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Six Crucial Issues in Supervised Visitation

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Published: September 1, 2004

Authors' Notes

This project was supported by Grant No. 2003-WT-BX-K020, awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Introduction

Judges and battered women's advocates support the development of supervised visitation programs in communities struggling to address crimes such as domestic violence, child abuse, and stalking. [1] Whether supervised visitation programs are considered valuable to those affected by domestic violence in the long term, however, depends largely on whether programs can provide a safe setting in the short-term. This article describes six crucial issues that may decide how victims, their children, and their communities experience supervised visitation. These issues, based upon research and experience from supervised visitation providers nationally, are: how staff and volunteer training can enhance victim safety; how risk assessment tools can help staff identify dangers; how stalking can be reduced at supervised visitation programs; how liability issues can be addressed at programs; how court orders can increase protection for victims and children; and how staff can avoid unintended outcomes in program record keeping.

I. How staff and volunteer training can enhance victim safety

Supervised visitation programs offer parent-child contact in the presence of a third party in a neutral setting. [2]Many supervised visitation programs use or will use some combination of paid staff, student interns, and volunteer workers at some point during the time they provide services. [3]There are only a few formal studies of supervised visitation programs, but all indicate that a varied experience level of workers is used to monitor visits. [4]Whatever staffing options are used, one caveat must be kept in mind: volunteers and paid staff must grasp the complex dynamics of domestic violence so that they do not cause further harm to domestic violence victims, their children, other program participants and/or staff. For example, untrained volunteers or staff who do not understand the dynamics of domestic violence may view as unremarkable batterers' efforts to have children convey messages back to the other parent. These personnel may even examine such messages, and upon finding them facially benign, allow them to be received by the victim. Allowing such a message to pass from the batterer to the victim - not

understanding the hidden messages, or the feelings of vulnerability experienced by the victim - can cause indescribable trauma to the victim, who has been promised by staff that the visitation program offers safety and understanding.

Likewise, an untrained staff member may increase the actual risk a victim may experience by allowing a batterer to see what car the victim arrives in or gain access to program records regarding where the victim and children are staying. Ignorance of batterer tactics is also a result of lack of training, and can allow staff to be manipulated by the very people they are hired to supervise. Batterers can convince staff that they are innocent of claims against them, and that the need for vigilance at visits has been exaggerated in their case.

The founders of the supervised visitation movement in the U.S. recognized the need for staff training in domestic violence, recommending that training should ensure "familiarity with issues about visits related to family violence," and "differing forms of dynamics of partner and child abuse." [5]The guidelines developed by these pioneers, however, do not provide specificity regarding the topics on which training is necessary, and there is currently no certification that the training is being accomplished. Other groups who are often enlisted by the courts to assist battered women (such as Guardians ad Litem and parenting evaluators) have also explicitly recognized the need for training in domestic violence. [6]

In the past decade, supervised visitation programs have been asked to take cases involving custody and domestic violence in addition to dependency and other types of family law referrals. In fact, an important source of funding has been the federal Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Safe Havens) funding under the Violence Against Women Act [7]of 2000 which has resulted in the development and expansion of supervised visitation programs across the U.S.

In order to maximize the security that all supervised visitation programs offer -- including, but not limited to Safe Havens grantees -- they must ensure that all staff and volunteers are thoroughly trained--initially and periodically -- in the dynamics of domestic violence. This training would begin with, but go far beyond, the power and control dynamics of domestic violence - often referred to as DV 101. The fact is that there has been much work to identify the co-occurrence of domestic violence in child maltreatment cases, and to recognize how batterers can use the court system to gain sympathy and custody of their children. [8]These are complex dynamics that require providers to be familiar with the research literature, to discuss the issues with domestic violence advocates and to listen to the experience of victims. Training should be taught by those persons in a community who have direct experience working with victims and perpetrators of domestic violence and who are able to discuss how battering affects the entire family, how children are used as weapons against the victim, how batterers and incest perpetrators share common characteristics, and how parenting evaluators and other interveners can easily overlook these dynamics. In-depth information on co-occurring child maltreatment and domestic violence, and on non-offending parents, including role-play activities and opportunities to speak directly to survivors, is an important part of this training. Programs should partner with a domestic violence agency, such as a shelter to provide the training or to advise on topics. Some programs may find

themselves faced with a noncustodial parent whom they suspect is the actual victim: the litigant who has been abused is now faced with supervision of his or her contact with the children. Understanding how this can happen, and how programs can work to accommodate victims in this scenario, is also an essential component of supervised visitation --and judicial [9]-- training. For example, if the program suspects that the court erred and the custodial parent is the batterer, the program should have the flexibility to require the custodial parent to arrive first with the child, to help prevent stalking on-site. Supervised visitation providers, and the clients they serve, will benefit from in-depth training. If they are federally funded, [10]programs must have Memoranda of Understanding with their local domestic violence victim services program and may be trained by the staff of that domestic violence program; if they follow the guidelines of the Supervised Visitation Network, [11]they should seek out training in domestic violence issues; and if they are in a state with Minimum Standards, [12]they are usually required to have staff training on domestic violence. The key here is that this training must be thorough and ongoing within a structure developed in conjunction with battered women's advocates in each community.

The problem of untrained staff and volunteers is preventable: programs should develop screening policies for staff and volunteers; mandate pre-service training on domestic violence and in-service training on domestic violence; and, provide appropriate supervision of domestic violence cases by new workers or volunteers to ensure safety of program participants.

II. How risk assessment tools help staff identify dangers

Given appropriate training on domestic violence as described in the previous section, supervised visitation providers should recognize that all domestic violence cases contain some level of risk. Having some information regarding the risks that batterers present frequently leads to the question of assessing those risks on site at supervised visitation programs. Conducting a risk assessment is one tool which may assist staff in identifying risk factors in a given case. A risk assessment is simply a method of gauging identified markers for both the assessment of current abuse being experienced by a victim and a way in which providers can make a initial determination whether the violence may escalate. Unfortunately, although valuable risk assessment tools exist--most created by the domestic violence community--they have inherent limitations that may make them misunderstood by supervised visitation staff. Those limitations are discussed below:

How Most Risk Assessments Were Created

Empirical evidence about the risks created by batterers comes in large part from fatality reviews. We know, for instance, about the great risks of separation violence [13]from studying the deaths of women who were murdered by their intimate partners. For example, a Florida Governor's Task Force on Domestic and Sexual Violence Mortality Review Report in 1997 revealed that in a study of domestic

homicides in Florida, 65% of intimate homicide victims had physically separated from the perpetrator prior to their death. [14]We know that fathers and their agents commit most child abductions, that most occur in the context of domestic violence, and that 41% of child abductions occur between the time of separation and divorce. [15]We also know that supervised visitation and exchange services present opportunities for batterers to know exactly when and where their partners will be at specific times, and how that can be a lethal opportunity. In 1998, Melanie Edwards and her seven-year-old daughter were shot and killed by Mrs. Edward's estranged husband at a Seattle, Washington monitored exchange program in 1998. All domestic violence cases potentially present dangers; however, it is problematic to determine whether a specific batterer will attempt to kill a particular victim. As the American Psychological Association notes:

> There is no way to predict whether a specific batterer is likely to kill his partner. Even though data are available about batterers who actually commit such murders, the batterer's violence behavior alone does not provide enough information about accurate predictions about which batterers will go on to kill the partners. Psychotherapists can use a variety of checklists and other instruments to help determine the level of risk for a lethal incident, but these assessment devices have not been validated by empirical research. [16]

What are commonly identified risks?

Several of the oft-cited risk factors of batterers include:

- Escalation of physical or other forms of violence
- Recent acquisition or change in use of weapons
- Suicidal or homicidal ideation, threats, or attempts
- Change in substance use/ abuse patterns
- Stalking or other surveillance/monitoring behavior
- Centrality of the victim
- Jealousy / obsessiveness about, or preoccupation with the victim
- Mental health concerns connected with the violent behavior
- Other criminal behavior or injunctions
- Increase in personal risk taking (e.g. violation of restraining orders)
- Interference with the victim's help-seeking attempts
- Imprisonment of the victim in her home
- Symbolic violence, including the destruction of the victims' pets or property
- The victim's attempt to flee the batterer or to terminate the relationship
- Batterer's access to the victim or her family [17]

Who conducts risk assessment?

Despite their close ties with domestic violence shelters in their communities, many supervised visitation

program staff do not have the level of expertise necessary to conduct formal risk assessments. Therefore, it should be domestic violence professionals who should conduct the assessments, not visitation personnel:

> These domestic violence professionals have accumulated their expertise by seeking out workshops and training programs that focus on the unique nature of this societal problem. By specializing in their field, they know how to interview the parties to get the maximum information in the least intrusive way, and are better able to assess and understand the meaning of the information they have gathered. They are less likely to be fooled by the manipulative and socially adept batterer, and more likely to be sensitive to some of the indicators of potential lethality. [18]

When domestic violence personnel conduct risk assessments, however, the information they receive is privileged in many states, and can not be obtained by the batterer. By contrast, the information received by the supervised visitation program from batterers and victims alike may be considered public records. Each visitation program should consult with an attorney familiar with state domestic violence issues and law concerning privilege and confidentiality to consider issues of sharing information with and from domestic violence centers.

Other inherent limitations

Besides the fact that violence in a particular case is difficult to predict, risk assessments can be limited by the source of information. This problem occurs when supervised visitation personnel attempt to identify known risks in a case--as they frequently do--by researching family history, court pleadings, police reports, and background checks. If the program attempts to obtain such information from the victim, several problems may hamper that effort. First, although studies show that victims appreciate questions from professionals about the safety of their children, [19]there may be dangers in eliciting that information in the presence of children. The victim may not want to discuss the matter in the presence of the children, because he or she doesn't want the children involved, and even children who may not appear to be listening to the interview may later repeat to the perpetrator statements that the victim made about the abuse. One way to address this dilemma is to have a staff member bring the children to a different room during the interview.

Another problem is that asking the victim to admit to violence may cause to fear that she looks as though she is failing to protect the children. [20](Note: the concept of failure to protect means that the victim is viewed by child welfare or law enforcement officials as failing to intervene to prevent children from witnessing abuse or failing to intervene when the batterer directs violence toward the children. In some states, victims of domestic violence may be charged with failure to protect and knowing this, may not disclose information about abuse to supervised visitation staff.) Finally, the victim may be in denial about the actual risk from a partner. These factors, added to the fact that supervised visitation records--and what the victim says about her batterer--are usually discoverable in litigation, can endanger the

victim if the program does not think through how to balance long and short term safety interests.

Another consideration in determining known risks is how to help staff interpret the mysterious codifications of background checks. The meaning of arrests, pleas, and convictions can be extremely difficult for non-law enforcement personnel to understand and differentiate. Additionally, an extensive criminal history of petty theft, or passing worthless bank checks may say more about an individual's poverty than about risks at visits. Supervised visitation staff should have knowledgeable assistance in clarifying the results of background checks to make them truly meaningful for risk assessment. Even if professionals conduct formal risk assessments for supervised visitation programs, and even if the information programs gather is accurate and understandable, one ongoing risk to programs is the risk of complacency. If visitation staff are told (or conclude) that a case is not of heightened risk, they may feel a false sense of security. Thus, they may lower their scrutiny of cases and allow danger to be increased on site.

Pragmatic Approaches

One might ask at this juncture: What good are risk assessments or knowing the risks in the case? The answers are purely pragmatic. Most speak to how programs view their mission, and whether they can tailor their services to provide meaningful assistance to victims and their children.

First, programs that have gathered information about risks need to decide whether they will ever reject a case as being too dangerous. No doubt there will be resistance to answering this in the affirmative from judges who believe they have already gauged risk, and from program staff themselves, who believe that they must provide the service to victims. But a fundamental question remains: Does a program, once it provides service to anyone, have to provide service to everyone? Does an obligation to a victim arise, for instance, if staff believe that the court may allow unsupervised visitation if a program refuses to supervise it? Every program must struggle with the question and its ramifications.

Second, programs will determine from their information gathering or risk assessment that most cases will be suitable for visits, but some cases require additional considerations or restrictions. Sometimes a pattern of risk surrounding the victim's transportation becomes apparent: e.g., the batterer knows the victims model and make of car and knows how to look for it. Knowing this, visitation staff can help plan alternate forms of transportation for a victim to and from visits, or suggest a relative to drive the children to the program. Similarly, programs will determine that an alcoholic batterer is more violent when drinking, and staff decides to condition visits on the batterer's passing a breathalyzer before each visit. Other examples are programs that review records and determine that the case is not appropriate for group visit; programs may require a one to one ratio for supervision of visits (one staff to one noncustodial parent). These are all examples of using case information to keep victims safe in the short term; they have the added long term advantage of holding the batterer accountable for the violence.

III. How incidents of domestic violence and stalking can be

reduced at programs

As described above, there are a number of behaviors that indicate that a batterer is dangerous, including stalking behavior. [21]Unfortunately, supervised visitation staff who are untrained in domestic violence may mistake a batterer's behavior or jealously and preoccupation with the victim as accidents at best, and an annoyance at worst. The ways in which a batterer can stalk his victim at supervised visits are only limited by the batterer's imagination. Labeling this dangerous behavior appropriately is the first step in preventing, identifying and stopping it at visitation.

Table•1.•Examples of Common Batterer Behavior at Supervised Visitation Programs

Behavior	Example
Stalking	Batterer is informed of a program's staggered arrival &departure times but consistently ignores the schedule and arrives just as partner and children do. Potential Risk: Batterers may be manipu- lating the schedule in order to stalk victim by having victim become aware of their presence, being able to determine transportation of victim, or being able to identify friends who accompany victim &children to visit. Research on domestic violence is clear that stalking of a victim is a predictive factor for increased violence.
Emotional control/Abuse and Threatening Behavior	Batterers may bring certain items to their scheduled visits which bear symbolic threats to their victims. For example, a batterer brings a flower to a visit for child to take back home. Victim has been told that such a flower means a threat of being killed. Batterer brings battery-operated toys to visit for children to play with. Toys stop working during visit, visit monitor opens battery compartment to check battery and discovers note to victim hidden inside. Potential Risk: Program staff must be alert to the potential symbolic use of seemingly benign or even "thoughtful" items brought to visits but intended for their victims. Staff must be able to assess manipulative behavior which can present risk to

	victim and/or children.
Involving Child Witnesses	Batterer uses visit to repeatedly tell child how much other parent is loved; how they will be together soon, how child needs to tell other parent to come home. Potential Risk: Research indicates that child witnesses to domestic violence often have ambivalent feelings toward both parent who perpetrates the abuse and the parent who is victim. Children can experience emotional turmoil if they are further caught in the middle by the batterer. Visit monitors should be sensitive to behaviors of the batterer which attempt to involve children in conveying messages, etc.

Preventing additional episodes of domestic violence and stalking at supervised visitation programs

Once supervised visitation staff realize the potential for additional domestic violence episodes and stalking on site, they can work toward preventing it with firm rules including clear direction for staggered arrivals and departures, policies pertaining to limitations on what noncustodial parents can bring to supervised visits, and procedures for re-directing or prohibiting discussions about the other parent or the court case. They can examine each case at intake and decide whether special restrictions need to be incorporated in specific cases. Finally, they can develop prevention strategies to enhance victim safety at all stages of supervised visitation.

Responding to incidents of domestic violence and stalking behaviors at supervised visitation

When prevention policies fail, batterers must be held accountable for any acts of domestic violence at supervised visitation. The key is that supervised visitation staff must be vigilant enough to know that the prevention policies failed. Without vigilance on the part of staff, there is no real supervision. Authors Lundy Bancroft and Jay Silverman touch on this issue in The Batterer as Parent [22]as they recite a litany of examples of supervised visitation staff overlooking or missing dangerous batterer behavior at visits.

Unfortunately, often the only power that the program has involves asking the referring source (e.g. the court) to further restrict or terminate supervised visits, or to issue fines. Programs should work with their referring source to gain the ability to use discretion in limiting visits without returning to court. This flexibility will allow program directors to operate their program in the safest way they can without

having to return to court, for example, every time a batterer acts in an inappropriate manner. Again, the issue of training arises here, to ensure that directors given such discretion have had extensive training in dealing with batterers and batterer dynamics, but for our purposes we envision a director well-versed in domestic violence issues. Given appropriate training on how batterers may attempt to use the visitation setting to stalk their partners and manipulate staff, program directors who are given a certain amount of flexibility and discretion can tailor visits and program rules to address the problems in specific cases and make visits safer.

An example of how this could work is if a batterer in a specific case arrives late and meets the custodial parent in the parking lot of a visitation program. The director may suspect stalking behavior. The commonly recommended staggered schedule would have the batterer arriving a full fifteen minutes before his partner. [23]When given the flexibility to address concerns in specific cases without immediately returning to court, however, the director might decide to require that the batterer arrive even earlier for the next visit, say an additional half-hour, or the time it takes for the custodial parent to get from a safe setting to the visitation program. Staff could telephone the custodial parent and inform her that the visit will occur, eliminating the possibility that the two will meet. Similarly, if the victim needs extra time to leave the premises and neighborhood after a visit, the director should be able to require the visiting parent to wait for additional time before leaving the program grounds. Program policies should be flexible enough to allow the director discretion to make these alterations, without going back to court each time. There will be times, of course, when the appropriate course of action is going back to court; however, a judge is not present at the program when the parent showed up late, and the account of the behavior loses much of its power in the retelling in a judge's chamber. Therefore, the best approach is for the director to maintain the authority to make educated decisions about the best course of action considering the factors. This would include the ability to suspend and terminate visits when necessary for the safety of a victim or her children. Such authority should be part of the court order, so that parties have notice of it.

Courts holding batterers accountable

The court system is also responsible for holding batterers accountable for their actions. Judges generally have more tools at their disposal, such as:

- **Orders of Civil Contempt**: Holding batterers in contempt of court for violations of program rules lets them know that their behavior is recognized and unacceptable.
- **Orders for Batterer Intervention Programs**: If the court has not already done so, an order for the perpetrator to attend a Batterer Intervention Program is one response the court may have to a batterer's violating supervised visitation policies with stalking or other violent behavior.
- **Orders Suspending or Terminating the right to visitation**: Whether or not a program director has the power to suspend visits, the court can always exercise this power. This remedy helps to remove the batterer's control over the victim and ensures that the behavior will not be repeated at a visitation program.
- **Orders of sole parental responsibility for the victim**: Egregious behavior, flaunting and

violating the rules, and endangering staff may directly impact the best interest of the child and require severe measures, such as denying parental responsibilities to the batterer.

- **Charges of Criminal Conduct**: Some behavior on-site is criminal in nature. When a batterer threatens or assaults a staff member, for instance, that behavior is criminal and should be treated as such in the criminal justice system and by the program staff.

IV. How liability issues can be addressed by programs

Cases sent to supervised visitation programs are, by their nature, some of the most difficult cases in the court system. The sheer volume of court cases in areas such as dependency, custody, paternity and neglect has been described as a "skyrocketing caseload" [24]for judges. These are the cases in which supervised visitation is used.

The United States has already been described as a "litigation nation" [25]in which lawsuits are already all too common. Batterers bring additional dynamics into the fray: they may turn the legal system into a "symbolic battleground" [26]to continue their abuse. Studies show that fathers who batter are twice as likely to seek sole physical custody of their children, and are "more likely to engage in protracted legal disputes over all aspects of the divorce." [27]Added to this mix is the reality that there are many instances in which parents have sued those professionals and paraprofessionals that the court asks for assistance in disputed custody, dependency and divorce cases. With the specter of lawsuits looming over supervised visitation providers (some parents threaten programs "daily" [28]) we predict that lawsuits against individuals who work at those programs are not far in the future.

The threat of litigation is already widely perceived as inhibiting the provision of many important services, including education and health care. [29]Given that it is only a matter of time before a high-profile lawsuit is filed against a worker at a visitation program, it is useful to examine the protections offered other community members who assist the courts, and to ask the public policy question of what protections may be crafted for program providers.

At the outset it should be noted that it is the threat of lawsuits, not large numbers of lawsuits, that is of concern. A relative handful of suits filed by disgruntled parents could discourage or even halt the development of supervised visitation services by intimidating volunteers and staff, diverting resources to legal fees, and inflating insurance premiums. These kinds of concerns are what led many state legislatures to write legislation making CASAs and GALs immune from civil liability: more than a dozen states grant immunity from civil liability to these program staff and volunteers if they act in good faith, without gross negligence or willful misconduct, and in the scope of their duties. [30]

Judges who make decisions in contested cases have long been immune from suit, pursuant to the doctrine of absolute judicial immunity, which protects judges' decisions even if their acts are corrupt or

intentionally harmful. The protection holds for all judges, from county courts to the Supreme Court, as long as they are performing judicial acts that are not clearly beyond their jurisdiction. [31]Mediators are another group who are provided immunity by some state statutes, [32]as are mandatory reporters of child abuse, and child protection workers in social services agencies. [33]A relatively new group of professionals commonly requested for their assistance is parenting coordinators. In Florida, the Association of Conciliatory Courts has drafted proposed legislation which would provide immunity to parenting coordinators who act in good faith. [34]As the courts ask for help with tough cases dealing with severe familial dysfunction, new categories of service providers are created. In order to protect themselves, these groups frequently ask for civil tort immunity. No state, however, currently provides any protection from civil liability to supervised visitation providers, and we know of no state that has ever introduced such legislation. Instead, the states that provide some guidelines to supervised visitation programs require them to carry liability insurance. The existence of such insurance, however, does not obviate the potential problem of tort cases in the visitation setting, because defending such cases is usually time consuming and draining on staff. In addition, insurance may not cover all claims, depending on the terms of the policy.

Best practices dictate that staff and volunteers should avoid going beyond the scope of their duties, act in good faith, and avoid wanton recklessness or criminal activity. These actions will not guarantee the absence of lawsuits, but may be the best defenses against them.

Knowing the scope of supervised visitation duties is essential for all program staff and volunteers. A well-meaning monitor who decides to bring a child home with her practically invites a lawsuit, regardless of whether the child is upset, for instance, because he makes an allegation against one of his parents. Similarly, staff should be clear about their roles in transporting visitation participants, avoid the unlicensed practice of law when giving advice to those participants, and steer clear of allowing the parents to believe staff are licensed clinicians if they are not. Acting in good faith requires a visit monitor to believe that she is doing what is in the child's best interest at visits. If, for example, the monitor terminates a visit because she believes the parent's berating of a child is putting child is at risk for emotional or physical harm, a visiting parent might accuse her of interference with parental rights. Among her defenses will be her good-faith attempt to serve the child's best interest.

Wanton recklessness and criminal activity are clearer standards. If a batterer presents known risks to a child, and the visit monitor leaves the child unattended during the visit and her parent subsequently harms her, the monitor may be accused of wanton recklessness and may not be able to defend against this accusation. Similarly, criminal activities by a monitor will not be excused simply because of the special visitation setting in which they take place. Thus, if a monitor steals money from a parent's diaper bag, no protection from criminal liability can be expected.

V. How court orders can increase protection for victims and children

There are valid reasons for programs to require a court-ordered referral, although there are disadvantages. Most of the disadvantages stem from the program's reluctance to require victims of domestic violence to enter (or reenter) a court system in which the victim has no confidence, or in which the victim has been disbelieved or treated unfairly. On the other hand, we find it unrealistic to expect that batterers will simply volunteer to have their visitation with their children supervised, given common batterer characteristics such as a sense of entitlement [35]and denial of their violence and the impact it has on their children. Even if victims could convince their partners to agree to supervised visits, such informal arrangements lack important protections for victims and their children that only the court system can provide.

Once a court order is signed, two things happen. First, the court has now clearly specified that the batterer is entitled only to supervised visits. Without such a document, a batterer may still be considered to have shared custody of his children. If he absconds with the child during an informal visit, when no formal child custody determination has been made, it may not be considered abduction. If there is no court order delineating a child custody determination (temporary or permanent) to the contrary, the law may not consider the batterer's actions illegal. If a batterer court-ordered to visitation flees with the child during a supervised visit, staff should call the police and immediately provide proof that the batterer has violated the law. A simple directive in every order--e.g., "The court hereby authorizes law enforcement officers in this state to take all measures necessary to enforce this order and prevent the removal of the child from the supervised visitation program"--makes the court's goals clear. This, in addition to the program's education of and collaboration with law enforcement on the purpose of supervised visitation will increase safety and shorten response time. [36]

Kidnapping is one risk associated with batterer visitation. Additional risks may be caused by batterer behavior associated with program rule violations. These violations may go unpunished without the court's contempt power. This is a good reason for having programs at least participate in the drafting of a standard court order for supervised visitation and incorporating by reference the program's rules. Programs may decide to offer visitation without a court order, but they should first have at least considered the advantages and disadvantages of doing so.

Specific Court Order Information

When a court orders a family to use a supervised visitation program, it often uses a standard court order developed by the program itself in conjunction with a circuit court judge and /or a local attorney. The Clearinghouse recommends that orders should include at a minimum:

1. The names and birth dates of the children who will be using the center.
2. The type of service that the parties will be using (e.g supervised visitation or monitored exchange.)
3. A provision that makes it clear that this is the only contact that the non-custodial parent may have

with the child.

4. The address of the program and a contact name and phone number. Some direction as to how the parties should contact the program to arrange visitation is usually necessary.
5. The schedule of visitation, including staggered arrival and departure times, frequency (weekly, twice a week, etc.), cost (including who will pay the fee -- in domestic violence cases it should be the batterer -- and where the fee should be paid), and the duration of the court order. Many programs do not have the resources to keep cases for the long term.
6. The name of the person visiting the child and whether anyone else can attend the visit with that person (for example, grandparents, step-siblings, step-parents, etc).
7. Any requirements for identification. (Some programs keep photographs of all parents to ensure that the children are returned to the right person, and in case of child abduction.
8. The program rules incorporated by reference, and a directive for the parties to comply with them.
9. A directive to law enforcement to prevent unauthorized removal of the child (or child abduction) from the visitation program.
10. A statement notifying the parties that failure to comply with the program policies may result in sanctions.
11. A statement authorizing the program to terminate a visit when necessary.
12. A directive for parties to notify the program in case of cancellation. Sometimes programs reserve the right to request a doctor's note verifying illness if too many visits are missed.

Other Sample Provisions for Court Orders

Below are listed several sample provisions which might be considered for addition to a supervised visitation program's standard court order, along with commentary (in italics) to describe why or how the provisions are used.

- **Provision authorizing law enforcement to enforce the order to prevent parental kidnapping.**: The court hereby authorizes law enforcement officers in this state to take all measures necessary to enforce this order and prevent the removal of the child from the supervised visitation program. *This provision makes it clear that removing a child from a visitation program is contrary to court order.*
- **Provision for Records Release**:The following records shall be made available to the Sunshine Visitation Program. *Provisions specifying what records should be made available to the supervised visitation program in order for a risk assessment to be conducted may be listed here.*
- **Provision for no additional contact by the batterer.**:Any contact with parent or child other than at The Sunshine Family Visitation Program center that occurs during the pendency of this Order shall be reported to the referral source (list the referral source here) or caseworker assigned to this cause and may terminate visitation privileges. *This provision ensures that cases sent to the program are not receiving additional, non-supervised contact.*
- **Provisions making visitation contingent on treatment, counseling, or other requirements.**: The nonresidential parent's visitation is contingent on his/her participation in the following. The court directs the service provider to send compliance reports directly to the court.
    - Batterer's Intervention Program

- Substance Abuse Counseling

This provision may specify the required services, service providers, and how reports are to reach the visitation program.

- **Provision for videotape of visits.**:The program is instructed to videotape all visits between the nonresidential parent and the child, and maintain such records pursuant to the laws of the state.
- **Provision for Judicial Review**:This case shall be reviewed in ____ months. *In order for the court and service providers such as batterer intervention programs to address the underlying reasons for the referral to supervised visitation, this provision for periodic judicial review can be used to determine that the batterer is addressing the violent behavior. While judicial review is automatic in dependency cases and determined by statute, most family law orders do not include provisions for judicial review. Courts are encouraged to add such a provision to all supervised visitation orders so that batterers are held accountable for their actions.*
- **Provision for Records**The program shall provide written reports regarding attendance at visitation to the court as follows (e.g. three months, a certain number of visits, or at some other period). *This provision directs the program to deliver reports to the court on a certain schedule.*

VI. How programs can avoid unintended outcomes in program record keeping

Every single visit that occurs at supervised visitation programs across the U.S. results in the production of documents. Programs routinely create written forms for many aspects of the visitation process: visit logs, authorizations for alternate custodians, health forms, informational intake sheets for parents to fill out in orientation sessions, observation notes written at each visit, and critical incident reports. If a parent uses a visitation program once a week for six months, the case file can be several inches thick.

Programs need these documents to administer the program and to track cases. On the other hand, others in the court system can also use these documents in ways in which the program may not anticipate. Thus, program administrators should scrutinize the purpose and potential uses for each document with the assistance of an attorney who understands family court rules and domestic violence dynamics. [37]In addition, every supervised visitation program should consult an attorney upon the receipt of any subpoena, subpoena duces tecum, or any request for records.

At a minimum, it is clear that some information collecting is required at supervised visitation to keep track of important data and protect the families using the program. For example, basic information on parents and children, such as the names, dates of birth, addresses, telephone numbers, referral dates, other agencies involved, legal representation information, status of custody determinations, parent and child health or special needs information, and reasons for referral are all important information to ensure that the program has fundamental information regarding the family it is serving. Additionally, as stated

in the sections above, background information such as police reports, criminal background check information, and court pleadings relating to violence, custody and visitation should be reviewed and made a part of the program's case file. Finally, actual dates and times of visits, when each parent arrived and left, and who came to each visit should be logged by a program to document for the referring source that visits actually took place. Beyond this area defined by relative clarity of purpose lies a vast field of information that is controversial because of issues such as victim safety, staff interpretation, the notion of 'objectivitity' in reporting what occurs at visits, and the purposes for which lawyers and judges use them.

Intake Records

When each parent is introduced to the program at an orientation program prior to the first visit, he/she is generally asked to fill out intake forms. In domestic violence cases, this information can be controversial because there is currently no privilege surrounding this information: that is, any information obtained from the victim by supervised visitation staff is "discoverable" by parties to the litigation. This means that batterers can subpoena these records to find out what the victim has told staff.

Victim advocates have expressed concern over several aspects of this practice. First, victims may not be aware that what they say to visit staff is not confidential; they may be confused between the advocates who assist them in shelter and court proceeding and those who ask the same sorts of questions in the intake setting. Currently more than half the states have statutory privilege for communications between a counselor/advocate and a victim of domestic violence or sexual assault, [38]but none provide protection to communication between supervised visitation staff and victims. Thus, victims may understand that their statements to advocates cannot be subpoenaed, but do not realize that the same kinds of statements made to visit staff are not. (Victim address and telephone information are protected in most states, but this may only offer an illusion of safety, given the capabilities of the Internet.)

Thus, visitation staff should always make clear to a victim that there is no privilege for statements made. Victims have a right to know how their statements can be used, and may then reveal far less about the batterer when they know he can find out exactly what was said to visitation staff. There is a grave tension here when victims want to keep their children safe, but do not want to endanger themselves further by revealing more "family secrets." To illustrate this dilemma, consider a female victim who has taken an enormous risk. She has left her violent partner, and obtained an injunction for protection against domestic violence and an order for supervised visitation. She may not know about the national statistics of separation violence, but she understands the reality of it in her life. When she arrives at intake and is told that the records will not be confidential, she may make a conscious decision not to reveal her partner's sexual abuse cases of her children, hoping that they are safe at visitation, and believing that the batterer will certainly become enraged and punish her when he finds out she has told someone. This is yet another bind for the battered woman, and the program has lost some of its ability to keep the children safe at visits when they are not told about the sexual abuse. Supervised visitation staff may be trained specifically in the dynamics of sexual abuse, [39]but if they are not told of the problem, it may very well remain invisible, and children can be subtly reminded of the abuse, or even revictimized

at visits without staff suspecting anything amiss. Staff will have to trust victim instincts regarding their own safety.

There are few options to deal with this dilemma. Those supervised visitation programs operated by certified domestic violence centers and staffed with certified domestic violence advocates who have statutory privilege may be able to obtain more information without worrying about the above complications. Supervised visitation programs that are only affiliated with or have partnerships with domestic violence centers should consult with attorneys to determine whether there is a way in their particular state to protect victim's records by having shelter staff conduct intake and keep those records. In the hypothetical case above, it might mean that a battered woman's advocate (in a state that confers a statutory privilege on communications between that advocate and a battered woman) discusses with the victim the risks to the children, and then provides a recommendation to the visitation program staff about heightened security. If a program offers different levels of security, the advocate could perhaps recommend the strictest security. Our idea is one that requires fleshing out with an attorney familiar with both domestic violence and public records laws, and it may not be feasible in many programs. It does show, though, the difficulty in obtaining crucial information about safety, and returns us full circle to the importance of training staff (in issues such as child sexual abuse dynamics). The fact is that the victim may not--for a variety of reasons--provide all of the information necessary at intake for staff to keep her children safe, placing a heavy burden on staff. All domestic violence cases have the potential to be dangerous. However, in some cases, there will be no way for staff to fully ascertain the risks at intake. This makes visit vigilance all the more crucial.

Observation Reports

Other records that cause concern are observation reports, the notes recorded by the visit monitor at every visit. Even the pioneers of supervised visitation services in the U.S. recognized the potential for these records to be used by parties to influence decisions about future parental access to the children. Observation reports can be misused to the detriment of battered women if program staff, parents (and their lawyers), and judges do not understand their purpose.

Environmental Issues

No matter how child-friendly a supervised visitation program is, no matter how many toys it contains, and no matter how unobtrusive staff attempt to be during the visit, the visit environment is an artificial one, and visitation is always sanitized to some extent. Parents can choose to be on their best behavior--batterers can choose to be cooperative-- for a few hours, and this behavior should not be assumed to be how they would behave under different circumstances. The Supervised Visitation Network recommends the following language at the bottom of observation notes: The observations are of parent-child contacts, which have occurred in a structured and protected setting.

> No prediction is intended about how contacts between the same parent(s) and Child(ren) might occur in a less protected setting and without supervision. [40]

Format Issues

Observation Notes themselves are usually forms that either contain a response section in which a visit monitor may describe what happened during a visit, or a series of check-off boxes with sections such as "The child laughed/smiled/cried when she saw the visiting parent," or a combination of both. [41]There are two overarching issues with the format of any observation reports: first, programs must decide why they are writing such reports, and then they must remember that although they try to be 'objective,' staff always bring to such documents their own cultural norms and opinions about what 'normal' parent-child interaction looks like.

Evaluations and Recommendations

Finally the use of Observation Notes is troubling. Pearson and Thoennes found that parents think programs should make recommendations about what should happen with respect to custody and visitation in their cases, and assess the validity of the allegations made against the parents. [42]The founders of SVN believed that programs would be under "intense pressure" from the courts to make recommendations. Programs should not, however, "evaluate" parents or families, or make recommendations as to unsupervised visits or long-term custody. It is understandable that parents would misinterpret the mission of a visitation program; however, courts should be clear that most supervised visitation providers are not clinicians and are not qualified to make recommendations based on their observations of families. Courts should not allow a batterer to use Observation Notes as evidence to strengthen his request for custody or unsupervised visitation. Courts' falling into this "trap of the good visit" [43]can endanger victims. Simply because a batterer chooses to comply with program rules, or because a child smiles when she sees her parent, does not mean that the parent is not dangerous or the alleged violence did not occur. Yet again, staff training in the dynamics of domestic violence and co-occurring child maltreatment become overwhelmingly important. Observation Notes should be developed by administration with the following questions in mind:

1. What basic information must be collected in each case to protect the victim and children?
2. What other information does the referring source require? (For example, the court may require the verification of dates and times of visits.)
3. What purpose does each additional piece of information collected serve, and in whose interest are we collecting it? How can we help ensure that it is not misused.
4. Does our program need to work further with the court system to help it understand the mission of our program and the inherent "trap of the good visit?"

Conclusion

These issues are not easy to resolve, but they establish a framework within which programs and their

supporters can strive to improve crucial services. Not one of the goals expressed in this paper is impossible to attain, but each requires thoughtful analysis (as the treatment of some of these issues was superficial, requiring a program-by-program analysis) and the involvement of the entire community. Success, in this case, is enhanced safety for victims and their children, the paramount goal of supervised visitation in domestic violence cases.

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[1] See, e.g. Amy B. Levin, Child Witnesses of Domestic Violence: How Should Judges Apply the Best Interests of the Child Standard in Custody and Visitation Cases Involving Domestic Violence,47 U.C.L. A. L. Rev. 813 (2000) stating that courts should use supervised visitation programs to keep children and victims safe.

[2] New York Society for the Prevention of Cruelty to Children Professionals' Handbook on Providing Supervised Visitation,Anne Reiniger, Ed. (2000) at 12, (hereinafter NYSPCC).

[3] Nancy Thoennes and Jessica Pearson, *Supervised Visitation: A Profile of Providers*,37 FAM. &CONCILIATION CTS.REV 123, 138 (1999).

[4] id.

[5] Standards and Guidelines for Supervised Visitation Practice, Sec. 11.1 (b) and 11.2 a (1), The Supervised Visitation Network, found in the NYSPCC handbook, supra, note 2.

[6] See, e.g. National CASA Volunteer Training Manual, available at http://www.casanet.org/training/volunteer-manual/index.htm(last viewed August 20, 2004) see Chapter Two for Domestic Violence Training.

[7] 42 U.S.C.A. § 10420 (a) (West Supp. 2002) The Safe Havens for Children Pilot Programs provides for the awarding of grants to states, units of local government, and Indian Tribal governments that propose to enter into or expand the scope of existing contacts and cooperative agreements with public and private non-profit entities to provide supervised visitation and safe exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault, or stalking.

[8] See, e.g. LUNDY BANCROFT and JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (Sage Publications, 2002).

[9] This issue also raises concerns about judicial training in domestic violence and supervised visitation, but that topic is left for other articles to explore. See, e.g. Meier, supra note 11 at 707.

[10] Under the Safe Havens Program, supra note 10.

[11] The international Supervised Visitation Network publishes its Standards and Guidelines online at www.svnetwork.net. Section 20.2, Partner Abuse, 11.2 ,Training Requirements.

[12] Three states that have attempted to create minimum standards are California (Cal. Rules of Ct. Standards of Judicial Administration),Kansas (Child Exchange and Visitation Center Guidelines), and Florida (Minimum Standards for Supervised Visitation program Agreements). All require training for staff in domestic violence.

[13] Children of Domestic Violence: Risks and Remedies, Barbara Hart http://www.mincava.umn.edu/documents/hart/risks.shtml

[14] Florida Governor's task Force on Domestic and Sexual Violence, Florida Mortality Review Project Report, 1997.

[15] Children of Domestic Violence: Risks and Remedies, Barbara Hart http://www.mincava.umn.edu/documents/hart/risks.shtml

[16] 16Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family, American psychological Association, 39 (1996).

[17] Maureen Sheeran and Scott Hampton, Supervised Visitation in Cases of Domestic Violence, Juvenile and Family Court Journal, Spring 1999. See also Barbara Hart, Assessing Whether Batterers will Kill 1990, available at http://www.mincava.umn.edu/hart/lethali.htm

[18] Lavita Nadkarni &Barbara Zeek Shaw, Making a Difference: Tools to Help Judges Support the Healing of Children Exposed to Domestic Violence. 39 COURT REVIEW 24, Summer 2004.

[19] For a good discussion of this type of questioning by medical professionals, see, e.g. Screening for Intimate Partner Abuse Violence when Children are Present: The Victim's Perspective, Journal of Interpersonal Violence, Vol. 18, No. 8, August 2003

[20] The concept of failure to protect is the subject of many articles. For an overview of the issues, see

Randy Magen, In the Best Interests of Battered Women: Reconceptualizing Allegations of Failure to Protect, CHILD MALTREATMENT, Vol. 4 No.2 , May 1999.

[21] Stalking is not the only dangerous behavior of which a batterer is capable. See, e.g. Sharon Maxwell and Karen Oehme, Strategies to Improve Supervised Visitation Services in Domestic Violence cases, http://www.mincava.umn.edu/documents/commissioned/strategies/strategies.html

[22] LUNDY BANCROFT &JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Sage Publications, 2002.

[23] See, eg., NYSPCC Handbook, supra note 2, at 76.

[24] Judith S. Kaye and Jonathan Lippman, New York State Unified Court System: Family Justice Program: 36 Family and Conciliation Courts Rev. 144 (1998).

[25] See Stuart Taylor, Jr. and Evan Thomas, Civil Wars, Newsweek, Dec. 15, 2003.

[26] Violence and the Family, Report of the American Psychological Association, 40(1996).

[27] Id.

[28] Survey of Providers, conducted by the Clearinghouse on Supervised Visitation at the May, 2002 Supervised Visitation Network Conference, on file with the authors.

[29] Id, note 24 at 73.

[30] See, e.g.,FLA.STAT.ANN. § 39.822(1)(West,2003);705 ILL.COMP.STAT.ANN.405/2-17.1 (West,2003);IND.CODE ANN. § 31-15-6-9 (West,1998)KAN.STAT.ANN. § 38-1505a(b) (2002);LA.CIV.CODE ANN.art.424.10(West,2002);ME.REV.STAT.ANN. tit.4, § 1506 (West,2003);MONT.CODE.ANN. § 41-3-1010(2002);NEB.REV.STAT. § 43-3716(2002).

[31] Jeffrey M. Shaman, Judicial Immunity from Civil and Criminal Liability, 27 San Diego L. Rev. 1,5 (1990).

[32] See, e.g. ARIZ.REV.STAT.ANN. § 12-2238 (West 2003);ALASKA STAT. § 47.12.450 (Michie, 2002);S.C.ALT.DISPUTE RESOL.8(i)(2001);COLO.REV.STAT. § 13-22-305(6).

[33] Legislatures have long recognized the importance of immunity for child protection workers. A few of the laws granting immunity include MD. LAWS, ch.308 § 5-708; MICH.COMP.LAWS.ANN. § 722.625(5) (West 2002); N.Y.SOC.SERV.LAWS § 419(McKinney 2003)

[34] See www.flaafcc.org/Documents/PCStatute-011504.pdf

[35] According to Bancroft and Silverman, entitlement is the overarching attitudinal characteristic of batterers. Bancroft &Silverman, supra note 24, at 7.

[36] If local law enforcement offices request stronger language to authorize enforcement of an order for supervised visitation, programs should consider crafting a provision specifically listing the local law enforcement agencies by name. Lawyers assisting supervised visitation programs should be fully familiar with the Uniform Child Custody Jurisdiction Enforcement Act.

[37] For a discussion of some of these issues, see generally, Nat Stern and Karen Oehme, The Troubling Admission of Supervised Visitation Records in Custody Proceedings, 75 Temple L. Rev. 271 (2002).

[38] see, e.g. ALA. CODE § 15-23-40 to 46 (2002);KEN. RULE OF EVIDENCE 506(2002);NC. GEN.STAT 8-53.12 (2001); TENN. CODE ANN. § (2001); WISC. STAT.ANN. § 895.67 (2001).

[39] See, e.g. Child Sexual Abuse Issues in Supervised Visitation: A Curriculum for Providers, available at http://familyvio.ssw.fsu.edu, updated Nov. 2003

[40] SVN Guidelines, in NYSPCC handbook, supra note 2, appendix D.

[41] See Id. Appendix D.

[42] Jessica Pearson and Nancy Thoennes, Supervised Visitation: The Families and Their Experiences, 38 FAM. &CONCILIATION CTS. REV.123, 134 (2000).

[43] See, Stern and Oehme supra note 41, at 299.

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policies of the U.S. Department of Justice.

This web site is a cooperative project of ***Office on Violence Against Women*** and ***Minnesota Center Against Violence & Abuse*** at the University of Minnesota and is supported by grant number 2004-WT-AX-K075 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice.

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