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Domestic Violence, Visitation and Custody Decisions in New York Family

Courts

Executive Summary

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Safe Horizon

New York City

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NOTE: The views are those of the author, and do not purport to represent the position of
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FINAL REPORT

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Battered women are encouraged to leave abusive partners to prevent their children's exposure to violence, among other reasons. In fact, they may be charged with "failure to protect" their children if they continue to live with an abusive partner and thereby risk the children witnessing violence. If they do separate from an abuser who is the father of the child, however, the father may petition the court for visitation and may even seek full or joint custody. The National Council of Juvenile and Family Court Judges has issued guidelines recommending that non-violent parents receive custody of minor children and that abusers' visitation be limited. Nonetheless, there is considerable anecdotal evidence that courts do not fully consider domestic violence in constructing visitation and custody orders.

The present study was the first to investigate how some courts handle batterers' petitions for visitation and custody. The study was conducted in New York City and Westchester County and relied on three sources of information:

A random sample of custody and visitation cases in New York City Family Courts in 1995 (n=1,692);

A full sample of visitation cases in the White Plains Family Court in suburban Westchester County in 1995 (n=222); and

Interviews with attorneys who represent victims of domestic violence in Family Court in New York City and Westchester (n=20).

Findings

New York City Family Court Database

Sample

There were 24,502 custody and visitation dockets in the five counties of New York City in 1995. Collapsing separate dockets for children of the same parents yielded a pool of 16,920 cases. A 10% random sample was taken of the cases, for 1,692 custody and visitation dockets in which one parent might have petitioned the court for a protection order.

Custody and Visitation Petitions

Overall, half the visitation petitions and a third of the custody petitions were granted. Fathers were more often the petitioners, but there was no difference between mothers and fathers in rate of success in securing court orders.

Notably, custody and visitation were almost never denied in New York City Family Courts. Only one petition for visitation was denied, to a father; and only one petition for custody was denied, to a mother. The most common disposition of visitation petitions was a visitation order (53%) followed by dismissal (40%). The remainder of the petitions was withdrawn. The most common disposition of custody petitions was dismissal (55%). (See Table 1.)

Family Offense Petitions and Protection Orders

The indicator of domestic violence in this study was a family offense. If a family offense petition is successful, the petitioner is granted an order of protection (OP) against the respondent. Almost half the parents involved in custody and visitation litigation filed a family offense petition against the other parent between 1990 and 1997; 19% were granted an order of protection. Ten percent of the sample were granted a protection order against the other parent in 1995, the same year the visitation or custody case was disposed.

Mothers involved in custody and visitation litigation in 1995 were significantly more likely to file a family offense petition against the father than fathers were against the mother: mothers filed three-quarters of all family offense petitions. Mothers' petitions were also twice as likely to result in protection orders. See Tables 2 and 3.

Cross-Tabulations of Custody/Visitation Orders and Family Offenses

Because the purpose of the study was to discover how courts handle custody and visitation in families where there is an indication of domestic violence, the most

important statistical tests for the purposes of this study assessed the relationship between protection orders - especially those issued in 1995 - and disposition of the custody or visitation case. These relationships were tested with Pearson's Chi Square.

Visitation

Fathers' petitions for visitation were most successful when they had a 1995 OP against the mother (75% of the fathers who secured a protection order in '95 were granted visitation). - But fathers were also very successful in securing a visitation order when the mother held a protection order against them (63% of the fathers enjoined by a protection order in '95 were granted visitation). If neither parent had a protection order, fathers secured court ordered visitation only about half the time. These differences did not reach statistical significance, however. Fathers' success in securing visitation was not significantly affected by the disposition of the family offense case (chi Square [6, 150]= 6.90, p=.33). (See Table 4.)

No comparison can be drawn with mothers' petitions for visitation because mothers rarely applied for visitation - only 50 mothers, or 3% of the sample, did so. Statistical tests on the relationship between mothers' visitation petitions and family offense cases were non-significant.

Custody

Fathers who successfully petitioned the court for a protection order against the mother were significantly more likely to be granted custody (67%) than fathers who did not (23%): Chi Square (8, 481) = 28.32, p<.0004. Likewise, mothers seemed to receive custody orders more frequently when they successfully pursued a protection order against the father (58%) than when they did not (31%). However, this test did not reach significance: Chi Square (6, 136) = 12.89, p<.07. (See Table 5.)

In neither of the two cases in which custody or visitation petition was denied did the other parent have a protection order.

Westchester Family Court

Sample of Visitation and Custody Cases

Data were collected on the full sample of visitation petitions brought in the Family Court in White Plains, the county seat of suburban Westchester County, in 1995. There were 222 visitation cases; 101 also involved custody litigation. Fathers filed 78% of the visitation petitions; mothers filed 22%. Overall, visitation was granted in 47% of the cases, and there was no difference between the dispositions of mothers' and fathers' petitions. Mothers were the petitioners in 59% of the custody cases, fathers in 35%. Both parents sought custody in 6% of the 101 custody cases. Mothers were three times more likely to be granted custody than fathers.

Family Offense Cases & Protection Orders

Information on Family Offense petitions filed in the visitation cases was available for 1995-1998 only. In 1995 alone, over a third of the parents involved in a visitation case filed a family offense petition against the other parent, and over a fifth of the parents were granted a protection order that year. Over three years, from 1995 to 1998, half the parents involved in visitation litigation sought a protection order against the other parent, and almost a third received one. These rates are slightly higher than in New York City. While we can only speculate on the reasons, Westchester residents are, on average, wealthier than City residents, and are therefore more likely to be represented by attorneys. They are also more likely to come to family court for modification of visitation and custody orders pursuant to a divorce in Supreme Court. (Legal relationship between the parents was not given in the Westchester dockets.)

Looking at family offense petitions filed in 1995 only, visitation appeared to be granted more often if the mother had a protection order against the father than if no family offense petition had been filed, but this difference was not statistically significant. (See Table 5.) However, looking at family offense petitions filed between 1995 and 1998 (Table 6), fathers were more likely to be granted visitation orders if the mother had filed

a family offense petition (63%) than if she had not (37%). Fathers were also more likely to be granted visitation if the mother had been granted a protection order -- half the fathers enjoined by protection orders were granted visitation - than if she did not. If the mother had not filed a family offense petition, the fathers' visitation petitions were more likely to be dismissed (38%) or withdrawn (19%). The statistical test was significant: Chi Square (16, 91)=26.40, p<.05. That is, *fathers enjoined by protection orders were more likely to secure visitation orders than fathers whose former partners did not seek a protection order.*

Conditions on Visitation: Supervised Visitation, Supervised Transfer, and Public Transfer

We were able to get conditions on the visitation orders by reviewing the case files of 34 cases. Most commonly, petitioners were granted unsupervised visitation (47%). Visits were to be supervised in 30% of the families (21% by professionals and 9% by relatives). Public transfer or supervised transfer was ordered in 15% of the cases.

Looking at 1995 family offenses only:

- unsupervised visitation was ordered in a third of the cases in which a protection order was granted in 1995, and two-thirds of the cases in which there was no protection order;
- professionally supervised visitation was ordered in 28% of the cases in which there was a protection order, and 20% of the cases in which there was no order.

These differences were not significant.

The picture changes when family offense actions for 1995-1998 are taken into account - although differences were still not statistically significant. When the mother was granted a protection order against the father between 1995 and 1998, some sort of supervision was ordered in half the 1995 visitation cases. Of the cases in which no family offense petition was filed, supervision by relatives was ordered in 17% but professionally supervised visitation was never ordered. Supervision of visits was never ordered in cases in which a family offense petition was filed but not granted, although visitation was denied in 25% of these cases. Therefore, it appears that supervision, especially professional supervision, was used most often in Westchester when there was an indication of domestic violence.

Interviews with Attorneys Representing Domestic Violence Victims in Family Court

It should be noted that interviews were conducted only with advocates for victims of domestic violence, not with defense attorneys, judges or law guardians. Therefore, this section represents a single perspective. Lawyers practicing in family court reported a number of problems with the court's handling of visitation in domestic violence cases. They reported considerable violence against their clients in the course of visitation, including an attack with a hammer and smashing a client's face against the glass wall of a restaurant during public exchange of the children. In neither case was the attorney able to secure a suspension of visitation or supervised visitation from the court. Most, however, reported threats rather than actual violence, or non-cooperation, such as keeping the children longer than specified in the visitation order.

Attorneys said they never requested that the court deny visitation to an abuser, for fear of invoking the friendly parent provision, which gives custody to the parent most likely to encourage the other parent's involvement. Some attorneys said that even asking for supervised visitation creates hostility toward their client. In one case, the judge threatened to change custody to the father if the mother's allegations of domestic violence proved to be false. The attorneys said they advise mothers to tell the court that they favor the father's involvement in their child's life, to avoid losing custody.

Lawyers said that judges vary considerably in how they interpret the 1996 law that made domestic violence a factor in awarding custody and visitation. One attorney said she appears before a judge who orders supervised visitation when there is only an allegation of verbal abuse and even when the attorney feels it is unwarranted. Some judges order supervised visitation as a means of delaying unsupervised visitation and of getting an investigation. However, other judges were said to believe that they cannot even order an investigation unless there is a protection order.

Once domestic violence is established to the court's satisfaction, the attorney must demonstrate that the child has been harmed by exposure to the violence for the domestic violence factor to be applied to the visitation or custody decision. The lawyers agreed that establishing harm to the child on a case-by-case basis is difficult: they have to demonstrate that the child in question has symptoms that can be attributed to the violence.

There were criticisms of law guardians (who are appointed to represent the child in almost every case in which there are visitation and custody issues and the child is not pre-verbal), and criticisms of forensic examiners who evaluate the parents. The attorneys feel that few of the law guardians and forensic psychologists appointed by the court to report on the child's best interest have an understanding of domestic violence. Most are extremely reluctant to recommend that the court deny a parent access to the child. One attorney said two different law guardians were nonplussed and did not know how to proceed when the children said they did not want to see their father. She said she had to explain to the law guardians that the children in these cases were afraid of their fathers, having witnessed their violent rages.

One attorney expressed reservations about supervised visitation. She prefers supervision by family members, because such orders are permanent. If professional supervision is ordered, the order is temporary and the agency or mental health professional will issue a report on the father's interactions with the child (under ideal conditions that do not involve dealing with the mother). As another lawyer commented, the report enters the record and "you have to live with it for a long time."

Another concern is that there is no regulation or licensing procedure for supervised visitation centers, and the quality, customary practices and treatment of the lawyers' clients varied. One center was the subject of particular complaints of unfairness and risks to battered women.

Summary and Conclusions

Family offense petitions are brought in nearly half the custody and visitation cases in New York City and Westchester. Ten percent of the parents involved in custody or visitation litigation in New York City received a protection order against the other parent the same year; 19% received one within seven years of the visitation case. In Westchester, the rates were much higher: 23% of the parents were granted a protection order against the other parent in 1995, and 31% had protection orders between 1995 and 1998.

How did the family courts respond? First, they never or rarely responded by denying visitation when there is a risk of violence. In New York City, out of hundreds of cases, visitation and custody were never denied to a parent enjoined by a protection order. In Westchester, visitation was denied to three fathers, two of whom were enjoined by a 1995 protection order. Lawyers representing victims of domestic violence said that they do not dare even to propose that visitation be denied to an abuser, because they say to do so would be to "incur the wrath" of the court and risk invoking the "friendly parent" provision. In their view, women who want to avoid contact with an abuser who is the father of their children may risk losing custody.

Second, domestic violence does not seem to moderate the court's response to visitation petitions at all. There was no statistical difference between parents enjoined by a protection order and parents not so enjoined in rates of securing visitation orders, except when fathers enjoined by protection orders were more successful in securing visitation orders. Any differences found, moreover, were due to withdrawal or dismissal of visitation petitions - actions of the petitioners rather than the court. These findings do not necessarily indicate that the courts are offering no protection to victims when granting batterers visitation rights: conditions on visitation are not indicated in the courts' computerized databases, but a small subsample in Westchester suggests that supervision of visitation is more often ordered when there is an indication of domestic violence.

Subsequent research should examine violence during visitation, and the exposure of

children to violence after their parents have separated. Further investigation is also needed to determine the impact on children of having visitation with a parent they have witnessed abusing the other parent. The topic of batterers as parents has received insufficient attention in research and public policy (with the notable exception of the new book, *Batterers as Parents*, by Bancroft and Silverman, 2002). Generally, more attention has been focused on the adequacy of battered women as mothers, such as whether they are neglectful or abusive.

Penalizing battered women by removing their children under failure to protect statutes seems antithetical to the court's own response of granting visitation to abusers if the victim does separate. Fathers who batter their partners but do not physically abuse their children are rarely charged with child abuse or neglect, yet mothers who are battered in front of their children are more commonly charged with neglect. This practice divides responsibility along gender lines, such that abusive men are not being held responsible for the impact of their behavior on their children, and mothers are. A more coherent policy should focus on means of ensuring safety to children of victims of domestic violence after their parents separate as well as before, even if it entails limiting the parental rights of fathers.

References

Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage Publications.

National Council of Juvenile and Family Court Judges (1990). *Family Violence: Improving Court Practice*. Reno, Nevada.

Table 1. Visitation and Custody Petitions Filed in New York City in 1995 and Dispositions

Disposition	Petition Type			Petitioner			Σ (n=246)
	Visitation Petitioner	Custody Petitioner	Both Petitioner	Mother (n=50)	Father (n=604)	Σ	
Ordered	50%	53%	53%	34%	31%	32%	99%
Dismissed	40%	40%	40%	52%	57%	55%	1%
Withdrawn	10%	7%	7%	14%	11%	12%	
Denied		.2	(.2%)	.1%		(.1%)	
% of Total Petitions Filed	8%	92%	39%	38%	62%	46%	15%

Table 2. Number of Family Offense Petitions Filed between 1990-1997 by Parties in 1995 Visitation/Custody Cases in New York City

Number of 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%
Total filing	756	45%

Table 3. Family Offense Petitions 1-4*: Comparison of Mothers' and Fathers' Filing Rates and Dispositions in New York City 1990-1997

*Details on up to 4 petitions were recorded for each family

Petitioners & Disposition	1st Fam Offense Pet*	2nd Fam Offense Pet**	3rd Fam Offense Pet***	4th Fam Offense Pet****	Row total
% Filed by mothers	84%	67%	67%	52%	76% (1281)
% mothers' petitions granted	35%	30%	29%	49%	33%
% mothers' petitions withdrawn	23%	21%	14%	14%	22%
% Filed by fathers	16%	13%	33%	48%	24% (303)
% fathers' petitions granted	18%	19%	24%	23%	20%
% fathers' petitions w/drawn	36%	35%	17%	13%	30%

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

**Chi Square (3, 196)=8.48, p<.02

***Chi Square (3, 75)=.53, p=.77

****Chi Square (3, 66)=5.05, p=.08

**Table 4. Fathers' Petitions for Visitation in New York City Family Courts:
Outcomes as a Function of Family Offense Actions in 1995**

<i>Family Offense Actions</i>	<u>Visitation Ordered</u>	<u>Visitation Pet. Dismissed</u>	<u>Visitation Denied</u>	<u>Visitation Pet. Withdrawn</u>
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
<i>Col. Total % Visitation Dispositions (n)</i>	53% (320)	40% (241)	.2% (1)	7% (40)

Table 5. Fathers Seeking Custody in Westchester Family Court: 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)

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Table 6. 1995 Dispositions of Fathers' Petitions for Visitation as a Function of Family Offense Cases 1995-1998 in Westchester County

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