

# Dangerous Visitations...



AP/Wide World Photos, Elaine Thompson

A taxicab passes the parking spot in Seattle where Melanie Edwards and her two-year-old daughter, Carli, were murdered in December by Carli's father. The car was parked across from Common Ground, a social service agency through which court-ordered visitations between Carli and her father were arranged.

**I**t's a judge's worst nightmare - a mother and child killed in the process of making a court-ordered visitation exchange. But it can happen, as a Seattle case in December made clear, and even when at least some precautions are taken. In an accompanying article, Professor Julie Kunce Field outlines the steps judges can take to maximize the safety of children and victims of domestic violence.

# Killer 'Lived and Breathed' His Estranged Wife's Terror

BY KIM BARKER

SEATTLE TIMES STAFF REPORTER

He built her a jail before he shot her.

Carlton Edwards told his wife so many times that he would kill her, the threat is now a numb soundtrack for people she knew. He wouldn't let her shop alone or write her teenage daughter in England. She covered black eyes with theatrical makeup.

So when Melanie Edwards took her daughter and left, burrowed down so far that her husband couldn't find her, she started to see possibility. She planned to move into her own apartment, with her daughter, next month.

"It's a waste," said Michele Tokarski, one of Melanie Edwards' closest friends from Illinois. "She was trying to get out of this, doing all the right things. And then this happened."

Carlton Edwards shot and killed his wife and 2-year-old daughter two weeks ago, outside the one place that he knew they would be, Common Ground, a neutral spot where he picked up his daughter for visits.

The murder charges against Carlton Edwards were upgraded last week to first-degree-aggravated murder.

Two days after the shooting, he called a friend and said he shot his wife and daughter because his wife "tripped out" and tried to spray him with pepper gas.

"Obviously what I did was completely wrong," Carlton Edwards told the friend.

Last weekend he shot and killed

himself in the San Francisco Bay Area after a police officer approached him.

Since the killings, people involved with the Edwards family have looked to plug the holes in the system. Common Ground has already decided to change its drop-off procedure to protect custodial parents from accused batterers.

Small fixes have been suggested. If authorities order a batterer's assessment, to evaluate whether a parent seeking visitation is dangerous, it should be done before the parent gets to visit the child, said Gene Oliver, Melanie Edwards' lawyer.

On Nov. 10, King County Superior Court Commissioner Leonid Ponomarchuk said Carlton Edwards could have overnight visits with his daughter. He also ordered a batterer's assessment, which wasn't done.

Some domestic-violence advocates are calling for changes. The group Survivors in Service was planning a demonstration from noon to 3 p.m. today at the King County Courthouse to protest "court decisions that kill women and children."

It's not easy to make these decisions. A court commissioner hears as many as 15 cases on family-court motions and protection orders in one morning, Superior Court Commissioner Kim Prochnau said. She makes decisions based on slim reading, slimmer testimony and gut instinct, and she's been lucky.

"It is an art rather than a science, determining what the risk is," she said.

On paper, Carlton Edwards had no domestic-violence history.

He met Melanie Cunningham in

February 1992 while on vacation in England. At the time, Edwards was still married to his second wife. Four days after divorcing his wife and six months after meeting Cunningham, Carlton Edwards married her. They lived outside Chicago.

Carlton Edwards wanted a son, but Carli was born in August 1996.

"This man wouldn't buy her a stroller for her baby," said Sharyn Romano, who threw the baby shower. "He was just a tyrant. He lived and breathed her fear."

Carlton Edwards, an airline mechanic, moved the family to the Seattle area in June 1997. A year later, they moved to a home in Gig Harbor.

Melanie Edwards decided to leave after a fight in late July. A friend snapped photos of her bruised leg and swollen eye. Melanie Edwards said that her husband had slammed her head in the door and had punched her repeatedly in the back of the head. She planned her escape and left Oct. 19, three days early, because she was afraid.

"I need to be able to stay where he cannot get to us," she wrote when she filed for divorce. "If that means leaving this area I will need to do that. I cannot stress too much how much danger I believe I have put myself in by leaving him. The only thing worse would have been to stay."

She went to a shelter for a few days. Kim Frinell, who had worked with Melanie Edwards, and his wife offered to let her move into a tiny studio apartment beneath their garage in Magnolia.

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# Killer

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Melanie Edwards moved in with her daughter, her clothes and a couple of decorative prints of Harlequin masks. She started a job at the Museum of Flight. Her old boss paid Risk Management Services for a bodyguard to protect her from her husband.

Her lawyer hid her file, concerned that her husband might break into his office to find it. On Nov. 2, Melanie Edwards won a protection order. On Nov. 10, Carlton Edwards was granted overnight visits with his daughter.

Melanie Edwards left the courtroom that day and drove straight for a car lot, where she traded in her 1996 Ford Taurus for a car that her husband wouldn't recognize.

Although scared of him, she started to feel that she would survive, co-workers said.

"She reminded me of someone who had been in prison and suddenly tasted freedom," said Michael Friedline, her boss at the Museum of Flight.

She asked everyone to call her

Melanie Cunningham. She had a date on the Friday after Thanksgiving, and she wore Sandra Frinell's crystal necklace and fox jacket.

She ran up her credit cards, bought new silverware, dishes and quilts, all still in their wrappers in her hide-away apartment, waiting to be opened when she moved. The new furniture from Ikea was supposed to be delivered last Thursday.

Early this month, she sat down with Risk Management President Michael Carlucci and said she no longer needed his help. At the time, Carlucci thought Carlton Edwards still posed a significant risk to her, and he told her so.

Carli got sick the next weekend. Melanie Edwards still brought her to see her father for their fifth visit. When he brought her back three days later, 13 minutes early Dec. 9, Carlton Edwards said Carli was better.

Carli ran inside Common Ground to play. She asked the program supervisor to comb and fix her hair. For the first time, Carlton Edwards was friendly toward Common Ground staff members before he left.

Melanie Edwards showed up at 6:22 p.m., picked up her daughter

and walked back to her car, parked 50 yards away on the street.

Carlton Edwards approached and shot them both in Melanie Edwards' new car, at 6:30 p.m.

Co-workers held a memorial service for Melanie and her daughter a week ago at the Museum of Flight. About 100 people grasped for meaning. They looked at pictures of Melanie and Carli throughout the service - mother smiling in the borrowed fox jacket, daughter in a matching yellow-orange hat and outfit, holding a stuffed bunny.

Melanie Edwards used to say that she didn't have many friends because her husband wouldn't let her see people socially, unless he was there.

At the service, several people walked to the microphone, said they'd miss her, said she'd be surprised at the turnout.

Carlton Edwards was only mentioned once by name during the service, in a prayer. Otherwise, he was called "someone who promised to love them."

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# Visits in Cases Marked by Violence:

## Judicial Actions That Can Help Keep Children and Victims Safe

by Julie Kunce Field

**M**elanie Edwards' story is disturbing. It ought to be disturbing. Ms. Edwards tried to do everything right, but the system failed her and her daughter, and now both are dead. Ms. Edwards' case illustrates one of the most troublesome situations facing courts with jurisdiction over family law matters: cases in which there is domestic abuse.

Unfortunately, domestic abuse by one parent on another is common. Domestic abuse can include emotional and psychological abuse as well as physical assaults. Children are harmed by domestic abuse, even if they are not the direct victims of the physical violence.

How to make sure that children's best interests are met, and that the children and the victim stay safe, are paramount concerns. But, in any given case, a judge must determine whether and how a child should have a continuing relationship with the offending parent. Visitation, or parenting time, between the offending parent and the children becomes problematic, and can cause judicial headaches, and participant heartaches.

This article will discuss some of the methods available to courts to fashion visitation orders that can ensure safety for the children and the victim parent, and identify recent developments in the area of supervised visitation in family law cases.<sup>1</sup> This article will also discuss some things that might have been done differently for Ms. Edwards, which may have avoided the tragic result in her situation.

### I. DOMESTIC ABUSE IS COMMON, AND WOMEN AND CHILDREN ARE THE USUAL VICTIMS.

Statistics on domestic abuse indicate that many family law cases will involve domestic abuse at some level, and that women and children are the most common victims:

- There are five million reported incidents of domestic abuse every year.<sup>2</sup>
- Women are about ten times more likely than men to experience violence committed by an intimate.<sup>3</sup>
- Approximately 3.3 million children witness their parents' interpersonal violence each year.<sup>4</sup>
- More than fifty percent of abusers will be abusive of their partners in a subsequent relationship.<sup>5</sup>
- In thirty-two to fifty-three percent of all families in which women are being beaten, their children are also the victims of abuse by the same perpetrator.<sup>6</sup>
- Up to seventy-five percent of battered victims have left or are trying to leave men who will not let them go.<sup>7</sup>
- In 1992, 1,414 women were known to have been killed by their husband, ex-husband or boyfriend.<sup>8</sup>

### II. DOMESTIC ABUSE IS ABOUT POWER AND CONTROL.

The key factor characterizing domestic abuse is one partner's need to control the other. Abuse and violence generally occur after the man has wooed and charmed the woman.

The author expresses her appreciation to Kansas Attorney General Carla Stovall and to her assistant, Carolyn Ward, for their help in providing information for this article.

#### Footnotes

1. For a similar discussion of these issues directed to legal aid attorneys and indigent clients' concerns, see Julie Kunce Field, *Visiting Danger: Keeping Battered Women and Their Children Safe*, CLEARINGHOUSE REV., Special Issue 1996, at 295.
2. BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY (Aug. 1995).
3. BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY (Jan. 1994).
4. B. E. Carlson, *Children's Observations of Interpersonal Violence in Battered Women and Their Families: Intervention Strategies and Treatment Programs* (1984).
5. Daniel Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 SOC. WORK 51, 53 (Jan. 1994).

6. J. Edleson, *Mothers and Children: Understanding The Links Between Woman Battering and Child Abuse*, paper presented at the Strategic Planning Workshop on Violence Against Women, National Institute of Justice, Washington, D.C., March 31, 1995. The paper can be found online at <http://www.mincava.umn.edu/papers/nij.htm>.
7. This is often the most dangerous time for a woman and explains why most women stay in a battering relationship. She stays because she is in fear for her life if she leaves. See Martha R. Mahoney, *Legal Images of Battered Women*, 90 MICH. L. REV. 1 (1991).
8. BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY (Aug. 1995) (based on the Uniform Crime Reports collected by the FBI, which reported the victim-offender relationship for 61 percent of the reported homicide incidents).



**It has been demonstrated that when a woman tries to leave her abuser, the violence escalates....**

Many survivors of domestic abuse describe their partner in the initial stages as loving, attentive, protective, and charming. It is only later, after the woman is more invested in the relationship, that abuse starts. Abuse can start subtly, with degrading and isolating behavior, insults, and "put downs." The man begins to convince the woman that she is causing unhappiness to him and in their relationship and

that she needs to change. He will control her by isolating her from her friends and family, and will blame her for his problems. He will often accuse her of infidelity and blame her for his jealousy, whether there is a realistic basis for his claims of jealousy or not. He will control her finances and her comings and goings. He will often use children, pets, and other people and things important to her as a means of controlling her. He will lash out with violence, then claim remorse and a willingness to change. Until the next time, when it happens again. These characteristics of controlling and manipulative behavior are seen again in the offending parent as custody and visitation cases play out in court.

Women are often asked why they don't leave a violent relationship. The answers are complex. The level of control by the batterer often includes financial control, making it difficult for the victim to have any means of escape. One of the main areas of control that a batterer maintains over his partner is the threat to take the children from her.<sup>9</sup> It also has been demonstrated that when a woman tries to leave her abuser, the violence escalates, and is more likely to become lethal.<sup>10</sup> Given that, staying in the abusive relationship is often a means of survival.

The batterer has often convinced the victim that he can do what he wants to her without risk of punishment, a claim the victim will believe if, as is often the case, she has called the police and the batterer had insignificant (if any) consequences because of his abuse. In public, the abuser often is seen as someone who is caring and kind, even while committing extreme acts of violence or torture in private. Batterers almost universally deny or minimize the abuse and blame the woman rather than themselves. This reversal, where the batterer claims to be the victim, is often seen in courtrooms. The victim, who may have been subjected to years of abuse and mental conditioning by the batterer, may appear in court as emotional, hysterical, and frustrated with the fear that her batterer may be able to convince the court that she (not he) is the prob-

lem. The batterer, on the other hand, may seem to be in complete control of the situation, while he denies or minimizes the abuse, or claims to be the victim himself.<sup>11</sup>

Courts must understand domestic violence, and the complexity of the situation, when fashioning a visitation order. A lack of understanding of domestic violence and the use of power by the batterer in that relationship could lead to harmful results for the victim and her children. Visitation, in the context of a domestic violence case, becomes one more means of the batterer controlling the victim, and maintaining power over her. It gives the batterer opportunities to interact with her, directly or through the use of the children, and can endanger her at the critical time of separation.<sup>12</sup>

### **III. DOMESTIC ABUSE HAS PROFOUND, HARMFUL EFFECTS ON CHILDREN.**

Children in violent homes are victims of abuse whether or not they are the direct targets of the violence:

Another way to look at the situation is this:

Where there is physical and sexual violence in the home, the children are witnesses to a series of crimes in their own homes, and they are at risk themselves for being direct victims of a crime. The constant psychological and emotional abuse directed by a parent at the family also conveys a powerful and lasting lesson about the roles of men and women in relationships.<sup>13</sup>

Nearly all children in violent homes hear or see the abuse:

Hiding in their bedrooms out of fear, the children may hear repeated threats of injury, verbal assaults on their mother's character, objects hurled across the room, suicide attempts, beatings, and threats to kill. Such exposure will arouse a mixture of intense feelings in the children. These feelings include fear that the mother will be killed, guilt that they could not stop the violence, divided loyalties, and anger at the mother for not leaving.<sup>14</sup>

Even a single episode can produce post-traumatic stress disorder. The immediate effects are withdrawn, anxious, or aggressive behaviors by the child exposed to parent-on-parent violence. Teenagers are more likely to turn to alcohol or drug abuse. The long-term effects include the risk of being a victim or an abuser in adulthood.<sup>15</sup> Children from homes where there is parent-on-parent violence are more likely to be physically abused themselves by the battering parent. Surveys show that between forty-seven and fifty-four percent of men who had battered a partner had also abused a child more than twice a year,

9. See Joan Zorza, *Protecting the Children in Custody Disputes When One Parent Abuses the Other*, 29 CLEARINGHOUSE REV. 1113-15 (1996).

10. See Mahoney, *supra* note 7, at 5-6, 64-65, 82; Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582, 593 n.44 (1996).

11. See Marilyn McDonald, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, COURT REVIEW, Spring 1998, at 12.

12. See sources cited in note 10 *supra*.

13. N. Masliansky, *Child Custody and Visitation Determinations When Domestic Violence Has Occurred*, CLEARINGHOUSE REV., Special Issue 1996, at 273.

14. Saunders, *supra* note 5, at 52 (citations omitted).

15. *Id.* at 52-53.

whereas only seven percent of men who had not battered their partner had severely abused a child more than twice a year.<sup>16</sup> More than half of abusers will be abusive of their partners in a subsequent relationship,<sup>17</sup> a fact which means that children may be exposed to domestic violence on visits at the abuser's home with his new partner. Children are often used as tools by the abuser to continue to have power and control over the victim. Custody and visitation battles that are brought to court often become the forum for continuing abuse and control.<sup>18</sup>

Given the profound effects of domestic violence on children, courts that are presented with domestic violence cases involving children should be particularly concerned about keeping the children safe, which often means keeping the victimized spouse safe, and not blaming the victim for the abuse, or allowing the abuser to continue his abuse through court processes.

#### IV. WHAT JUDGES CAN DO TO AID IN SAFETY DURING VISITATION.

When setting a visitation schedule in any case, the court has the goal of trying to balance the children's relationships with both the custodial parent and the noncustodial parent. Where there is violence, issues such as where and when pickup and drop-off of the children occur, and who will be present during those transfer times, are critical. Issues that may not be problematic in a nonviolent relationship, such as when the children may call the noncustodial parent, or adjusting visitation times because of schedule changes, can be harrowing in a relationship marked by violence.<sup>19</sup> The court's understandable desire may be to insist that the parties work out these apparently minor matters themselves, and the court may not be able to understand why the parties don't seem to be able to do that. But asking the parties to work out their own visitation details would be comparable to asking a former hostage to return to his captors alone, without any weapons or back-up support, to negotiate the surrender of weapons, and the release of other hostages or goods. The hostage-takers have all the guns, and the power, and the ability to control the outcome to their design. Similarly, the battered woman has no relative power without legislative and court assistance to design a visitation plan that can help her and the children stay safe.

To help ensure safety, the court that is faced with a case like Melanie Edwards' can do certain things. First and foremost, the court must have a clear understanding of domestic violence. Had the court had a better understanding of domestic violence

in Melanie Edwards' case, perhaps the outcome would have been different. From the news reports, it indicates that the court allowed overnight visits, even though an ordered batterer's assessment had not been done. Had the assessment been done, perhaps there would not have been any visitation allowed. The cost of waiting a few days, or even a few weeks, for a determination of whether a parent is dangerous to the child or to the victim is small compared to the cost of underestimating the danger.

The news report also said that "on paper, Carlton Edwards had no domestic violence history." By that, it likely means that Ms. Edwards did not rely on calling the police as a safety measure. Many battered women don't call the police for help, knowing that they will be hurt worse if they do call, and that it is likely that the police response will not help them.<sup>20</sup> But there was easily accessible evidence that Melanie Edwards was battered – photographs, and many friends and acquaintances who knew – the abuse was apparently common knowledge. Ms. Edwards' former employer was so concerned about her safety that he had hired a security guard to protect her. Even without police records, there was ample evidence that Carlton Edwards was dangerous to Ms. Edwards, and, therefore, harmful to their daughter as well.<sup>21</sup>

The safety of the victim and her children should always be the primary consideration. The victim's own assessment of the danger must be believed, and considered. In her court filings, Melanie Edwards tried to stress the danger she was in. Had her concerns been taken more seriously, she may not have been put into the situation she was.

Courts that have pending cases before them, in which there is an allegation of domestic violence, can and should do the following in order to make safe decisions:

1. Understand domestic violence.<sup>22</sup> Recognize that women and children are most often victims, and that men rarely are victims, though they may try to portray themselves as victims.<sup>23</sup>
2. Have the primary concern be the safety of the victim and her children. All orders should be drafted with that concern foremost in mind. "Fathers' rights" or "parents' rights" should always be secondary to safety.

**The safety of the victim and her children should always be the primary consideration.**

16. Surveys are cited in Saunders, *supra* note 5, at 51-52.

17. Saunders, *supra* note 5, at 53.

18. Joan Zorza, *supra* note 9, at 1117 n. 2. "Five percent of abusive fathers threaten during visitation to kill the mother, 34 percent threaten to kidnap their children (and 11 percent actually do abduct them), and 25 percent threaten to hurt their children." *Id.*

19. See Julie K. Field, *Visiting Danger: Keeping Battered Women and Their Children Safe*, CLEARINGHOUSE REV., Special Issue 1996, at 295.

20. Kathleen Waits, *Battered Women and Their Children: Lessons from One Woman's Story*, 35 HOUSTON L. REV. 30, 36 n.17 (1998) ("Battered women's decisions not to call the police may be quite reasonable. Given how poorly many police respond to

domestic violence, ... a woman may legitimately fear that her situation will be worsened, not improved, by calling the police.")

21. See text *supra* at notes 13-18.

22. An excellent, easy to read introduction to domestic violence is found in Kathleen Waits' latest article. See Waits, *supra* note 20.

23. Even after the murders, Carlton Edwards tried to portray himself as a victim of wife who "tripped out" and tried to attack him with pepper gas. See generally Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality of Battered Women*, 29 FAM. L. Q. 273, 304 (1995) (explaining that abusers "frequently deny, minimize, lie ... and manipulate others, including the courts, to further control and punish their victims").

**If assessment tools are available, use them before ordering any exchange or visitation....**

3. Believe the victim.<sup>24</sup> The cost of erring on the side of not believing her could be enormous.
4. If assessment tools are available, use them before ordering any exchange or visitation of the children.
5. When fashioning visitation schedules, consider some of the suggestions included in this article, and know how any

local, supervised visitation center operates to ensure client safety.

Safety provisions can include consideration of some or all of the following: (1) supervised visitation, (2) supervised or otherwise safe pick-up and drop-off, and (3) other restrictions or requirements, such as limiting the use of alcohol or controlled substances, or successful completion by the perpetrator of a batterer's intervention or counseling program as a condition of visitation.<sup>25</sup> In thinking through the visitation arrangement, judges should consider what will happen when schedules need to be changed, and how the telephone will be used, either for visitation or as a means of contact. The primary consideration in setting visitation should always be safety of the victim and her children.

#### **A. SUPERVISED VISITATION**

Supervised visitation arrangements are common in child abuse and neglect proceedings, but are not as routine in custody, divorce and paternity actions. Because there usually is not the same kind of agency involvement in a family law case as in an abuse or neglect matter, there is no built-in mechanism for supervision. The hard questions to answer, then, are: (1) who will do the supervision; (2) where will the supervision take place; and (3) how will the costs of supervision be paid?

Federal funding is available for the development of supervised visitation centers.<sup>26</sup> Because of this increase in funding availability, and the recognized need for the services, many

communities now have supervised visitation centers available as an option for domestic relations cases. Where there is a supervised visitation center available, the questions of who will supervise the visits, and where they will take place, can be answered within the program, after the program considers the court's orders, the particular needs of the children and the parents, and the safety concerns of the children, parties, and center staff. Supervised visitation centers generally can accommodate a range of requirements, from constant, one-on-one supervision on- or off-site, to supervision only during the exchange of the child. The supervisors may be licensed mental health professionals or paraprofessionals (preferably with specialized training).<sup>27</sup> Judges should contact their local domestic violence shelter to find out whether a supervised visitation center is operating in their area.

Before making any referral, the court should understand what services the center can and cannot provide. It is critical that a judge who is considering sending a case to a center know what that center's capabilities are, and whether the center can provide services for a particular case. By keeping open communication between the court and the center, the parties and the children will be better served. Courts should also evaluate whether a center meets minimum requirements that will help protect children and parties.

The Attorney General of the State of Kansas has developed an excellent guide of what supervised visitation centers should offer.<sup>28</sup> Kansas is one of the first states to develop statewide guidelines and to provide grant funding<sup>29</sup> to establish and expand centers. The Kansas guidelines set out the purpose and goals of visitation centers, define terms, describe a preferred administrative structure and record-keeping requirements, and create guides for referrals, service provision, confidentiality, staffing and training, and safety recommendations. A review of the Kansas guidelines can help courts determine whether the service provider that serves their community has met the basic standards of service and safety necessary in the implementation of supervised visitation and exchange of children.

The State Justice Institute recently funded a study that examined 1,049 cases referred to five supervised visitation pro-

24. See Waits, *supra* note 20, at n.55 and 99-100.

25. The American Bar Association's Center on Children and the Law recommended these visitation conditions in its book, *The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association* (1994), as did the National Council of Juvenile and Family Court Judges in its Model State Code on Domestic and Family Violence (1994) [hereafter "Model Code"]. In addition, the Model Code also suggests that the visitation conditions include a requirement that the abuser pay a fee to defray the costs of supervised visitation, that overnight visits be prohibited, that the abuser post a bond guaranteeing the safe return of the children, and that any other condition necessary for the safety of the children, the parent or other family or household members be set.

26. This legislation was part of the Local Crime Prevention Block Grant Program, Pub. L. No. 103-322, 108 Stat. 1838 (1994), and

is codified at 42 U.S.C. § 13751 (1998). Other funds are available through a provision of what was officially labeled the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, more commonly called the Welfare Reform Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, for services related to needy families, which in pertinent part are codified at 42 U.S.C. § 669b (1998).

27. R. Straus, *Supervised Visitation and Family Violence*, 29 FAM. L.Q. 229 (1995).

28. OFFICE OF KAN. ATTY. GEN. CARLA STOVALL, CHILD EXCHANGE AND VISITATION CENTER GUIDELINES (1998).

29. State funds were collected through a \$10 increase in the marriage license fee. Kan. Stat. Ann. § 23-108a (1997). The enabling legislation passed by the Kansas Legislature appears at Kan. Stat. Ann. § 74-7334 (1997) and Kan. Stat. Ann. § 75-720 (1997). Federal matching funds were made available through 42 U.S.C. § 13751 (1998). See also 42 U.S.C. § 669b (1998).

grams around the country.<sup>30</sup> The SJI survey looked at empirical information on the cases, and surveyed programs, families, courts and professionals affiliated with the cases. The SJI report has some findings of interest to judges. For instance, the researchers found that the average case receives supervised visitation services for between nine and ten months, during which time there are about four visits per month, each lasting about two hours. Of particular interest to courts using supervised visitation services are the limitations on what supervisors can offer the court in terms of making assessments of the families and the need for additional services for most of the families who use the facilities.

Standards of the Supervised Visitation Network<sup>31</sup> and the Kansas standards<sup>32</sup> both specify that, except for therapeutic supervised visitations, which are conducted by mental health professionals, supervisors should not be performing evaluations or making recommendations to the court about what should happen with the parties or the children. The supervisors can, and should, give factual information to the court about what occurs during visitation or exchanges, so that the court can make a decision about what is the best next step for the family members. Once again, communication between the court and the service provider is critical if the court is to get the type of factual reporting that will be most helpful to it. For example, one judge complained about his local program's reports:

Case managers summarize the reports visitation specialists prepare. A lot of the detail is lost. They just say, "Visitation is going well." It is extremely generic when they distill it. They don't understand that we are looking for detail to support their recommendations. They seem shocked that we ask for evidence. There should be a middle ground between the weekly, detailed reports and the generic summaries that case managers prepare.<sup>33</sup>

A discussion between the judge and the program staff about what kind of information the judge needs in reports could prevent this kind of problem.

The SJI report emphasizes that "...supervised visitation programs...work best when they compliment [sic] other therapeutic interventions."<sup>34</sup> The report recommends:

[T]he court must play an aggressive oversight role. It must order families into the supervised visitation program, refer the families elsewhere for the evaluations the court needs to make decisions about custody and visitation, and schedule timely review hearings to ensure that case progress is being monitored and that the families are receiving needed services.... In many respects the family court should emulate the juvenile court in supervised visitation cases and assume a similar oversight role.<sup>35</sup>

**[T]he court must play an aggressive oversight role.**

Among the good news in the SJI report is that the great majority of visiting parents (71%) said they could relax and enjoy the visit, and that the great majority of those surveyed (73%) indicated that the same was true of the children. But with the remaining families who had difficulty relaxing during visits, the researchers conclude that these families are in greater need of therapeutic remedies to address their underlying psychopathologies, personality disorders, and substance abuse problems.<sup>36</sup> Essentially, the SJI report concludes that "supervised visitation is an extremely valuable service, but [it] is not a substitute for therapeutic interventions and judicial oversight."<sup>37</sup>

In making orders referring cases to supervised visitation centers, the order must provide sufficient information so that the center can do its job, the parents can know what to expect, and the court can be informed of problems that may arise. Most essentially, the order must contain the referral, the services to be provided (e.g., supervised visitation or supervised exchange), identify the duration and frequency of contact, who may have contact with the children, who will pay for the services, and the type and frequency of reporting back to the court the progress of the visitation. In order for the center to do its job effectively, it needs to know what other orders may be in effect that might impact on the supervision. For example, in some states, the court is required by statute to maintain the effectiveness of the protection order.<sup>38</sup> In other states, protec-

30. J. PEARSON & N. THOENNES, SUPERVISED VISITATION: A PORTRAIT OF PROGRAMS AND CLIENTS, (1997). The report is available from the Center for Policy Research (303-837-1555).

31. The Supervised Visitation Network defines itself in a mission statement as "a community of individuals who are committed to the delivery of supervised visitation services to children and families." The Network is finalizing guidelines for its members to follow in developing supervised visitation programs. Current drafts of the standards and guidelines developed by the Supervised Visitation Network are available from their office, 1213 S.E. Second Avenue, Grand Rapids, Minnesota 55744 (218-327-6737).

32. See *supra* note 28.

33. Pearson & Thoennes, *supra* note 30, at 64.

34. *Id.* at 144.

35. *Id.* at 144.

36. *Id.* at 143.

37. *Id.* at 144.

38. See, e.g., Cal. Fam. Code § 3031 (1998), which provides that "the court is encouraged to make a reasonable effort to ascertain whether or not any ... protective order ... is in effect that concerns the parties or the minor. The court is encouraged not to make a custody or visitation order that is inconsistent with the ... protective order ... unless the court makes both of the following findings[:] (1) the custody or visitation order cannot be made consistent with the ... protective order...[and] (2) the custody or visitation order is in the best interest of the minor." See also, e.g., N.J. Stat. Ann. § 2C:25-29 (1998), which requires that "parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant."



**Family members themselves can often be bullied and intimidated by the abuser.**

tion orders will provide that visitation is an exception to the order. The visitation center staff needs to know whether there is a protective order in effect, and what the parameters of the order are in regard to the visits. Therefore, a court order referring the case to a center may require the parties or the clerk's office to provide copies

of relevant orders, and to identify specifically what those orders are. A model order referring a case to a supervised visitation center is found at the conclusion of this article.

How the costs of supervised visitation will be covered can be difficult. Few states have taken the steps that Kansas has, and provided state funding to supplement the federal funds available. Without subsidies, costs can be prohibitive at some centers for all but wealthy and upper-middle class parties. Many centers, though, provide their services at no, low or reduced cost, based on a sliding scale. The Model Code suggests that the abuser be required to pay the fees associated with supervised visitation.<sup>39</sup> That suggestion makes sense, because the abuser's conduct is the reason that supervised visitation or exchange is required. Judges should become familiar with the rates of services at the centers which serve their communities, in order to be able to evaluate the availability of such services for any given case.

The court should also consider what sanctions would be appropriate for violation of a court's order regarding visitation. A battering parent who does not comply with the court's orders setting supervised visitation should face consequences for his conduct. He may believe that if he does not comply with the requirements imposed that the supervision will be canceled. One thing that the court should not do to deal with non-compliance is to reward the batterer's non-compliance by taking the case out of the program and putting the visitation arrangements back into the hands of the parents. The court should fashion real consequences, such as limiting or eliminating visitation for a period of time. And, upon review in all cases, the Court should be prepared to modify the supervised visitation based on the reports received from the center, and to meet the changing needs of the parties and the children.

## **B. FAMILY MEMBER SUPERVISION**

Where supervised visitation centers are not available, or for indigent clients without funds to pay for a supervisor, many

custodial parents may opt for a family member to do the supervision. Although family members may seem like the only choice for a supervisor, they are often a very poor choice. A common tactic of batterers is to isolate their victims so that they have no ready source of emotional support.<sup>40</sup> As a result, the victim may not have contact with any of her own family members who may be willing to supervise visitation. Family members from either party's family may, consciously or unconsciously, assist the batterer in his attempt to control and intimidate his former partner. Family members may not recognize the abuse for what it is, or may apply victim-blaming myths about domestic violence that are prevalent in our culture.<sup>41</sup>

Family members themselves can often be bullied and intimidated by the abuser. Unlike professionals or paraprofessionals at a visitation center, family members rarely have had any training in safety planning, or in methods for responding to physical or emotional manipulation. It might be difficult for family members to put themselves in the position of reporting violations of court orders during visitation, and the supervisor's partiality might be in question, were the family member to present his or her report to the court.

The Model Code recognizes that family members may, at times, be the only supervision option. The Code therefore suggests that "[i]f a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation."<sup>42</sup> The rationale of the Code's drafters was that "[w]hen those supervising visitation are furnished clear guidelines related to their responsibility and authority during supervision, they are better able to protect the child should the perpetrator engage in violent or intimidating conduct toward the child or adult victim in the course of visitation."<sup>43</sup> Even in jurisdictions where the Model Code provision regarding supervised visitation is not in effect, the court can still order such conditions on the supervised visitation, in the best interests of the children.

## **C. TRANSFER ISSUES**

Visits in domestic violence cases provide the perpetrator with the certain knowledge of when his victim will be at a particular place. If the court is not careful, it could also provide him with her address (if he does not already know it). Given that danger, judges must be cautious about setting out transfer locations. At minimum, if the abuser does not know the victim's address, nothing in the transfer should reveal that information. The Model Code and the statutes of many states make it clear that the address of the victim may be kept confidential.<sup>44</sup> Even if a given state's legislation does not provide for

39. Model Code, *supra* note 25, § 405, comment, at 35.

40. See DULUTH DOMESTIC ABUSE INTERVENTION PROJECT'S POWER AND CONTROL WHEEL. This graph describing tactics used by abusers is available from most domestic violence programs and shelters, and in many common references on domestic violence. It can be found online at:

<http://www.infoexchange.net.au/wise/DVIM/DAIP.htm>. See also C. Kirkwood, *LEAVING ABUSIVE PARTNERS* 53-54 (1993).

41. See NO SAFE HAVEN: MALE VIOLENCE AGAINST WOMEN AT HOME, AT

WORK AND IN THE COMMUNITY (Mary P. Koss, et al., eds. 1994), at 8-9.

42. Model Code, *supra* note 25, Sec. 405(5).

43. *Id.* at § 405(5) Commentary.

44. See, e.g., Model Code, *supra* note 25, § 405; California law, CAL. FAM. CODE § 3100 (1998); Florida law, FLA. STAT. ANN. § 741.30 (1997); Michigan law, MICH. COMP. LAWS ANN. § 600.2950 (1998); New York law, MCKINNEY'S FAM. CT. ACT § 154-b (1997); Pennsylvania law, 23 PA. CONS. STAT. ANN. § 6112 (1998).

confidentiality of addresses, courts need to be aware that non-custodial parent knowledge of the custodial parent's address is not a requirement for visitation.

Many supervised visitation centers will provide for supervised exchanges of children as one of their services. This option is probably the safest, because it can provide documentation of compliance with court orders, trained personnel, and a child-friendly environment. Other locations that have been used for transfer of children in domestic violence cases include police stations and other public locations, such as restaurants or parks. Police stations, while probably viewed as the safest venue, are not typically child-friendly places in which to wait. Restaurants or other public locations may not provide any real safety, since passers-by may not want to get involved in what appears to be a "domestic dispute," even where there may be threats of violence. Having the transfer take place in the home of a third party or relative raises some of the same concerns that supervision by a relative does: lack of training, inability to stop the abuser if he becomes violent or threatening, and reluctance to report violations.

The method and timing of the transfer can influence the location, and help determine safety planning. For example, when visitation centers plan for safe exchange, they generally will time the transfer so that the custodial parent brings the child to the center well before the non-custodial parent is due to arrive, so that both parties are not present with the child at the time of the exchange. That kind of safety planning for the exchange is not possible where the exchange is taking place at a public location or police station. And at the home of a third party or relative, the third party may not be able to enforce the requirement that the parties not be present at the same time. If the non-custodial parent, for example, refuses to leave after dropping off the children so that he can be there when the custodial parent arrives, there may not be much that the relative can do to make him leave, or to warn the custodial parent before she arrives that the other party is still there. Given all of these considerations, courts should be thoughtful about when, where and how the transfer of children should take place in domestic violence cases.

#### **D. OTHER LIMITS THAT A COURT MAY CONSIDER**

The Model Code suggests a number of obligations that a court may choose to require of the violent parent before visitation may be had, or during visits. Those restrictions may be combined with a supervised visitation requirement, or may be ordered without supervised visitation. When ordering such restrictions, a court should consider how compliance will be monitored, and fashion provisions that will allow for reporting of violations by agencies or persons other than just the victim herself.

Restrictions can include limitations on drug and alcohol use

generally and, in connection with transportation of the children, a requirement that a batterer attend and complete a batterer's treatment program, limits on the use of the telephone to contact the children, and guidelines for what will be allowed when schedules must be modified.

#### **1. DRUG AND ALCOHOL USE RESTRICTIONS**

Certainly it is not in the best interests of children to be transported by a parent who has been using alcohol or other intoxicating substances. Nor is it in their best interests to be under the care of an intoxicated adult. But the restrictions on the use of drugs or alcohol during visits go beyond those two concerns. The National Council of Juvenile and Family Court Judges gathered information that demonstrates the connection between substance abuse and family violence. Drinking or substance abuse during visitation can disinhibit control of behavior, or can be the excuse or trigger for violence.<sup>45</sup> Estimates of alcohol or drug use by violent men range from fifty-two to eighty-five percent — rates three times those of nonviolent men.<sup>46</sup>

Restrictions on the use of drugs and alcohol during visits seems like a minimal and appropriate order that can do much to protect children in domestic violence cases. The imposition of a requirement that an abuser complete a substance abuse treatment program, or attend such programs or meetings on an on-going basis, are other provisions a court may order.

Most judges are very familiar with methods for measuring compliance with orders not to use drugs or alcohol, including, for example, monitoring AA or other relevant program attendance, conducting random drug testing through court services or probation offices, or through out-patient treatment programs. Many supervised visitation centers may have the capacity to monitor whether a parent is intoxicated at the time of visitation or exchange, and can report that information to the court. In addition to simply ordering a prohibition against drug or alcohol use during visits, the court should plan for what will happen if its order is violated, and the restricted parent tries to pick up the children while intoxicated, or becomes intoxicated while the children are visiting. Because it could be dangerous to put the onus on the victim to decide, at the time of exchange, that the visiting parent is intoxicated and should not have visitation that day, the court should consider who and how that decision will be made at the time of the visitation. For example, if the visitation exchange is made at a supervised visitation center, the trained center staff can and should make

**[C]ourts should be thoughtful about when, where and how the transfer of children should take place....**

45. R.W. Fagan, et al., *Reasons for Alcohol Use in Maritally Violent Men*, 14 AM. J. OF DRUG & ALCOHOL ABUSE 371-92 (1988).

46. Model Code, *supra* note 25, Appendix IV, Prevention and Treatment (citing G. K. Kantor & M. Straus, "The Drunken Bum"

*Theory of Wife Beating*, 34 SOC. PROBS. 213-30 (1987); Fagan, *supra* note 45; JJ Fitch & A. Patantonio, *Men Who Batter: Some Pertinent Characteristics*, 171 J. NERVOUS & MENTAL DISEASE 190-92 (1983)).

**A poor batterer's program can be more hurtful than helpful.**

that determination for the safety of the children. A relative who is supervising the exchange would need to be trained and should be specifically authorized by the court's order to say that visitation will not occur if the visiting parent arrives intoxicated.<sup>47</sup>

## **2. BATTERER'S TREATMENT OR COUNSELING PROGRAMS**

Although attendance at a batterer's treatment program<sup>48</sup> is not a cure-all, it can "offer offenders a chance at rehabilitation, but cannot be expected to work with many who attend. Courts need to recognize that batterer treatment needs to be used as one option in an array of sanctions used to deter domestic violence."<sup>49</sup> It can be difficult to evaluate the effectiveness of treatment programs but, according to the National Council of Juvenile and Family Court Judges, good programs are long-term and have goals that include: increasing the offender's responsibility for his battering behavior; developing behavioral alternatives to battering; increasing constructive expression of all emotions; developing listening skills and anger control; decreasing isolation and developing personal support systems; decreasing dependency on and control of the relationship; and increasing the batterers' understanding of the family and social facilitators of battering.<sup>50</sup> In addition, in order for the treatment to have the greatest chance of being effective, the court should look at the length and intensity of the treatment program, evaluate the program's quality, monitor victim's safety, and hand down sanctions for non-compliance.<sup>51</sup> Any recidivism of the violence since the treatment was ordered should be a basis for the court giving serious consideration to imposing additional sanctions, or requiring more restrictive, or supervised visitation. Attendance at a batterer's treatment program may be ordered not just in regard to a visitation or custody case, but also in connection with a criminal action against the batterer. Judges should be sure that visitation orders are consistent with any criminal sentencing provisions, such as completion of treatment programs.

A poor batterer's treatment program can be more hurtful than helpful. Judges who are concerned that the treatment program in their community does not meet an acceptable standard of effectiveness should work with any local coordinated community response organizations to identify judicial concerns, and should attempt to implement an effective program

that meets the goals identified by the National Council of Juvenile and Family Court Judges.

## **3. TELEPHONE VISITATION**

The telephone can be a means to maintaining a connection between children and their non-custodial parents. But, as with the other provisions discussed in this article, what may work in a non-violent relationship can be dangerous in a relationship where there has been violence. The telephone itself is often used as a means of harassment by the violent party; any court orders that permit or even require telephone contact between the batterer and his children can be a court-sanctioned invitation to terror.

In allowing for telephone visits, the court must consider the arrangements that will ensure safety. Of course, the court must evaluate whether telephone contact is in the best interests of the children at all, and whether they are of an age where that kind of contact is meaningful. The court should avoid giving the batterer access to the victim's phone number for purposes of visits, or emergencies. In the case of a true emergency, the police or medical professionals can contact the victim directly, rather than the abuser.

With current telephone technology, there can be danger even if the victim or the child places the call from home. With the advent of caller-ID, her telephone number may be displayed for the abuser. Bell South Telephone Company reported to the Florida Governor's Task Force on Domestic Violence that it was unrealistic to believe that an abuse victim who uses a telephone is safe, even if she uses current technology to block calls or uses a pay phone, cellular phone or calling card. With the advances in caller-ID and enhanced call return, even blocked numbers may appear on the phone bill of an abuser.<sup>52</sup>

Given the potential for harassment, and the high cost associated with the victim having to repeatedly change phone numbers or acquire unlisted phone numbers once the batterer has discovered her number, judges should consider carefully any arrangements for telephone visitation before ordering this type of contact.

## **4. MODIFICATIONS TO VISITATION SCHEDULES**

Changes in visitation schedules may seem to be one of those trivial issues that the parties should be able to work out themselves, without court intervention. In non-violence cases, that should be true. In cases where there has been violence, visitation changes can become one more means of control by the batterer. The batterer may not appear on time to pick up or

47. As discussed in text at notes 40-43, *supra*, a supervised visitation center is preferable to a relative as a supervisor, but if a relative is going to be a supervisor, he or she must be trained to handle the offender and must be empowered to respond in appropriate ways to inappropriate conduct during visitations and exchanges.

48. Batterer's treatment, as described here, is not substance abuse treatment, though that may be ordered as well. See A. Ganley, COURT-MANDATED COUNSELING FOR MEN WHO BATTER: A THREE DAY WORKSHOP FOR MENTAL HEALTH PROFESSIONALS (Center for Women

Policy Studies, Washington, DC, 1981)(treatment of substance abusing batterers is a necessary part of rehabilitation, but that alone will not stop the battering).

49. *Id.*

50. *Id.*, cited in Model Code, *supra* note 25, Appendix IV.

51. *Id.*

52. FLORIDA GOVERNOR'S TASK FORCE ON DOMESTIC VIOLENCE, FIRST REPORT 41 (1993).

return the children, he may change visitation days or times at the last minute, or he may repeatedly petition for increased or altered, visitation times.

The use of a supervised visitation center for exchange of the children, or for supervised visits, can limit the controversy over changing scheduling. The center staff can report to the court the missed or late visits, and their knowledge of the situation can assist the court in evaluating new petitions for visitation. The center itself may impose consequences on the non-complying parent, for instance, charging a fee for every minute the parent is late.

Even without the use of a supervised visitation center, judges can also limit the controversy by fashioning a very specific visitation schedule that builds in consequences for non-compliance. There should be no room for ambiguity or negotiation.<sup>53</sup> For example, the order should state the precise days, times and parameters of visits, including any conditions on the non-custodial parent. The Model Code drafters suggest that the posting of a bond for the safe return of the child could be one condition. If the non-custodial parent is late or does not appear, the order should specify the range and type of consequence to be expected. Monetary penalties are appropriate, and could be spelled out. An order could specify that it is the court's intention that a parent violating the time of return, for example, would be penalized \$100 for a first violation, \$200 for a second violation, and so on. The violation penalties would be for contempt of the court's orders, and would be in addition to any fines imposed by the visitation center. Although violation of the order would still have to be found by the court, including the penalties would be consistent with the Model Code and ABA Report's suggestion that the orders be specific and without room for negotiation.

Specific orders that understand the victim's need for safety can also limit the victim feeling as though she must limit or withhold visitation as a means of protection. Orders should not put victims in the untenable position of having to choose between safety for herself or her children, or with violating the court's order. By understanding domestic violence from the victim's perspective, the court can realize that a victim's refusal to allow visitation under certain conditions, or fleeing to prevent visitation under certain conditions, is an effort to stay safe and alive, rather than a tactic to alienate the abusive parent from the children. Where a custodial parent has refused visitation, the court should examine carefully the reasons behind that refusal, and if fear of domestic violence is raised as the reason for the refusal, the court should review its orders to determine how the victim and the children can be assured of safety.

## V. CONCLUSION

No doubt one of the most difficult decisions faced by courts that hear family law cases is determining how to balance safety

and access in domestic violence cases. Visitation problems, though annoying in any case, can prove deadly in domestic violence cases if not handled appropriately. Specific orders that spell out consequences, the use of supervised visitation centers, and safety planning can help limit the harm domestic violence victims and their children face during visits or exchanges. Along with these technical tools, however, a better understanding of domestic violence, and its complexities, can assist judges in devising solutions in particular cases. By understanding more deeply the perspective of the victim, and the children who experienced violence in their home, judges will be able to limit any further harm to these sufferers, and give them a setting that can help them to heal.



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53. MODEL CODE, *supra* note 25, §405; THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOC., *supra* note 25.



ANY COURT, U.S.A.

Name of party, )
Plaintiff, )
vs. )
Name of other party, )
Defendant. )

Case No. \_\_\_\_\_

ORDER FOR SUPERVISED VISITATION OR EXCHANGE

The Court hereby orders:

- 1. The parties shall participate in the [ ] visitation [ ] exchange program offered at [name of center] with the following child(ren) [list names and dates of birth of child(ren)]:
2. The type of service between the visiting parent and the child(ren) will be [check only one]:
3. The parties are ordered to contact [name of center] at [center's phone number] within 10 days of service of this order.
4. The parties are directed to comply with the rules of [name of center], and to attend orientation as required by center staff.
5. The cost of supervision or exchange will be divided as follows [check only one]:
6. Only the following people may provide transportation of the visiting child(ren), along with, or in place of, either the visiting non-custodial parent or the custodial parent [list name and relationship]:
7. This order shall continue until [check one]:
8. Reports shall be made to the Court forthwith whenever services have had to be terminated, a party fails to comply with the Court's orders, when there has been a situation in which he has endangered a child or a party, or when requested by the Court.
9. Failure to comply with any of the provisions of the Court's order may result in the Court issuing sanctions against the responsible party.

IT IS SO ORDERED.

\_\_\_\_\_  
Judge