of subdivision 1046(a)(vi) makes an inadvertent change in the standard rules of evidence. Ordinarily, if an out-of-court

16. *Richardson on Evidence*, *supra* n. 9, at §200.

17. *In the Matter of Marshall R.*, 73 A.D.2d 988, 423 N.Y.S.2d 564 (3rd Dept., 1980).

18. *In the Matter of Tonita R.*, 74 A.D.2d 830, 425 N.Y.S.2d 172 (2nd Dept., 1980).

19. Illinois Department of Children and Family Services, *Child Abuse and Neglect Decisions Handbook*, Appendix E, p. 6 (1982).

20. *See, e.g.*, Dembitz, *supra* n. 2, at p. 619, stating, in relation to such evidence: "Nevertheless, this hearsay frequently proved, on cross-examination, to be unconvincing. ('Did you ask the child whether his father hit him, and did he merely nod in reply?'). To the distress of conscientious social-worker witnesses, it was generally insufficient, standing alone, to support a finding against the parent."

statement falls within one of the exceptions to the hearsay rule, it becomes fully admissible evidence which need not be corroborated. This subdivision's requirement of corroboration seems to apply to *all* out-of-court statements made by children – even if they fall within a standard exception to the hearsay rule.

The child's out-of-court statement can be corroborated by *any admissible evidence which tends to confirm it.* Corroboration can take the form of: apparently inflicted injuries on the child's body,[21] the prior but now retracted admissions of the parent,[22] the sworn testimony of another child,[23] and, depending on the applicability of *Lincoln v. Lincoln* to child protective fact-finding hearings, the same child's or another child's statements to the judge in chambers.[24]

On the subject of corroboration, it should be noted that Family Court Act §1012(e)(iii)(1983) lifts the Penal Law's requirement that court testimony concerning sexual offenses be corroborated.

As mentioned above, the child, when interviewed by the child protective agency or counsel, may have disputed or contradicted the allegations of maltreatment or may later have retracted a claim of being abused. That the case was nevertheless continued indicates that the agency or counsel disbelieved or discounted the child's statements or later retraction. But, like all exculpatory evidence, this information should be given to the parents' counsel and the Law Guardian.[25] Although the parents' counsel and the Law Guardian can be expected to introduce this information at the hearing, fairness to the parties and to the court, as well as sound trial strategy, dictate that the petitioner inform the court of any statements that the child has made suggesting that he is not abused. Since, under the circumstances, it would ordinarily be inappropriate for the petitioner to call the child, subdivision 1046 (a)(vi) can be used to introduce the child's exculpatory statement. (The subdivision is carefully drafted to apply to any previous statements "relating" to allegations of abuse or neglect, not just allegations in support of the petition.) The respondent parents or the Law Guardian, too, may use this subdivision to introduce the child's out-of-court exculpatory statements to bolster in-court testimony or when, for some reason, a decision is made not to call the child as a witness.

The Parent's Admissions

A parent's out-of-court description of having abused a child (or other sufficiently inculpatory behavior) can be the basis of an adjudication. The parent's statement (or behavior) is admitted into evidence as an exception to the hearsay rule. While the use of such admissions "may smack uncomfortably of betrayal of a confidence when the parent has confessed his fault only because he was desperately seeking help for the child or psychotherapy for himself, his admission against interest must, of course, be considered by the Court."[26]

Many parents are deeply fearful of harming their children. When they feel things slipping beyond their control, they often turn for help to others – to friends, to relatives, to clergymen and to helping professionals. Except for clergymen, all of these persons can be called to testify about what the parent said. Subdivision 1046(a)(vii)(1983) abrogates the confidentiality that normally attaches to conversations between: husband and wife, physician and patient, psychologist and client, and social worker and client. (The attorney/client privilege remains in effect.) In addition, various Federal rules of confidentiality can be suspended in cases of child abuse and neglect, including those pertaining to: (1) school

21. See the section entitled *"res ipsa loquitur,"* on *infra* p. 21.

22. *See, e.g., In the Matter of Margaret W.*, 83 A.D.2d 557, 441 N.Y.S.2d 17 (2nd Dept., 1981).

23. *See, e.g., In the Matter of Hawkins*, 76 Misc. 2d 738, 351 N.Y.S.2d 574 (Fam. Ct., N.Y. Co., 1974).

24. *Id.*, 351 N.Y.S.2d at 577.

25. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).

26. Dembitz, *supra* n. 12, at pp. 616-617.

records under the Federal Family Education Rights and Privacy Act (FERPA); (2) drug treatment records under the Drug Abuse Prevention and Treatment Act of 1972; and (3) alcohol treatment records under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.[27]

Parents also often make inculpatory statements to child protective workers. Because Family Court proceedings are civil in nature, and because a main function of child protective agencies is to protect children and provide supportive social services to parents, such statements are held to be admissible even though the worker may not have given *Miranda* type warnings. As one court explained:

> To require such a warning would frustrate the State's performance of its duty as *parens patriae* to investigate and protect the welfare of children. In any event, there appears to be no precedent for the requirement of a warning in connection with a civil proceeding.[28]

Often overlooked is the possibility that the police or district attorney may have obtained statements from the parents or other evidence bearing on the child protective proceeding. Although criminal prosecutions for child abuse are relatively rare, investigations (especially of suspicious deaths or claims of sexual abuse) are not.[29]

A parent's description of abusive or neglectful behavior, unless long past, should be a sufficient basis for an adjudication. However, it is not necessary that the parent actually admit to having abused a child. In determining the significance of parental statements, two things must be kept in mind. First, a parent's statements are inculpatory because they support the circumstantial proof of abuse. For example, farfetched explanations for suspicious injuries, explanations at variance with clinical findings, and other suspicious conduct can aid the court in assessing apparently inflicted or ambiguous injuries;[30] they should be introduced into evidence.

Second, certain parental statements, behavior, and general demeanor may suggest that a parent is suffering from *severe* mental disabilities which make future abuse or neglect likely.[31] They, too, should be introduced into evidence. Parental threats to kill or otherwise harm a child are the most extreme example of such evidence. In *Matter of Jason B.*, Judge Leddy described a not untypical situation and the court's response to it:

> Parental threats to kill one's child must trigger swift and immediate action from those charged with the protection of children. And where such threats are made by a parent who, by action, inclination, mental state, or otherwise, exhibits a capacity to carry them out, a finding of neglect as defined in F.C.A. § 1012(b) may properly be made without any evidence of present or past harm to the child.
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> * * *
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> On October 25, 1982, while in treatment at a program operated by North Richmond Community Mental Health Center (North Richmond), the respondent mother made the following statement: "What do I have to do to get help, something stupid like dangling one of my kids over the ferry?" Noting that the respondent was "in crisis" and capable of hurting the children, a social

27. *See In the Matter of Dwayne G.*, 97 Misc. 2d 333, 411 N.Y.S.2d 180 (Fam. Ct., Kings Co., 1978); *In the Matter of Doe Children*, 93 Misc. 2d 479, 402 N.Y.S.2d 958 (Fam. Ct., Queens Co., 1978), both cases involving records of alcohol abuse treatment agencies. *See also In the Matter of Gigi B.*, 71 Misc. 2d 176, 335 N.Y.S. 2d 535 (Fam. Ct., Bronx Co., 1972), records of N.Y.S. Narcotic Addiction Control Commission.

28. *In the Matter of Diana A.*, 65 Misc. 2d 1034, 319 N.Y.S.2d 691, 697 (Fam. Ct., N.Y. Co., 1971). *Cf. People v. Yanus*, 92 A.D.2d 674, 460 N.Y.S. 2d 180 (3rd Dept., 1983).

29. For a discussion of concurrent criminal and Family Court jurisdiction in cases of child abuse and neglect, and of the problems surrounding the use of parents' Family Court testimony in a subsequent criminal proceeding, *see* Besharov, "Practice Commentary to McKinney's New York Family Court Act," §1014 (1983).

30. *See* the sections entitled "Unsatisfactory Parental Explanations" and "Ambiguous Situations," on *infra* pp. 40 and 43.

31. *See* the section entitled "The Child In Danger of Serious Injury," on *infra*. p. 6.

> worker from North Richmond filed a report of suspected child abuse or mistreatment (D.S.S. form 2221).
>
> Responding to this report, Ronald Haucke, a caseworker for Special Services for Children on Staten Island, visited the respondent at her home. She stated to him that she was "very depressed," "wanted to end it all," and would "take the children with her." Respondent now maintains that she never intended to hurt her children and points to the fact that there is no evidence of any past or present injury to them.
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> * * *
>
> . . . Thus, the threshold issue is whether the parent presents a genuine danger to the child, and in this regard, the mere utterance of a threat to kill or seriously injure one's child must be viewed as sufficiently serious to establish a *prima facie* case of neglect.
>
> Since the parent made the threat, it is only reasonable that she be required to come forward to satisfy the Court that the children are, and will be, safe. To hold otherwise would mean that a parent could issue a death threat, remain silent thereafter, and leave the child protective service powerless to act unless it could prove that the parent actually intended to carry out her threat. Such a result would put an extremely onerous, and perhaps, impossible burden on the petitioner in child protective proceedings.[32]

However, a distinction must be drawn between parental threats to kill or harm a child and parental descriptions of feelings of anger or loss of control. Parental expressions of anger toward a child and of fears of losing control, on the other hand, require further assessment. Many parents have "angry thoughts" about their children; some find themselves thinking about beating, and even killing, their children. That the parents have summoned the courage to tell an outsider about such feelings is a reflection of how real – and disturbing – these feelings can be. In parents of young children, especially newborns and infants, such feelings are a signal of serious danger that cannot be ignored. But in parents of older children, such verbalized feelings are an all too common symptom of dysfunctional parent/child relationships. Although they are destructive and may benefit from treatment, they probably will not deteriorate into actual abuse or neglect. Thus, for parents of older children, "angry thoughts" warrant a finding only if there is sufficient additional reason to believe that they signal future maltreatment.

32. *In the Matter of Jason B.*, 117 Misc. 2d 480, 458 N.Y S. 2d 180, 181-182 (Fam Ct., Richmond Co., 1983).