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Author(s): Chris O'Sullivan Ph.D.

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**Domestic Violence, Visitation and Custody Decisions
in New York Family Courts**

**Chris O'Sullivan
Safe Horizon
New York City**

**Final Report
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Domestic Violence and Visitation and Custody Decisions in New York Family Courts

Problem and Purpose

Recent research has brought to light the negative impact on children of exposure to domestic violence, which typically occurs in the form of physical and psychological abuse of their mothers by male partners. Documented effects on children include psychological, behavioral, and cognitive problems and increased likelihood of perpetrating or tolerating intimate violence in adulthood (Jaffe, Wolfe & Wilson, 1990; Pagelow, 1990; Osofsky, 1999; Kolbo, Blakely & Engleman, 1998; Edleson, 1997). This risk is not minimal: according to the Spousal Assault Replication program, intimate partner violence disproportionately occurs in homes with children, with double the rates of domestic violence in households with young children. Fantuzzo and Mohr (1999) found that children under five are most likely to be exposed to multiple incidents of violence.

Unfortunately, mothers may underestimate children's awareness of violence in the home and fail to take into account the devastating effects of the abuse (Jaffe & Gefner, 1998). Society, however, generally holds mothers responsible for the welfare of their children, for providing for their nutrition, education and safety. Reflecting the fact that mothers are more often the primary caregivers than fathers and recognizing the damage that domestic violence inflicts on children, child protective services tend to hold mothers accountable for the harm to children of witnessing intimate partner violence, despite the fact that women are more often the victims of physical abuse than men. This confluence of social realities has the somewhat contradictory effect of holding victims responsible

for the collateral impact of their victimization: Battered women can be, and are, charged with neglect for failure to protect their children from witnessing violence (Edleson, 1997). Therefore, victims of domestic abuse can face loss of custody of their children if they do not separate from the abusive partner.

Ironically, though, when a woman does separate from an abuser who is the father of her children, the court may grant his petition for visitation. Thus, even a woman who has separated from an abusive partner under pressure from the court to protect her children may soon find herself under a court order to make the children available to her abuser. Given the high rates of co-occurrence of domestic violence and child abuse (Osofsky, 1999; Ayoub, Deutch, Maragnore, 1999), giving an abuser custody or visitation with his children could expose the children to direct physical harm, without the protection of the non-abusive parent. Furthermore, since visitation usually entails contact between the parents, if the abuse does not end with separation, children may continue to be exposed to violence. Separation can pose heightened risks for victims of domestic violence and their children. In some cases, separation or the attempt to end a violent relationship prompts escalation in the severity of abuse, including murder (Johnston & Campbell, 1993; Tjaden & Thoennes, 2000; Sev'er, 1997).

Given the risks of post-separation violence and society's (and the courts') interest in preventing children's exposure to violence, there is a need to understand what happens when a victim separates from an abuser who is the father of her children. The purpose of this study was to investigate the frequency of visitation and custody appeals by batterers and to document the response of the court when an abusive partner applies for visitation.

Background

Children's Exposure to Domestic Violence

Population studies have produced widely varying estimates of the number of children who have witnessed violence between their parents (or between a parent and intimate partner), from Carlson's (1984) estimate of 3.3 million exposed annually, to Straus and Gelles's (1990) estimate of 10 million teen-agers annually. Straus and Gelles (1990) estimate that a third of American children have witnessed domestic violence, most repeatedly. O'Brien, John, Margolin and Erel (1994) found that one in four children in a community sample witnessed violence between their parents. (See Edleson, 1997, for a review.)

How to respond to children's exposure to domestic violence has been a contentious issue. Schechter and Edleson (1994) note that advocates for domestic violence victims and advocates for children share common ground, but there has been more tension than collaboration between the two groups. That tension may be a natural consequence of the primary area of concern of the advocates. While it may be in the best interest of the child to be removed from a situation in which the child's mother is being beaten, it seems to punish the mother for her own victimization. Child welfare workers are most aware of the battered mother's failure to keep her child from harm and focus on the child in seeking remedies, which can entail removing the child from the home. Battered women's advocates, focused more on the mother, argue that the child is best served by providing for the mother's safety.

Further complicating the problem is the court's preference for maintaining both parents' involvement in their children's lives. Since mothers are most often the primary caregivers, this preference amounts to encouraging paternal roles in families. As noted

by Canada's National Association of Women and the Law (1998), "some judges consider estrangement from the father to be more traumatic than witnessing abuse." Which has the greater impact on children's development and adjustment is an empirical question that has yet to be answered, although the deleterious effect of witnessing violence is established.

The conflicting perspectives that have hindered development of coherent policy recommendations regarding children caught in family violence are evident in the legislature's directions to the court. Recommendations from judicial policy organizations have been clearly in favor of limiting batterers' access to their children, but other interests – especially paternal parental rights – have qualified the enactment of these recommendations.

Policy recommendations have been made by the National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Bar Association's Committee on Children and the Law. In 1990, the NCJFCJ called for recognition of spouse abuse as child abuse when children are present in the home. The organization proposed legislation making domestic violence a significant factor in custody and visitation decisions, and suggested that state legislatures consider requiring judges to provide a written explanation whenever granting unsupervised visitation or custody to a batterer (National Council of Juvenile and Family Court Judges, 1990). Along the same lines, the American Bar Association (Davidson, 1994) recommended that a history of domestic violence be made a presumption against awarding custody to the abuser and that visitation be supervised. Finn and Colson (1990) recommended that judges issuing civil protection orders consider denial of or limitations on visitation by batterers.

Legislation has followed these policy recommendations. Thirty states had adopted laws limiting abusers' custodial rights by 1991, including provisions against joint custody when there has been a history of domestic violence. By 1995, 44 states had enacted laws requiring courts to consider domestic violence in custody and visitation decisions. New York State, where the study presented here was conducted, was not in the forefront of these initiatives, despite efforts by some legislators. A bill introduced to the New York State legislature in 1995 presented psychological and criminological arguments against awarding custody and visitation to an abuser (Weinstein, et al., 1995). The original bill would have directed courts to consider the impact of violence on the primary caregiver. That is, it was not only direct harm to the child from witnessing violence that was viewed as grounds for limiting contact with the abuser, but also indirect harm if the residential parent's ability to care for the child could be impaired by violence or threat of violence. The language ultimately adopted was more limited, however, merely directing the court to consider domestic violence a factor in determining the child's best interest in custody and visitation decisions. (In other states, e.g., Massachusetts, domestic violence is a *presumption* against awarding custody and unsupervised visitation.)

As Hart (1995) notes, however, practice may lag behind statutory reform. Further hindering implementation is lack of clarity in regard to evidentiary requirements and how the child's best interest is to be weighed against the domestic violence factor, leaving it up to varying interpretations by judges (Hart, 1995). Subsequent amendments to New York's Family Relations Law (New York Assembly Bill 3950, 1997) attempted to clarify these points. The evidentiary specifications are that, when one parent swears in some form that the other parent has committed an act of domestic violence, a preponderance of the evidence must support the allegation. Once domestic violence has been

established, the court must consider "the effect of such domestic violence upon the best interests of the child."

The clarification issued in 1997 further specifies that there is a presumption that shared parenting is in the best interest of the child. In awarding custody, the court shall consider which parent is more likely to allow frequent and continuing contact with the other parent. The latter provision, known as the "friendly parent" provision, can work in disfavor of a victim who wants to limit her own and her child's contact with an abuser.

Children and Post-Separation Violence

Little research has focused on children's exposure to or involvement in domestic violence after their parents' separation. Shepard (1992) reported that 60% of a sample of battered women separated from their abusers experienced ongoing threats and intimidation, often involving the couple's children. Similarly, Leighton (1989) found that one quarter of her sample of battered women in Toronto experienced murder threats during visitation.

A preliminary study for the larger investigation described here found a high level of post-separation violence and child exposure in a sample of Victim Services clients (Gonzalez & O'Sullivan, 2001). For two one-week periods in May and July, 1996, counselors in the New York County (Manhattan) Family Court Counseling Program for domestic violence victims administered a brief questionnaire to all clients who came into the unit. Fifty-seven domestic violence victims, with a total of 119 children, were interviewed. The sample was almost evenly divided between victims who had separated from their abusers and those who were still living with them. There were significant differences between the two groups on only two measures of reported violence: women who were

still intimately involved with their abusers were more likely to be sexually abused and to be threatened with weapons.

Children were likely to be present during abuse whether their parents' relationship continued or not: according to their mothers, children were present in 100% of cases in which their parents were living together and in 87% of the cases in which the relationship had ended. (The difference was not statistically significant.) Children were physically involved in the violence between their parents in 44% of the incidents reported, including half the cases in which the parents had separated. Physical involvement included the child getting between the parents, the parents having a tug of war over a child, one parent holding an infant during the incident, and the child getting shoved or hit. Whether the parents' relationship was ongoing or terminated, over half the abusers threatened to take the children and more than 40% of the abusers threatened to kill the mother. In 79% of the cases, children heard the threats.

Thus it appears that domestic violence often does not end with the termination or attempted termination of the relationship. Women who have children in common with abusive partners may be particularly vulnerable to continuing violence because they have an inescapable bond with their abusers. Preliminary evidence indicates that children are likely to witness the abuse and hear threats whether their parents are separated or living together. Separation of the parents does not always offer the protection to children that child welfare agencies seem to expect. It would seem that court ordered visitation after separation could increase the risk of children's exposure to violence, and therefore it is important to examine the courts' response to domestic violence in visitation and custody decisions.

Purpose of the study

The study reported here was designed to examine the extent to which visitation or custody was sought and granted in cases involving domestic violence, through a review of Family Court records in New York City and suburban Westchester County. Domestic violence was identified in court files by the filing of a family offense petition by one parent against the other and the granting of a protection order to one or both parents. In a qualitative component, attorneys representing domestic violence victims in family court were interviewed regarding judicial practices and their experience in court in invoking the new law introducing domestic violence as a factor in visitation cases.

To state the research questions as hypotheses pertaining to specific variables, we would expect that increased awareness of the impact of domestic violence on children would limit court-ordered access to children by a parent who has abused the other parent. We would further expect that the court is aware that domestic violence is typically a behavior pattern such that a protection order granted at one point in time signals a history of abuse and the probability of continuing abuse. We hypothesize specifically that:

- H1: Among parents who petition the court for visitation, it will be granted significantly less often to a parent enjoined by a protection order from contacting or abusing the other parent than to a parent not-so enjoined.
- H2: Among parents seeking custody from the court, those enjoined by a protection order will be granted custody less often – if ever – than a parent not so enjoined.
- H3: Conversely, parents seeking custody who have a protection order against the other parent will be granted custody most consistently.
- H4: Finally, although gender differences are expected in the frequency of petitions for custody and visitation, when there is evidence of domestic violence, there should

be no difference between mothers and fathers in their success in getting custody and visitation orders under the conditions described in Hypotheses 1-3.

Method

Background on New York Family Court

The Family Court in New York State is a free-standing domestic relations court that handles civil cases, except for criminal offenses by juveniles. Unlike most states, in New York, the Family Court cannot grant divorces (which must be brought before the Supreme Court Civil Term). Other than the juvenile offender cases, the docket consists of child abuse and neglect cases; paternity, support, custody and visitation cases; and family offense cases. In family offense cases, the court may grant a temporary or full/permanent order of protection (OP). The maximum penalty the court can impose is a six-month jail term for contempt of court, usually imposed for violating a court order such as a protection order.

Despite frequent moves to reform the court, access to the Family Court is limited by relationship between the parties. Only those related to the respondent by blood/adoption, marriage (or divorce) or who have children in common can petition the Family Court. Couples who have never been married nor had children together cannot obtain civil protection orders in this court. (Thus same-sex couples usually cannot access family court.) Sometimes couples in the midst of divorce proceedings in Supreme Court will seek an OP in Family Court because the response tends to be quicker. Subsequent to the Supreme Court disposition of a divorce, couples may seek modification of custody or visitation or an OP in Family Court. In general, though, because Supreme Court divorce proceedings tend to be drawn out and expensive, while Family Court will hear a petition within two days of filing and litigants typically represent

themselves, Family Court tends to be the venue most used by low income litigants. It is also the most commonly used venue for couples who never married and who do not have extensive property disputes but need to resolve custody, visitation, paternity and support issues.

Sampling Method

Access to Family Court records was granted by the Supervising Judge for the New York City Family Courts, Hon. Michael Gage, and the Supervising Family Court Judge for the 9th Judicial District, Hon. Adrienne H. Scancarelli. The New York City system encompasses five family courts, one in each borough, or county. The Ninth District includes Westchester County, the suburban county chosen for this study. Because of differences in the way records are kept in the two districts, it proved to be impossible to collapse the Westchester and New York City samples, and the emphasis in the quantitative analysis falls on the five counties in New York City. Those records are kept separately by county but collected in a single database in the office of the Clerk of the New York City Family Court.

A random sample with replacement was taken of 1995 visitation/custody cases in the Family Court in each of the six counties. The 1995 calendar year was chosen for several reasons. First, the three years that had elapsed when the data for this study were collected in 1998 were deemed sufficient for the cases to have been fully processed and dispositions to have been reached. Second, we wanted to choose a year in which it was likely that both visitation and protection order petitions would be filed in Family Court to avoid the difficulty of cross-checking visitation cases in the Family Court with protection order cases in the Criminal Court. At the end of 1994, the legislature repealed the so-called "right of election" which required that victims of domestic violence

pursue their cases in either Family Court or Criminal Court but prohibited them from using both venues. Family Court practitioners advised us that, although petitioners were allowed to use either or both courts in 1995, the customary practice did not change for several years. The importance for this study was that the visitation/custody petitioners who were seeking OP's would be getting both from the family court. If they had been seeking visitation in family court and receiving protection orders from criminal court, we would have been unable to cross-check the orders.

To draw a 10% sample of custody/visitation dockets in each county, a print-out was obtained of all the custody/visitation dockets in the five counties of New York City. (Custody and visitation are coded the same way, as V-Dockets, in the City. It is only by going into the record that it can be determined whether the case involved a custody or visitation petition or both.) The five print-outs contained 24,502 dockets. Each child in a family has a separate docket, even though there is typically one action being taken in regard to all the children. In our scheme, however, each family was a unit since there was one set of parents between whom there might be allegations of domestic violence. When we grouped the dockets into family units, the total pool of cases to be sampled was reduced to 16,920. We took a 10% sample of these cases for a total sample size of 1,692 cases.

From a random start, we counted off and selected every tenth family unit. The print-out showed the docket number and date and the names of the petitioner, respondent and child. Entering the docket number into the Family Court database brought up a record. The record of each selected docket was initially checked for relationship of petitioner and respondent to children. If the petitioner and respondent were not the parents of the

children, the case was replaced. Thirteen percent of the cases involved petitioners with other relationships to the children (e.g., grandparents).

Table 1 below shows the sample size for each county. (Each of the boroughs is a county with its own Family Court administration. The borough names and the county names sometime differ.) The population density and demographic characteristics vary widely by borough in New York City. Staten Island and Manhattan are geographically the smallest boroughs, but Staten Island has low density, with most of the population living in houses in small towns, while Manhattan has high density, with most of the population living in apartment buildings. Queens, Brooklyn and the Bronx are geographically large but Brooklyn and the Bronx have larger populations, as parts of Queens (e.g., Forest Hills) have a more suburban character.

Table 1. Visitation/Custody Case Samples Drawn by County

County (Borough)	Size of Sample
Bronx (The Bronx)	463
Kings (Brooklyn)	488
New York (Manhattan)	259
Queens (Queens)	354
Richmond (Staten Island)	128
<i>New York City Total Sample</i>	<i>1,692</i>

For each visitation case selected for the sample, the docket number was entered into the Family Court database and the following information was obtained:

- 1) Petition type (visitation, custody, both)
- 2) Disposition on original petition (ordered, dismissed, denied, withdrawn)
- 3) Number of children; sex and age
- 4) Relationship of petitioner to child (mother, father)

Second, the protection order database was searched for cases involving the same parties. This database showed all family offense petitions filed between 1990 and 1997. Separate variables were created to record information about family offense petitions filed in 1995 – the same year as the visitation/custody case – vs. those filed other years. If there was a record of any actions regarding a protection order, the following information was recorded:

- 1) Relationship of petitioner and respondent (married, divorced, child-in-common)
- 2) Whether a petition for a protection order was filed in 1995
- 3) Disposition of 1995 family offense petition (OP granted, petition dismissed, denied, withdrawn) and, if an OP was granted, which parent was enjoined
- 4) Total number of family offense petitions filed
- 5) Whether family offense petitions were filed at any time between 1990 and 1997, whether a protection order was ever granted and, if so, who was enjoined (mother, father, both)
- 7) For up to four protection orders: a) date of filing; b) petitioner; c) disposition (ordered, dismissed, denied, withdrawn)

Results of NYC Family Court Database Analysis

Frequencies were run on all variables and cross-tabulations were conducted with Pearson's Chi Square as the test of significance.

Visitation and Custody

The 1692 couples had a total of 2,421 children. The majority had just one child (69%), 23% had two children, and 8% had between three and seven children. Of the 1,692 dockets, 47% (791) involved custody petitions; 39% (655) involved visitation petitions;

and 14% (246) involved both custody and visitation. Fifteen percent of the cases were supplemental petitions, seeking modification of earlier court orders.

Overall, fathers were the petitioners in nearly three-quarters (74%) of the cases. Mothers, however, were disproportionately likely to file for custody rather than visitation (chi-square (2, 1692)=185.80, $p<.0000$). Mothers were the petitioners in 38% of the custody cases but only 8% of the visitation cases.

Of the visitation petitions, the court granted a slight majority (53%) and dismissed 40%. Although the records do not reveal the reason for dismissal, the most common reason, according to attorneys who practice in Family Court, is failure of the parties to appear for return dates; in essence, the petitioner does not pursue the action. The petitioner withdrew the petition in 7% of the visitation cases. The court denied only one visitation petition.

A custody order was less commonly granted: only 32% of the custody petitions were granted. Most were dismissed (55%) or withdrawn (12%) – that is, no action was taken. Again, the court denied only one custody petition.

There was no difference in rates of the different dispositions between mothers and fathers (chi-square (3, 1684) =4.52, $p=.21$): about half the fathers' and mothers' petitions were granted, and about 40% were dismissed. Cases in which both custody and visitation petitions were filed almost always resulted in orders: 243 of the 246 petitions were granted; three were dismissed. (See Table 2.)

Table 2. Filings and Dispositions of Visitation and Custody Petitions in New York City in 1995

<i>Disposition</i>	Petition Type					
	Visitation		Custody		Both	
	Petitioner		Petitioner			
	<i>Mother (n=50)</i>	<i>Father (n=604)</i>	<i>Mother (n=303)</i>	<i>Father (n=481)</i>	<i>(n=246)</i>	
Ordered	50%	53%	34%	31%	99%	
Dismissed	40%	40%	52%	57%	1%	
Withdrawn	10%	7%	14%	11%		
Denied		.2	.1%			
% of Total Pets Filed	8%	92%	38%	62%	15%	

In summary, as can be seen in Table 2, fathers were more likely than mothers to petition the court for custody or visitation, but mothers and fathers were equally successful in securing the orders they sought. Mothers infrequently sought visitation, presumably because they most often had primary custody.

Protection Orders

One parent filed at least one family offense petition against the other in 45% of the visitation and custody cases. These 756 petitioners and respondents in visitation and custody cases filed a total of 1,396 family offense petitions. (See Table 3.) Of the litigants in the family offense cases, 53% were married, 7% were divorced, and 40% had never been married but had a child in common.

Table 3. Number of Family Offense Petitions Filed by Parties in 1995**Visitation/Custody Cases in New York City**

Number of family offense petitions filed	Frequency	Percent Of '95 Visitation Cases
None	936	55%
One	419	25%
Two	196	12%
Three	75	4%
Four to Nine	66	4%
<i>Total petitions filed by 756 litigants</i>	<i>1,396</i>	<i>45%</i>

Slightly more than half of the family offense petitions were filed in the same year the visitation case was brought to Family Court. Altogether, 28% of the litigants in custody or visitation matters in 1995 filed a family offense petition in 1995. Another 17% filed a family offense petition only in another year between 1990 and 1997, either before or after 1995. Table 4 shows the family offense petitions filed in 1995, and those filed between 1990 and 1997.

Of the 480 family offense petitions filed in 1995, the majority (64%) did not result in court orders. As shown in Table 4, 10% of the sample of visitation/custody petitioners was granted a protection order in 1995, and 19% of the sample was granted a protection order between 1990 and 1997. Overall (including mutual protection orders), 18% of the

mothers and 3% of the fathers had a protection order against the other parent of their child(ren) at some point between 1990 and 1997

Table 4. Family Offense Petitions Filed and Protection Orders Granted to Litigants in 1995 Visitation and Custody Cases

Percent of Sample of 1,692 Visitation Cases

<i>Disposition on Protection Order</i>	<u>Family Offense Petition Filed in 1995 only</u>	<u>Total Family Offense Petitions Filed 1990-1997</u>
Filed but not ordered	18%	25%
Granted against father	9%	16%
Granted against mother	.7%	1.5%
Granted against both parents	.6%	1.7%
<i>Total % Sample with OP Against other parent</i>	10%	19%

To test for gender differences, family offense petitions filed and protection orders granted were compared for mothers vs. fathers. Table 5 shows the results of those comparisons.

Table 5. Family Offense Petitions: Comparison of Mothers' and Fathers' Filing Rates and Dispositions 1990-1997*

<i>Petitioners & Disposition</i>	Mothers	Fathers
<i>% of 753 petitions</i>	84%	16%
<i>% of petitions filed that were granted</i>	35%	18%
<i>% petitions withdrawn</i>	23%	36%
<i>% dismissed</i>	42%	45%
<i>% denied</i>	.2%	.9%

*Chi Square (3, 750)=17.05, $p < .001$

Only the first filing of those who filed multiple petitions were compared. Most of the petitions by mothers and fathers were dismissed. However, mothers were more likely than fathers to file family offense petitions and were more likely to secure protection orders. The court denied only two petitions, one filed by a mother and one by a father.

Overlap of Custody/Visitation and Family Offense Actions

The most important analysis is whether visitation or custody was granted when there was domestic violence. If courts are limiting visitation and denying custody to abusive ex-partners, we would expect parents enjoined by a protection order to be granted visitation and custody much less often than petitioners in cases in which there was no evidence of abuse. We already know from the frequencies of dispositions of visitation/custody petitions shown in Table 2 that petitions were almost never denied.

Therefore, we will be looking at custody/visitation petitions granted vs. those not granted (whether withdrawn, dismissed or denied) as a function of the existence of a protection order. Two comparisons were made: disposition of visitation and custody petitions in cases in which a family offense petition was *filed* vs. those in which no family offense petition was filed; and visitation and custody dispositions for cases in which a protection order was *granted* vs. cases in which no protection order was granted.

Visitation/Custody Dispositions and Family Offense Petitions

First, the analysis was conducted looking at Family Offense petitions in 1995 only – that is, the visitation/custody case and the family offense case were brought in the same year. The simplest comparison was between visitation/custody dispositions in cases in which a *family offense petition was filed* in 1995 (that is, one parent alleged violence or harassment) vs. visitation/custody dispositions in cases in which no family offense petition was filed that year. As is clear from Table 6, visitation and custody were granted at equal rates when there was a family offense case and when there was no family offense case.

However, there was a significant difference overall: chi square (3, 1250)=13.49, $p < .01$. The difference lies primarily in the proportion of cases dismissed vs. withdrawn. It was more likely that the 1995 visitation/custody petition would be *withdrawn* when a family offense petition was filed and more likely that the visitation/custody petition would be *dismissed* when there was no family offense petition filed in 1995. The outcome was the same if the petition was dismissed or *withdrawn* – the case did not proceed. It appears, however, that the petitioner for visitation or custody was more likely to take the action of withdrawing the petition if there was a family offense case, while the visitation or custody petitioner was more likely simply to let the case lapse (dismissal) if there was no family

offense petition. Nonetheless, the important point for the purposes of this study -- the finding that is relevant to the hypotheses --, is that the proportion of cases in which visitation or custody was ordered by the court was identical for cases in which neither parent had filed a family offense petition as for cases in which a parent had filed.

Table 6. Disposition of Visitation or Custody Petition for cases in which a family offense petition (OP Petition) was filed in 1995 vs. cases in which no family offense petition was filed that year.

<i>Visitation/Custody Disposition</i>	No Family Offense Petition in '95	Filed for OP in '95	% of Total Sample (n=1684)
Ordered	50%	50%	50%
Dismissed	43%	38%	41%
Withdrawn	7%	12%	8%
Denied	.1%	.2%	.1%
Total	71%	29%	100%

Visitation/Custody Petitions and Protection Orders

Next, this analysis of disposition of the visitation or custody petition was conducted as a function of the *disposition of the family offense* case; that is, whether a protection order was granted in 1995. (See Table 7.) This comparison was significant at the .001 level, primarily, it appears, because the visitation/custody petition was *more* likely to be granted when there was a protection order against one of the parents. The visitation or custody petition was least likely to be granted when a family offense petition was filed that did not result in a protection order.

Table 7. Visitation/Custody Disposition by Disposition of 1995 Family Offense**Case**Disposition of Family Offense Petition filed in 1995

Visitation/ Custody disposition	No Fam Off petition in '95 (n=1202)	Pet. Filed OP not granted (n=309)	OP granted against father in '95 (n=149)	OP granted against mother (n=12)	OP granted against both parents (n=10)
Ordered	50%	44%	62%	67%	40%
Dismissed	43%	41%	32%	17%	60%
Withdrawn	7%	15%	7%	17%	0
% of sample	71%	18%	9%	.7%	.6%

Chi Square (15, 1684) = 36.84, $p < .001$

This result cannot be interpreted without breaking the analysis down further and looking at the identity of the petitioner and whether it was visitation or custody that the petitioner was seeking. For example, are women getting custody awards when they have a protection order against the father? Or are men and women who are enjoined by protection orders getting visitation?

To answer these questions, separate tests were conducted on family offenses for the following actions in the custody/visitation case:

- 1) the father petitioned for custody
- 2) the mother petitioned for custody
- 3) the father petitioned for visitation
- 4) the mother petitioned for visitation.

These four tests were first run on all the visitation/custody cases, then repeated excluding the 936 cases in which neither parent sought a protection order in 1995. That is, the second series of tests looked at visitation/custody dispositions for only those

cases in which a family offense petition was filed, in order to determine whether any visitation or custody outcomes depended on the disposition of the family offense petition.

Custody decisions and 1995 Family Offense actions

Only one test reached statistical significance. When fathers petitioned for custody, the outcome was significantly different depending on whether a family offense petition was filed in the same year and on the outcome of that petition: chi square (8, 481) = 28.32, $p < .001$. When the cases in which no family offense petition was filed were excluded, the test was still significant, chi square (6, 103) = 12.72, $p < .05$. As might be expected, fathers were most likely to be granted custody when they had a contemporaneous protection order enjoining the mother from contact, and least likely to receive custody when the mother held a protection order against them.

Table 8. Fathers Seeking Custody: Outcomes as a function of Family Offense**Actions in 1995**

Family Offense Petitions	Custody Ordered	Custody petition Dismissed	Custody Petition Withdrawn
None filed in '95	35%	56%	9%
Filed – not granted	20%	54%	26%
OP Against Father	15%	78%	7%
OP Against Mother	67%	33%	0
OP's against both	0	100%	0
Col. Total	31% (151)	57% (275)	11% (55)

Clearly, fathers petitioning the court are most likely to be granted custody if they have a protection order against the children's mother. Fathers were never granted custody if there were mutual protection orders between the parents, and only a small percent were granted custody if the mother had a protection order against them – over ¾ of these cases were dismissed. But more than half of the fathers' petitions for custody were dismissed when no family offense petition had been filed against either parent.

Unlike fathers, mothers were *not* significantly more likely to receive custody if they had a protection order against the father. (See Table 9.) While mothers' outcomes in custody petitions appear to follow the same pattern as father's outcomes shown in Table 8, the statistical test did not reach significance: chi square (9, 303) = 14.40, $p=.1$. One might

think the reason that the test is not significant is that mothers are awarded custody with or without a protection order. However, mothers' petitions resulted in a custody award at the same rate as fathers' petitions, so this explanation does not hold.

Table 9. Mothers petitioning for Custody: Outcomes as a Function of Family Offense Actions in 1995

<i>Family Offense Pets</i>	<i>Custody Ordered</i>	<i>Custody Pet. Dismissed</i>	<i>Custody Denied</i>	<i>Custody Pet. Withdrawn</i>
None filed in '95	33%	54%	0	13%
Filed – not granted	29%	55%	1%	15%
OP Against Father	58%	29%	0	13%
OP Against Mother	0	50%	0	50%
Total custody dispositions	34% (103)	52% (158)	.3% (1)	14% (41)

When the "no family offense filed in 1995" condition was eliminated, the test approached significance: chi square (6, 136) = 12.80, $p < .07$. This near-significant difference can be attributed to the fact that mothers' petitions for custody were most likely to be granted (58%) when they were granted an OP against the father, but were most likely to be dismissed if they had filed a family offense petition but were not granted a protection order. These patterns parallel those of the fathers seeking custody.

Visitation decisions and 1995 Family Offense actions

Also relevant to the hypotheses was the relationship between family offenses in 1995 and disposition of *visitation* petitions. No significant differences were found, although there was a non-significant trend in the relationship between father's visitation petitions and family offense petitions: chi square (12, 602) = 12.92, $p=.07$. (See Table 10.)

Table 10. Fathers' Petitions for Visitation: Outcomes as a Function of Family Offense Actions in 1995

Family Offense Actions	Visitation Ordered	Visitation Pet. Dismissed	Visitation Denied	Visitation Pet. Withdrawn
No Pet Filed	53%	42%	.2%	5%
Petition not granted	49%	36%	0	15%
OP Against Father	63%	30%	0	7%
OP Against Mother	75%	0	0	25%
OP Against Both Parents	33%	67%	0	0
Col. Total % Visitation Dispositions (n)	53% (320)	40% (241)	.2% (1)	7% (40)

Fathers were most likely to be granted visitation orders when they had a protection order against the mother. More importantly, if neither parent filed a family offense, fathers were less likely to be granted a visitation order (53%) than if they were enjoined by a protection order (63%). In fact, it appears that being enjoined by a protection order actually *improves* a father's chances of securing court-ordered visitation.

However, it is also important to note that the difference lies in the percent of visitation orders that were dismissed. We have been interpreting dismissal as due to inaction on the part of the petitioner (failure to appear for a hearing). Even if dismissal also reflected some discouragement on the part of the court, it would not reflect a protective action by the court, since visitation petitions were more often dismissed when there was no family offense petition than when there was a protection order. In any case, it appears that being the subject of a protection order does not hurt a father's chances of securing a court order to visit his children.

When the condition in which neither parent filed a family offense petition is eliminated, there is no significant difference in the fathers' success in securing visitation orders whether or not the mother secured a protection order. In fact, when the condition in which no family offense was filed is filtered out, the difference among the family offense dispositions in visitation orders does not even approach significance (chi square (6, 150) = 6.90, $p=.33$). That is, the father being enjoined by a protection order had *no detectable impact* on his petition for visitation. This finding would seem to show that domestic violence was not being taken into account in awarding visitation.

Only a small percent of mothers in the sample filed for visitation (50 or 3% of the sample). The test comparing outcomes of their visitation petitions as a function of family offense actions was not significant ($p=.83$) and is probably not generalizable.

Visitation and Custody Petitions and Family Offenses 1990-1997

The same tests were performed with all protection orders filed, including those before and after 1995. None of the tests reached statistical significance. The only test that

approached significance was the analysis of fathers pursuing custody ($p=.09$). These results generally followed the same patterns as the tests including petitions filed in 1995, in that fathers who had a protection order against the mother were twice as likely to get custody as fathers in cases in which neither parent had filed a family offense petition. The marginal significance is probably attributable to the '95 family offense petitions, which were included.

Summary: Relationship between Family Offense Petitions and Visitation and Custody in NYC

To summarize the findings when visitation and custody orders were compared across family offense actions in 1995, there was virtually no relationship. The only comparison to reach significance at the .05 level of probability was that fathers were more likely to get custody when they had a protection order against the mother. There was a non-significant trend for fathers to get visitation if they had a protection order against the mother, but that was only in comparison to cases in which neither parent filed a family offense petition in 1995. The non-significant findings are telling, however, indicating that family offense petitions and protection orders have little or no impact on the courts' decisions regarding visitation and custody. Most striking was the non-significant finding in which 75% of fathers were granted visitation if they had a protection order against the mother, and 63% were granted visitation if the mother had a protection order against them. This finding indicates that the courts are granting visitation in most cases before them when there is evidence or an allegation of ongoing violence or threats by one parent against the other.

Analysis of Westchester Family Court Records

The sample was smaller than we had anticipated for three reasons. We had originally obtained the number of custody and visitation petitions filed in 1995 for all the family courts in Westchester, a total of 4,653 original dockets and 1,467 supplemental petitions.

We planned to take a 20% sample from this county, to approximate the sample size of the urban counties, for a total of 1,223 cases. The print-out the Family Court ran for us contained only 720 cases, however. The first reason the list of cases was smaller than anticipated is that visitation and custody cases are coded differently in Westchester.

That is, in New York City, visitation and custody cases are both recorded as "V dockets."

It is only by looking into the record that one can determine whether the petitioner was seeking custody or visitation. In Westchester, "V dockets" are visitation cases only.

Therefore, our print-out of all V-dockets contained only visitation cases. Visitation was the primary focus of this study, in any case, because the majority of custodial cases in New York City and Westchester involve fathers seeking visitation, rather than custody, and the majority of family offense cases involve mothers, not fathers, seeking protection orders. In other words, when looking at domestic violence and petitions regarding children, the paradigmatic case is fathers seeking visitation when enjoined by a protection order.

Second, the records are not centralized in the county, much less the judicial district, as in New York City, and the print out contained only cases adjudicated in White Plains, the county seat. Cases from two smaller family courts, in Yonkers and New Rochelle, were not included. Third, although the records are kept by family unit, there were separate dockets for each child in the family, and for each action by each parent. After eliminating multiple entries for each family, the total pool of cases to be sampled contained only a few hundred original and supplemental visitation petitions.

We had assumed in planning the study that the Westchester County Family Court records would be easier to analyze since they are organized by family unit. A single identifier or docket number calls up a record that contains all family court actions for the family, including juvenile criminal offenses, PINS cases, custody and visitation petitions, and family offense petitions. Thus, although we began with only visitation petitions, we found a number of custody petition records in the database.

Several characteristics of the database belied our expectations of ease in retrieving records, however. The most significant problem was that the computerized database was incomplete. Most importantly, dispositions were often not given even in 1995 cases. The source of the problem is that not all the critical details were transferred from the paper records to the database prior to 1998. Often the computer record indicated that a decision was rendered, but not what the decision was (i.e., ordered, dismissed, denied, withdrawn.)

In addition, even for complete records, the relationship between the petitioners (married, divorced, child in common) was not an element included in the database. Another difference from the New York City database, upon which we based our data collection strategy, is that family offense petitions filed before 1995 were not included, only those filed in 1995 and later.

Supplemental petitions were not very useful for our purposes. If the visitation petition was a supplemental petition, the children were not always identified and the original disposition was not provided. Supplementals constituted a much higher percentage of the cases in Westchester than in New York City: 46% of the 367 cases were

supplemental actions seeking modification of previous court orders. If the petition was successful, the disposition was recorded as "MCO" (modification of court order). Without reviewing the original court order or the petition itself, it was impossible to determine what the visitation decision was. Subsequent review of the paper records suggested a possible reason that the proportion of supplemental petitions was higher in Westchester than NYC. Many of the cases were secondary motions following a divorce in Supreme Court. As Westchester is a wealthier county than the urban counties, parties are more likely to pursue a divorce action, with both parties represented by attorneys and property disposition playing a major role in Supreme Court matrimonial cases. A final problem not frequently encountered in NYC is that a substantial number of the cases were transferred from other states and the original information was not available in any form.

To get all the details of dispositions, children, and relationship status of the parents, we had to request paper files. The retrieval process proved onerous for the court staff, requiring the efforts of at least three employees of the clerk's office. Requests were restricted to seven files per day. Reviewing the files proved time-consuming as well, although the information contained in the files was richer, including allegations by both parents, divorce decrees and terms, forensic exams ordered, etc. It was also possible to determine from these files, for the cases in which visitation was granted, whether the court ordered supervision of the visit or transfer of the children or placed other conditions on the visits. Not all the files requested could be found. Files for cases that were being re-adjudicated would be in the presiding judge's chamber. Requests for paper files were restricted to cases that appeared to be suitable for the study but were missing disposition of visitation and/or family offense petitions. Sixty-eight files were read; dispositions were culled from 12 more files by court staff; and 11 requested files could not be retrieved.

Number of children involved in the visitation/custody litigation was available for 219 of the 222 families in the sample. The 219 parents had a total of 334 children. The modal number of children per family was one (58%). The mean was 1.5. Thirty-four percent of the sample had two children; and nine percent had three or four. The maximum family size in the sample was four children.

Visitation and Custody

Data were collected on 222 cases, although particular analyses frequently contain fewer cases because data points were missing on many cases. For example, disposition of visitation petitions was missing in 11 cases, and in another 10 cases the recorded disposition was "no action taken" by the court. Of the total sample, 59% involved petitions for visitation, 4% involved petitions for custody (these probably got into the sample because the original petition involved visitation) and 37% involved both custody and visitation. Seventeen percent of the supplemental petitions alleged violation of a court order.

As in New York City, fathers filed over three-quarters of the visitation petitions. Both parents filed visitation petitions in 2% of the cases. Visitation was granted in almost half the cases; only 2% were denied. (See Table 11.) There was no statistical difference between disposition of petitions filed by mothers and fathers: chi square (8, 209) = 3.86, $p=.87$.

Table 11. Disposition of Mothers' and Fathers' Visitation Petitions in Westchester County, 1995

<i>Visitation Disposition</i>	Petitioner			<i>Total Dispositions</i>
	<i>Mothers' Petitions (n=46)</i>	<i>Fathers' Petitions (n=159)</i>	<i>Both Parents (n=4)</i>	
Ordered	50%	46%	50%	47%
Dismissed	26%	33%	25%	31%
Denied	0	2%	0	1%
Withdrawn	15%	16%	25%	16%
No action	9%	4%	0	5%
% Total Petitions	22%	76%	2%	100%

Of 101 custody petitions, mothers were the petitioners in 59% of the cases, fathers were the petitioners in 35%, and both parents sought custody in 6% of the cases.

Dispositions were available for 95 of these cases. As with the visitation petitions, nearly half were granted and only 2% were denied. The difference between mothers' and fathers' outcomes was significant: chi square (8, 93) =21.89, $p < .01$. As can be seen in Table 12, mothers' petitions were almost three times more likely to be granted; the majority of fathers' petitions for custody were dismissed or withdrawn.

Table 12. Disposition of Mothers' and Fathers' Custody Petitions in Westchester County, 1995

<i>Disposition</i>	<i>Mothers' Petitions (n=53)</i>	<i>Fathers' Petitions (n=34)</i>	<i>Both Parents (n=6)</i>	<i>Total Disposition (n=93)</i>
Ordered	62%	24%	67%	48%
Dismissed	25%	38%	0%	28%
Denied	0	6%	0	2%
Withdrawn	6%	21%	0%	11%
No action	7%	12%	33%	11%
% Total Petitions	57%	37%	7%	100%

Family Offenses

In 1995, the same year as the visitation petition, one of the parents filed a family offense petition in over a third of the cases and an OP was granted in over a fifth. Nineteen percent of the mothers received a protection order against the father in these visitation cases; 3% of the fathers received a protection order against the mother. These percentages include the 1.4% of cases in which there were mutual protection orders.

Looking at the entire time frame for which records were available, the patterns are the same as in 1995 alone. Between January, 1995 and August, 1998, half the parents involved in a 1995 visitation case filed a family offense petition against the other parent. These 108 parents filed a total of 250 family offense petitions against each other.

Twenty-four percent of the total sample filed just one family offense petition; 15% filed

two; 7% filed three; and 6% filed between 4 and 10 petitions. In one case, 14 petitions were filed in less than four years. In one-quarter of the visitation cases, the mother was granted a protection order against the father; in three percent, the father was granted a protection order against the mother; and in 3% the parents were granted mutual protection orders. In another 18% of the cases, a parent filed a family offense petition but did not receive a protection order.

Table 13. Family Offenses in 1995 Visitation Cases in Westchester County

<i>Family Offense Action</i>	1995 Only	Jan. 1995- Aug. 1998
Filed	37%	49%
OP Granted to Mother Against Father	19%	25%
OP Granted to Father Against Mother	3%	3%
OP Granted to Each Parent Against Other	1.4%	3%

Unlike the New York City family offense database, which only indicated who filed the petition against whom, the computerized database in Westchester indicated on whose behalf the parent filed the family offense petition: self, children, or both. We recorded this information for the first and second family offense petition filed in each case (family unit). For the 101 cases in which at least one family offense petition was filed (50% of the sample), 37% were filed on behalf of the parent only, 37% on behalf of the parent and children, and 26% on behalf of the children only.¹ (No further information is available on these cases, but presumably, if the custodial parent petitioned the court to

¹ In a sample of 97 felony domestic violence cases in a Brooklyn Supreme Court special domestic violence part, in which the files were reviewed for this study, 17% of the protection orders granted

protect the child from visitation by the other parent but did not seek the court's protection from contact with the other parent, the custodial parent argued that the parent posed a risk to the child.) In the 62 cases in which a second family offense petition was filed (28% of the sample), the petition named the parent only in 53%, parent and children in 24%, and children only in 23%.

Visitation and Custody Dispositions as a Function of Family Offense Cases in Westchester

There was no difference in visitation dispositions across different dispositions of family offense petitions filed in 1995: chi square (16, 206)=11.39, $p=.79$. That is, there was no significant difference in visitation orders whether or not a family offense petition was ordered, dismissed, or withdrawn. For example, when the mother was granted a protection order against the father in 1995, visitation was ordered in 55% of the cases; if no family offense petition was filed in 1995, visitation was ordered in 42% of the cases. Likewise, there was no statistical relationship between family offense cases filed in 1995 and custody dispositions: chi square (16, 91)=13.62, $p=.63$.

If, however, all the family offense petitions available (1995-1998) were included, the relationship between disposition of the 1995 visitation case and the family offense case was significant: chi square (16, 206)=26.40, $p<.05$. The significant relationship is due only to the 155 cases in which the father was petitioning for visitation: in those cases, the relationship between visitation disposition and family offense disposition was significant: chi square (16, 155)=26.35, $p<.05$. The relationship between visitation petitions and family offense petitions filed from 1995 to 1998 was not significant for the

to the victims included the children. As the mother was the victim/complaining witness in these cases, no protection orders were granted to the children alone.

45 cases in which the mother was petitioning for visitation ($p=.14$) or the four cases in which both parents petitioned for visitation ($p=.09$).

As the significant chi square for the overall relationship between family offense cases and visitation is almost completely due to the subset of cases in which the father was petitioning for visitation, the pattern of dispositions in this subset will be described further. As can be seen in Table 14 below, it appears that the father was *more* likely to receive a court order for visitation when a family offense petition had been filed (63% granted visitation). As in New York City, fathers were most likely to receive visitation orders when an OP had been granted to the mother or the father (67% awarded visitation). Unlike the findings for New York City courts, the Westchester court was especially likely to grant fathers visitation if the parents had mutual protection orders (67%). Since, as in New York City, visitation was almost never denied to fathers by the court, the source of the difference in court orders is actually the relative frequency of dismissals and withdrawn petitions, both indicating a failure to pursue the petition for visitation through to a court disposition.

Table 14. 1995 Dispositions of Fathers' Petitions for Visitation as a Function of Family Offense Cases 1995-1998 in Westchester County

<i>Visitation Disposition</i>	<i>No Fam. Offense Pet. Filed</i>	<i>Fam Offense Filed, not granted</i>	<i>OP against father</i>	<i>OP against mother</i>	<i>OP's against both parents</i>	<i>Total visitation Dispositions</i>
Ordered	37%	63%	51%	67%	67%	47%
Dismissed	38%	29%	28%	0%	17%	32%
Withdrawn	19%	8%	16%	0%	17%	16%
Denied	1%	0	2%	33%	0	2%
No action	5%	0%	2%	0%	0	3%
Total Fam Offense Actions	51%	15%	28%	2%	4%	100%

Conditions on Visitation

Information was available on conditions of visitation in 34 cases. The most common condition was unsupervised visitation (47%). Professionally supervised visitation was ordered in 21% of this subsample. In 9%, relatives were to supervise visitation, for a total of 30% supervised visits. In 9%, transfer of the children was to be supervised and in 6% transfer of the children was to take place in public. Three percent of the visits were to take place in prison, where the parent petitioning the court was incarcerated.

Chi squares performed to determine whether there was a difference in visitation arrangements as a function of whether a family offense petition was filed in 1995, whether a protection order was granted in 1995, or whether a protection order was ever

granted were not significant. The probabilities for these tests ranged from .50 to .74. However, the sample sizes for these tests were small (28 to 34) and therefore power was low. The raw frequencies show that professionally supervised visitation and supervised transfer of the children were more often ordered when a Family Offense petition had been filed. It also appears that unsupervised visitation was more often granted when no Family Offense petition had been filed in 1995 than when an OP had been granted to the mother. There were no cases in this subsample in which a protection order was granted to the father against the mother.

Table 15. Visitation Condition as a Function of 1995 Family Offense Case

<i>Visitation Condition</i>	<u>No family offense filed in 1995</u> (n=16)	<u>Family Offense filed 1995-not granted</u> (n=5)	<u>OP Against Father</u> (n=12)	<u>OP Against Both Parents</u> (n=1)	<u>Total Visitation Type</u> (n=34)
Unsupervised	63%	20%	33%	100%	47%
Public Transfer	0	0	17%	0	6%
Supervised transfer	6%	20%	8%	0	9%
Relatives supervise	13%	0	8%	0	9%
Professionally supervised*	13%	40%	25%	0	21%
Visits in prison	6%	0	0	0	3%
No visitation	0	20%	8%	0	6%
Total OP dispositions	47%	15%	35%	3%	100%

Custody Dispositions and Family Offense Actions

Custody dispositions in 1995 showed no relationship to family offense actions between 1995 and 1998, overall. However, looking at 1995 family offense actions only, a single significant relationship was found. Dispositions for fathers' petitions for custody in 1995 were significantly related to family offense actions in 1995: Chi square (12, 33)=21.10, $p < .05$. Fathers' custody petitions were most often dismissed; roughly a quarter of fathers who sought custody received it. Fathers were most likely to win custody if a family offense petition was filed by either parent in 1995 but not granted, or if the father had a protection order against the mother. The one father who filed for custody but was enjoined by a protection order in 1995 was denied custody. These relationships are shown in Table 17 below.

Table 16. Disposition of Fathers' 1995 Custody Petitions and 1995 Family Offense Petitions in Westchester County

Custody Disposition	No Fam. Offense Pet. Filed (n=21)	Fam Offense Filed, not granted (n=9)	OP against father (n=1)	OP against mother (n=2)	Total custody Dispositions (n=33)
Ordered	19%	33%	0	50%	24%
Dismissed	48%	33%	0	0	39%
Withdrawn	24%	11%	0	50%	21%
Denied	0	11%	100%	0	6%
No action	9%	11%	0	0	9%
Total Fam Offense Actions	64%	27%	3%	6%	100%

Summary of Findings in Westchester Family Court

Based on a sample almost a tenth the size of New York City's, the patterns of findings are in most cases similar. Fathers applied for three-quarters of the visitation petitions; mothers applied for almost two-thirds of the custody petitions. In both cases, 47% of the petitions resulted in a court order. Mothers were significantly more likely to receive a custody order than fathers. One fifth of the litigants received a protection order in 1995, the same years as the visitation or custody litigation was brought. However, concurrent protection orders showed no significant relationship to disposition of the visitation case. The one significant relationship found involved protection orders granted between 1995 and 1998: fathers who were enjoined by or had an OP against the mother during the three year period were more likely to receive a visitation order than fathers in cases in which no family offense petition was ever filed. In a small subsample of cases, no statistical relationship was found between court-ordered supervision of visitation and protection orders, but supervision appeared to be ordered more frequently when there was a protection order in effect.

Attorneys' Experience

Interviews were conducted with legal services attorneys who represent battered women in Family Court in Westchester and the five counties of New York City. These interviews were conducted in an attempt to find out what was happening behind the numbers. Why were so many family offense petitions dismissed or withdrawn? Why was visitation almost never denied when a parent had an order of protection against the other parent? How well was visitation working when there was a protection order? Were non-custodial parents even exercising visitation rights? This sampling was admittedly biased and the opinions subjective, but it was intended only to represent the experiences of advocates

for domestic violence victims in New York courts in regard to custody and visitation issues.

A group interview was conducted with about 20 lawyers from New York City and Westchester, and individual interviews were conducted with three lawyers. One lawyer referred a client to the study, and a three-hour interview was conducted with this client. The lawyers' answers will be aggregated and no individual attributions will be made to protect the lawyers' ability to represent their clients. Generally, they work for legal clinics and non-profit agencies that provide legal representation to indigent victims of domestic violence in civil proceedings.

A semi-structured interview format was used, beginning with establishment of the basic characterization of their clients and the custodial situation. The lawyers were asked the percent of their cases representing domestic violence victims in family court that also involve custody and visitation issues, whether their clients wish the father to continue in his parenting role, and whether their clients are experiencing violence and harassment during visitation. In regard to the legal arguments, the attorneys were asked how they introduce the issue of the risk of violence during visitation in the court, the court's response to arguments about risk to the mother vs. risk to the child, and whether they noticed differences in the court decisions regarding custody and visitation since passage of the law introducing domestic violence as a factor.

The primary response of the group of lawyers to the general question of the court's handling of custody and visitation in domestic violence cases was that judges vary widely in their understanding and application of the law and in how they respond to allegations of domestic violence. In answering specific questions, the lawyers were

inclined to report their worst cases, the instances in which they thought clients were treated unfairly and in a manner that created undue risk.

1. Do custody and visitation issues often arise?

Generally, lawyers become involved in only the more complex and drawn out cases. Such cases typically involve custody and visitation litigation. By the time lawyers are brought in, the case has been in the family court for months or longer, and the parties are separated. Therefore, close to 100% of their caseload have visitation and custody issues in addition to family offense litigation, and their clients usually have children in common with the abuser. (At least one complained that they should be brought in earlier, to assist with protection orders as well as custody, support and visitation.)

One lawyer said that batterers are retaliating against victims who file criminal charges by seeking protection orders in family court: about 30% of her clients are the respondent in family court family offense, custody and visitation cases. Sometimes victims with criminal cases will go to family court to establish paternity as a first step in seeking child support, or to get longer term protection orders that include their children.

To get children included in criminal court protection orders, the children have to be victimized; they may be included in temporary orders from the criminal court because the police report states that the children witnessed violence but children are not usually included in permanent orders on those grounds. When the victims go to family court, the protection order and visitation order are combined. Another attorney mentioned that she has older, disabled women as clients as well as women with children in common with the abuser.

2. Do most of your clients want the father/abuser to remain involved in their children's lives? Do the fathers want visitation or custody?

Lawyers generally encourage the clients to tell the judge that it is important for the child to have a relationship with the father. They don't want the mother to appear to be on a vendetta against the father. They are concerned about the "friendly parent" provision that gives custody to the parent most likely to encourage contact with the other parent. But do the clients really want the father around the child? About 70% do want the father to have visitation. Their reasons range from terror at going against his wishes, on the one hand, to believing he is a "horrible person" who is nonetheless good with the children. Other mothers reluctantly agree to visitation, realizing that it makes them appear less hostile in court. Only about 30% are firmly opposed to visitation and want the child to have no contact with the father. It is a confusing issue for the mothers, pitting their own safety against what they conceive to be their children's best interest. "He's their father," is the mothers' refrain, according to the lawyers. "They need to know their father."

Most of the batterers want to see their children, including stepchildren. But the attorneys attributed various motives to the fathers. The fathers are generally interested in asserting their rights – whether or not they are genuinely attached to their children. Fathers rights groups are actively lobbying. Sometimes the fathers file for custody in retaliation against support orders or arrest. Family court is used to harass the victim, to keep her coming back to court. Some fathers apply for visitation orders but do not exercise their visitation rights. The cases take on a life of their own. Some anecdotes related by the lawyers seem to illustrate that some fathers use their children as emotional confidants and to retain a connection to the mother. One lawyer said a father vigorously pursued visitation and received a court order. When he sees the child, he

cries about the failed marriage. Another father pumps the child about whether the mother is seeing other men and tells the child he wants to return home.

One case was described in particular detail. The woman thought her daughter did not know about the abuse until the 9-year-old walked into the bedroom when her husband was choking her. The woman called the police for the first time. She did not want her daughter thinking that she was tolerating abuse; also, the attack was the most life-threatening she had experienced. The police advised her to go to family court the next morning for a protection order, because her husband would be arraigned and released within 24 hours. The woman left with her infant and daughter. She was involved in a divorce in Supreme Court, a criminal case, and a family court case. What was surprising was that her husband was seeking custody not only of their baby, but also of her nine-year-old daughter, who was not his child.

3. Have you proposed to the court that visitation be limited or denied altogether in domestic violence cases?

Most lawyers have never asked the court to deny visitation. Many judges respond punitively to such a request. In one court, to ask for no visitation at all "is to incur incredible wrath." Even to ask for supervised visitation creates hostility to the client from either of the two family court judges in this county. In another county, a lawyer said a judge warned that if the client's allegations of violence were not true, the judge would change custody to the father. This fear of loss of custody if the client could not prove violence was a recurrent theme that inhibits requests to deny visitation. Another lawyer who practices in two counties primarily said, "I would love to ask for no visitation but it is a bad strategy."

4. If you ask for limitations on visitation, such as supervised visitation, do you put it in terms of danger to the mother of unsupervised visitation or danger to the child?

According to the attorneys, judges still think, "She's not there, so it [his violence toward her] is not a problem." Lawyers said they try to argue that visitation should be limited because of risk to the mother, "but we lose." When it comes to visitation, the judge wants the lawyer to talk about the children, not the mother. Some judges will almost always limit visitation; others almost never do. Judges and attorneys may disagree about what is harmful to the children. One judge thinks that transfer in the police station is bad for children under three. The attorney feels it is good for the child because it is safe. In general, lawyers use both kinds of arguments: risk to the mother and to the children, but rarely is risk to the mother considered a risk to the child on the grounds that her ability to care for the child will be compromised.

5. What sort of evidence does the court require to invoke the domestic violence factor in custody and visitation decisions?

This question elicited two kinds of responses: first, the lawyers discussed evidence required to establish domestic violence; second, they discussed evidence required to show that domestic violence should be a factor in awarding custody and visitation. In regard to the two-year old provision that made domestic violence a factor in custody and visitation, one lawyer asserted, "Judges don't know the law." Another asserted that domestic violence has no effect on the trial.

What evidence is required to establish domestic violence?

If a woman alleges domestic violence, judges ask, "How do we know whom to believe?" There has to be a finding for judges to consider domestic violence. If the criminal case was adjourned in contemplation of dismissal (the most common disposition of

misdemeanors in some counties)², there is no finding. The lawyers encourage the victim to file for a protection order in family court to get a hearing where they can introduce the history of abuse.

Lawyers encourage their clients to testify graphically about the abuse they have suffered, but it doesn't always work. One lawyer described the judge's reaction when her client testified about an incident in which her husband attacked her with a hammer: the judge turned to the victim and suggested she needed counseling for the trauma of such a vicious attack. The judge did not respond by addressing the abuser or limiting his parental rights to restrict his access to the mother. In another case, a lawyer had recently been engaged to represent a woman whose ex-partner had smashed her face against a glass wall during court-ordered public transfer of the child at a fast-food restaurant.³ The father also verbally abused and scratched the child. The woman filed for a new order of protection and the lawyer argued that visitation should be suspended temporarily. The judge noted that, after this assault, there had been several visits without incident (before the lawyer was brought into the case) and ordered unsupervised visitation. On the other hand, this lawyer said, another judge orders supervised visitation when the father has only verbally abused the mother, sometimes when it is not even warranted or wanted.

Many judges believe that there has to be a protection order before they even order an investigation looking for documentation of domestic violence. Judges in one county

² Adjudgment in contemplation of dismissal generally requires that no new offenses be committed within a specified period of time, usually six months to a year. If the defendant has no offenses at the end of that period, the charges are dismissed and the record is sealed. In many cases, the defendant is required to complete a batterers program as a condition of the adjudgment.

simply hear that there is "conflict" and send parents to classes about the damage divorce does to children. On the other hand, there is a judge who orders an investigation as a delaying tactic, to put off the father's petition for visitation. Supervised visitation may be ordered as an investigation. If a victim produces a criminal court order prohibiting the father from contacting her and the children, supervised visitation will be ordered.

Once domestic violence is established, what evidence is required for it to be considered relevant to custody and visitation orders? "Does domestic violence harm the child?

Hard to prove." The reason the lawyers find it hard to prove is that they cannot rely on research but have to establish that the child has symptoms that can be directly attributed to witnessing violence. That is, the lawyers have to present evidence that the child has such behavior problems as bedwetting that can be linked to the (alleged) domestic violence. One lawyer complained that, even though the mother included in her petition that the father punched their teenage son in the face, the judge did not include the child in the protection order.

There seems to be a double standard in regard to children's exposure to violence in parents' new relationships, the lawyers noted. On the one hand, a police officer testifying that a father's new girlfriend was bruised did not lead the judge to restrict visitation. On the other hand, when a woman took out a protection order against a new partner, the father petitioned for custody and the mother was told that, if she did not stop seeing the new abusive partner, she would lose custody. (The complication was that she had a child by the new partner, and he was exercising visitation rights.)

³ In New York courts, this is known as the "MacDonalds transfer," according to Brooklyn Family Court judge Jody Adams – although other fast food restaurant chains are also used.

6. Do law guardians and forensic psychologists factor in domestic violence when doing assessments or making recommendations to the court regarding custody and visitation?

Law guardians are appointed in the majority of custody and visitation cases, unless the children are infants. They are rarely assigned in family offense cases, even if there are children involved. Opinions of the quality of law guardians' representation of the children varied among the lawyers. In one county, law guardians come from a center that pairs social workers and lawyers; they are skilled at interviewing children and knowledgeable about domestic violence. In other counties, law guardians are unaffiliated attorneys (qualified by the state to represent children) who wander the courthouse halls and are called in to represent children. One was described as resembling "a dirty, smelly homeless man" who, the attorney representing the mother imagined, must frighten the child. This attorney said that law guardians range from mediocre to bad; there are no good ones. Most are not knowledgeable about domestic violence, although they are required to attend a training every year. A lawyer who attended the training said it focused mostly on the law, such as termination of parental rights and new case law, not on the social and psychological factors in domestic violence nor on skills for interviewing children.

The law guardians interview the children briefly and then report back to the court. One attorney said that two different law guardians in different cases came to her baffled: the children said they didn't want visits with their fathers and the law guardian didn't know what to do. The lawyer representing the mother had to explain, "They have seen their father's rages. They are afraid of him." The law guardians seem to be reluctant to tell the court the children don't want visitation.

Forensic psychologists who conduct custody evaluations for the court "by and large" recommend no limits on visitation, according to the lawyers. There were some evaluators they regarded as more sympathetic and conscious of domestic violence. Supervised visitation centers also conduct evaluations and make recommendations to the court. The trouble with that route, according to a few of the attorneys, is that the visitation center sees only the child and abuser together, under the watchful eye of a social worker. This does not give a realistic picture of the potential for violence and the tension that may exist if the center recommends unsupervised visits. Also, the report the center makes at the end of the evaluation period enters the record, and "you are stuck with it for a long, long time." One attorney said she preferred to make arrangements for a family member to supervise the visits, because that arrangement can last until the child reaches majority, unlike professionally supervised visits, which usually last a few months.

Supervised visitation centers operate in different ways and have different orientations. The advocates view the neutral stance that most centers adopt with regard to the parents as inappropriate when one of the parents has committed crimes against the other. One agency handles visitation only in domestic violence cases, does not do long term supervision, and conducts an evaluation for the court. The centers operated by this agency are not seen as problematic by the attorneys, with the reservation that the report becomes a permanent part of the record.

A new center was regarded as the source of egregious problems and raised concern that there are no standards or regulations governing visitation centers. This center has been taking on the role of advocate for the non-custodial parent – usually the father and batterer. For example, in supporting a "client" who is visiting his children at the center

(and paying the center), the center has filed affidavits against the custodial parent. The center has been filing "bad reports" on the mothers although they are not actually evaluating the mothers – they don't observe the mothers with the children and therefore should not be reporting on them. The lawyers also accuse the center of not abiding by safety plans. In one case, a battered woman produced two orders of protection at the intake interview and told the social worker that she had left the marital home and was living at an undisclosed location. After she began bringing her children to the center for visits with the father, another woman in the waiting room told her that the center was not abiding by the agreement to hold the father 15 minutes after she left with the children. She had a friend observe outside the center. The next time she left after a visit, the father followed immediately. "He is the paying customer." The Center maintains that they are concerned only with the child and what is best for her, but the social worker refused to take calls from the child's therapist. The child had not seen her father since she witnessed him attempting to kill her mother. This client recommended that the father's payment for the visits be funneled through the court so the center would not know which parent was paying.

7. Is there a problem with violence during exchange of the children?

One lawyer answered, "all the time." In addition to the account above of a woman being assaulted during public transfer, she told of a woman being choked during the trade off under unsupervised visitation. Usually the abuse involves threats, cursing and screaming rather than physical assault. Often it involves keeping the children longer than agreed or making the victim pick the children up rather than returning them to their mother, forcing her to go to his residence.

Domestic Violence vs. Child Abuse and Neglect

An issue that the lawyers raised is that custody and visitation issues are viewed through the child welfare lens, while domestic violence issues are viewed through a different lens. The two issues are not viewed as a whole. This difference is highlighted if the case is initially brought to the court by the Administration for Children's Services as a case of abuse or neglect for exposure to domestic violence. In that case, the victim's access to the child is also likely to be limited. Lawyers said they are seeing a serious surge in battered women being charged with failure to protect, at the rate of a couple of cases per month. One lawyer said that her client couldn't get her children back from foster care even though the victim cooperated with a criminal case and the batterer was incarcerated.

Conclusions

This study finds that there is a high degree of overlap between visitation and family offense cases. In the five counties of New York City, 45% of the 1995 visitation cases had an associated family offense case; in Westchester, 49% of the 1995 visitation cases had a family offense case between 1995 and 1998. In 10% of the 1995 visitation cases in New York City, one of the parents was granted a protection order against the other in the same year, and 19% had a protection order between 1990 and 1997. The rates were much higher in Westchester: one of the parents had a protection order against the other in the same year in 20% of the cases, and 25% had a protection order between 1995 and 1998.

Yet the protection orders have the opposite of the predicted effect on visitation orders. Visitation was never denied to a parent enjoined by a protection order in New York City, and 62% of the fathers enjoined by protection orders who filed for visitation received

court ordered. In Westchester, 51% of fathers enjoined by a protection order were granted visitation. Fathers were significantly more likely to be granted visitation in both New York City and Westchester when they were enjoined by a protection order than when no family offense petition had been filed.

These differences are not due to actions of the court, however, since the courts effectively did not intervene by denying visitation. Rather, the rates of court ordered visitation are lower when there was no indication of domestic violence because the fathers' petitions were more likely to be withdrawn or dismissed. That is, fathers were more likely to persevere in securing a court order for visitation when the mother had sought and/or received an order of protection, and the perseverance was usually rewarded. In general, as R. B. Straus (1995) concluded, there is "overwhelming evidence from the way courts currently operate shows that contact *will* take place. Courts regularly order visitation even when partner abuse has clearly occurred" (pp. 239-240).

Lawyers interviewed for this study had expressed skepticism about a study of New York City Family Court (Reiniger, 1994) which, on the basis of judges' self-reported dispositions in cases of family violence, concluded that judges most often denied visitation when space was not available in supervised visitation programs. While for a small subsample in Westchester, supervised visitation was often ordered when there was a protection order, in New York City, the same study (Reiniger, 1994) found that the judges wanted to send nine times more families to supervised visitation than there was space available in programs. Certainly, there are not enough programs to serve the 1,692 parents who, by extrapolation from our sample, were granted protection orders against a parent granted visitation orders in 1995.

In contrast, custody decisions did appear to follow the hypothesized impact on court decisions. Specifically, fathers who had protection orders against the mother were more likely to be granted custody than those who did not. This difference did not reach significance for mothers, although mothers were typically successfully in seeking custody. There do appear to be some double standards, though. Fathers do not lose visitation rights if they expose their children to violence but, according to the lawyers interviewed, mothers may lose custody if they expose their children to violence. The court seems to be holding mothers responsible for violence inflicted on them, rather than holding the batterers responsible. According to the lawyers' anecdotes, courts scrutinize more closely exposure to violence if a mother's new partner is abusive than if the father is abusing a new partner.

In this situation, victims and their attorneys may be reluctant to make the argument that the children are being harmed by exposure to domestic violence. Lawyers representing victims in Family Court find that harm to the child from exposure to domestic violence is difficult to prove. They reportedly hesitate to ask judges to deny or restrict visitation on the grounds of risk to the mother because the court's response is often punitive. The mother's best strategy is to tell the court she would like the father to continue to play a role in their children's lives, lest she be regarded as antagonistic and risk losing custody to the father.

The evidence suggests that visitation should be denied more often—at least as a temporary measure. Judges seem reluctant to suspend or deny visitation, and instead may resort to delaying tactics. Some court evaluators and law guardians are reportedly insensitive to children's fears and typically recommend visitation, regardless of the

circumstances, according to the lawyers interviewed. Supervised transfer may provide some protection to the mother, but none to the children.

Lawyers reported continual violence against their clients during exchange of the children. The statistical data suggest that the courts are not responding adequately to the risk that visitation poses to battered women who have separated from abusive partners, the risk of children's exposure to violence after separation, and the risk of physical harm to children. The psychological risks to children have not been explored.

R. B. Straus (1995) discusses the confusion felt by children who have witnessed domestic violence feel, the torn loyalties and the problem of identifying with the abuser. He raises the question of whether moving between two parents and their two perspectives on the violence, one angry and hurt, the other denying and minimizing the abuse, is psychologically tenable for a child. He concludes, "Even after the partner abuse has been stopped, there is a question whether the continuation of contact with the abusive parent even in a secure setting may still damage the child" (p. 238).

The problem of visitation and custody in domestic violence cases certainly warrants further investigation. Specific questions suggested by this study are *which* mothers and children are at risk of violence in the context of visitation; whether there is a critical period after separation when visitation is particularly risky; and the impact on children of visitation with a father who is a batterer. In the interim, it appears that judges need more tools than sending families to supervised visitation as a delaying tactic. The effectiveness of family-supervised visitation is unknown.

The clearest implication, however, is that the courts need to understand that domestic violence can continue after the separation and take steps to protect victims and children.

Dalton (1999) suggests that the courts have a "conflict paradigm" of domestic violence, viewing it as a characteristic of a relationship between two individual adults. Under this model, the violence will end with the end of the relationship, as conflict will dissipate. Under the "abuse paradigm" more widely espoused by advocates, domestic violence stems from the character of an individual, who resorts to abuse in order to control his partner and quite possibly his family. Under this model, separation may threaten his sense of control and inflame his need to reassert dominance through threats and abuse. Visitation and custody may be sought to perpetuate control. Given the evidence that violence does continue after separation, and that visitation can provide opportunity, the courts need to adjust visitation orders in conformity with the "abuse" or power and control model. This approach will also bring the courts more in line with the recommendations of the National Council of Juvenile and Family Court Judges and of the American Bar Association. Another possible implication of this study is that law guardians and custody evaluators should have special training or expertise on domestic violence and the impact of children's exposure to violence.

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