

VISITATION DECISIONS IN DOMESTIC VIOLENCE CASES: SEEKING LESSONS FROM ONE STATE'S EXPERIENCE

Nat Stern, Wendy P. Crook,** and Karen Oehme****

Among the most pervasive problems afflicting families in crisis are domestic violence, child abuse and neglect, and substance abuse. Increasingly, courts are addressing these and other issues of family dysfunction through the mechanism of supervised visitation. Supervised visitation refers to contact between a non-custodial parent, or "visitor", and one or more children in the presence of a third person responsible for observing and seeking to ensure the safety of those involved.¹ The proliferation of supervised visitation programs has been dramatic; in just two decades, their number has leapt from a few dozen nationally to several hundred.² Given this rapid development, data on many of the key features of supervised visitation programs have been understandably sparse. In particular, the significance of women as "visitors," or non-custodial parents, in domestic violence cases has not been adequately investigated. Given the overwhelmingly male class of batterers, one would expect women to be custodians, not visitors, in supervised visitation cases that arise from domestic violence. However, the data from at least one state shows

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* John W. and Ashley E. Frost Professor of Law, Florida State University College of Law.

**Ph.D.; Dr. Crook served as the Director of the Institute for Family Violence Studies at Florida State University College of Social Work until her tragic death in 2007. Beloved by her students and respected by her colleagues, Dr. Crook left a legacy that includes highly regarded work in domestic violence and poverty-related issues.

*** J.D.; Director, Institute for Family Violence Studies, which includes the Clearinghouse on Supervised Visitation. Oehme has served as the Director of the Clearinghouse for over a decade.

1. Supervised Visitation Network, Questions Parents Ask, <http://www.svnetwork.net/InformationForParents.html> (last visited Apr. 18, 2008).

2. Compare Robert B. Straus, *Supervised Visitation and Family Violence*, 29 FAM. L.Q. 229, 233 (1995) (noting "a handful of programs in 1982" and "fifty-six known supervised programs operating in twenty-eight different states" in 1994 while cautioning that the statistics "represent about a third to one-half of the existing programs"), with Supervised Visitation Network, Directory of Service Providers, <http://www.svnetwork.net/ServiceProviders.html> (last visited Apr. 4, 2008) [hereinafter Directory of Service Providers] (providing contact information for over 500 current Supervised Visitation providers).

that the presence of women among supervised visitation visitors has been considerably higher than such logic would indicate.

Florida advances toward becoming the first state to formally certify and monitor visitation programs. This article examines data about Florida supervised visitation programs compiled by the Florida State University's Clearinghouse on Supervised Visitation through the Institute for Family Violence Studies. Specifically, this article explores whether the special circumstances of domestic violence victims are sufficiently appreciated by those responsible for making referrals to supervised visitation programs. Much of the data is intuitive.³ However, the data also reveal an unexpected proportion of women as visitors, or non-custodian parents, at supervised visitation centers in domestic violence cases.

This article does not purport to offer a definitive explanation for this phenomenon. It does, however, identify the need to acquire further data concerning supervised visitation orders; call for greater training of visitation personnel and judges in the dynamics of domestic violence, especially in the co-occurrence of domestic violence and substance abuse or mental illness; and encourage communities to improve services to domestic violence victims. Ultimately, the article seeks closer scrutiny of domestic violence cases to ensure that women who have already suffered physical violence at the hands of their partner are not further victimized by a process that unfairly strips them of custody of their children. Crucially, the article calls for judges to take into account the violence and complex dynamics of domestic violence when making supervised visitation decisions.

I. THE SPREAD OF SUPERVISED VISITATION AND THE DISTINCTIVE POSITION OF FLORIDA

Supervised visitation programs allow parents who may pose a risk to their children or to another parent to experience parent-child contact in the presence of an appropriate third party.⁴ As the American Bar Association has pointed out, court orders allowing family members, rather than professionals, to supervise visitation or visitation exchanges place those family members at risk of violence or manipulation by the abuser.⁵ Beginning in the late 1980's, supervised visitation programs emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates an "outside resource" to allow the child contact with a non-

3. See CLEARINGHOUSE ON SUPERVISED VISITATION, FLA. STATE UNIV. INST. FOR FAMILY VIOLENCE STUDIES, DESCRIPTIVE ANALYSES 3-4 (2007) [hereinafter *Clearinghouse Study*], available at <http://familyvio.csw.fsu.edu/SVDataChartssept1.pdf> (stating that of over 5,000 cases analyzed, the courts referred an equal number of boys and girls to visit with their non-custodial parents, and the majority (65%) of children at programs were younger than nine years old).

4. Nancy Thoennes & Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 FAM. & CONCILIATION CTS. REV. 460, 460 (1999).

5. *Annual Report of the American Bar Association*, 125 REPS. A.B.A. NO. 2 20 (2000).

custodial parent.⁶ As the Model Code on Domestic and Family Violence states, “[v]isitation centers may reduce the opportunity for retributive violence by batterers, prevent parental abduction, safeguard endangered family members, and offer the batterer continuing [but monitored] contact and relationship with their children.”⁷ Thus, programs were developed and expanded for cases in which a parent is suspected of substance abuse, poor parenting, risk of parental abduction, lack of a relationship with the child, or debilitating mental health issues. In addition, the epidemic of domestic violence and concern for the safety of the victim and children at visitation has resulted in the creation of supervised visitation programs specifically for family violence cases.⁸

Supervised visitation programs may offer a variety of services to enable safe contact between parent and child to occur. A well-established, though resource-intensive, form is one-to-one supervision, in which a supervisor is assigned to a single family. In some instances, supervision of several families at a time (group supervision) takes place. In a broader sense, supervised visitation can also encompass a range of services intended to improve parents’ behavior and skills. Such ancillary services include parenting education, as well as provision of therapy and counseling to the family by mental health professionals during the visit.⁹ Moreover, as a service for the court, visitation programs often provide written factual information to the court regarding supervised contact when requested.¹⁰

Supervised visitation programs are designed to accomplish a variety of purposes. The most immediate is to prevent further domestic violence and child

6. See Duluth Fam. Visitation Ctr., Overview & History, <http://www.duluth-model.org/dfvchistory.html> (last visited Mar. 10, 2008). As noted on the website, one of the first supervised visitation programs opened its doors in Duluth, MN in 1989. In Florida, the first supervised visitation program was established in Jacksonville, FL in 1993. Family Nurturing Center of Florida, About Us, <http://www.fncflorida.org/about> (last visited Mar. 10, 2008). One of the best models of a supervised visitation program is the Elizabeth Stone House in Massachusetts. See Elizabeth Stone House, About the Elizabeth Stone House, <http://www.elizabethstonehouse.org/about-us.htm> (last visited Mar. 10, 2008).

7. MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE § 406 cmt. (Nat’l Council of Juv. & Fam. Ct. Judges 1994).

8. Julie Kunce Field, *Visits in Cases Marked by Violence: Judicial Actions that can help Keep Children and Victims Safe*, 35 FAM. CT. REV. 23, 26 (1998); Peter G. Jaffe, et al., *Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children’s Best Interest*, 6 J. CTR. FAM. CHILD. & CTS. 81, 90 (2005).

9. SUPERVISED VISITATION STANDARDS ADVISORY COMM., CLEARINGHOUSE ON SUPERVISED VISITATION, INST. FOR FAM. VIOLENCE STUDIES, FLA. STATE UNIV., PRELIMINARY REPORT TO THE FLORIDA LEGISLATURE 5 (2007) [hereinafter *Legislative Report*], available at <http://familyvio.csw.fsu.edu/phpBB3/viewtopic.php?f=15&t=102>.

10. See Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 281-82 (1999) (describing Washington D.C. Superior Court’s Supervised Visitation Program as a fairly typical example of a supervised visitation program that provides reports to the court).

abuse during parent-child contact.¹¹ Equally important, but more ambitious in scope, is the wider reduction of potential for harm to victims of domestic violence and their children in the dangerous post-separation period.¹² As the National Council for Juvenile and Family Court Judges has noted, “[t]he process of leaving their abusers presents a heightened potential for danger for survivors of domestic violence . . . increas[ing] the risks to their safety and security.”¹³ In a similar vein, programs can also play a part in reducing the risk of parental kidnapping.¹⁴ At the same time, programs attempt to engage parents in constructive ways when opportunities arise; for example, a program can assist parents with juvenile dependency case plan compliance.¹⁵ Ultimately, programs seek to build safe and healthy relationships between parents and children whenever possible, including the facilitation of reunification when appropriate.

The growth of supervised visitation has been well documented. In 1995 there were only 56 documented programs in 28 states;¹⁶ by 1998, 94 such programs had been identified.¹⁷ In May 2006, the state of Florida alone had 63

11. See generally Supervised Visitation Network, About SVN, <http://www.svnetwork.net/AboutSVN.html> (last visited March 10, 2008) (designed to keep families in safe contact); REBECCA BRUCK, ET AL., COMMUNITY SUPERVISED VISITATION CENTERS: A GUIDE TO OPENING YOUR OWN CENTER 2 (2003), available at <http://childwelfare.net/resources/VisitationCenterManual/VisitationCenterManual.pdf> (describing a program created for Georgia); JILL DAVIES, SUPERVISED VISITATION PROGRAMS: INFORMATION FOR MOTHERS WHO HAVE EXPERIENCED ABUSE (2007), available at http://www.endabuse.org/programs/children/files/supervised_visitation_handbook_final.pdf (providing a booklet for mothers who have been abused).

12. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65, 75-79 (1991).

13. NAT'L COUNCIL OF JUV. & FAM. CRT. JUDGES, A GUIDE FOR EFFECTIVE ISSUANCE AND ENFORCEMENT OF PROTECTION ORDERS 17 (2005).

14. HEATHER HAMMER ET AL., U.S. DEPT. OF JUSTICE, CHILDREN ABDUCTED BY FAMILY MEMBERS: NATIONAL ESTIMATES AND CHARACTERISTICS 4 (2002), available at <http://www.ncjrs.org/pdffiles1/ojdp/196466.pdf> (estimating that 203,000 parental abductions of children occur each year). One researcher estimates that 34% of batterers threaten to kidnap their children and 11% actually abduct them. Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 COLUM. J. GENDER. & L. 101, 112 (2004); see also PATRICIA M. HOFF, PARENTAL KIDNAPPING: PREVENTION AND REMEDIES 18 (2000), available at <http://www.abanet.org/child/pkprevrem.pdf> (referring to supervised visitation as a tool to prevent parental kidnapping).

15. FLA. STAT. ANN. § 39.6011(4) (West Supp. 2008) (describing components of a “case plan”); FLA. STAT. ANN. § 39.01(71) (West Supp. 2008) (defining substantial compliance as significantly remedying “the circumstances which caused the creation of the case plan . . . to the extent that the well-being and safety of the child will not be endangered upon the child’s remaining with or being returned to the child’s parent”).

16. Straus, *supra* note 2, at 233.

17. Thoennes & Pearson, *supra* note 4, at 460.

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such programs,¹⁸ and the Supervised Visitation Network (SVN) included 525 agency, affiliate, and individual members in North America.¹⁹ The SVN list indicates that Florida has the second highest number (after California) of supervised visitation programs in the United States.²⁰

It is not only the magnitude of Florida's supervised visitation activity, however, that makes the state a source of potentially valuable data about visitation programs. Florida has been among the nation's leaders in devoting sustained attention to promoting well-administered programs. The Florida Supreme Court's Family Court Steering Committee began developing a set of standards for supervised visitation and exchange programs in 1998. In an attempt to create uniformity in such areas as staff training, terminology, and basic practice norms, the committee presented a set of standards to Chief Justice Major Harding. The Chief Justice endorsed the Florida Supreme Court's Minimum Standards for Supervised Visitation Program Agreements and crafted an administrative order in 1999 mandating that the chief judge of each circuit enter into an agreement with local programs (to whom trial judges referred cases) that agreed to comply with the standards.²¹ The purposes of providing supervised visitation expressed by the standards include "enabl[ing] an ongoing relationship between the noncustodial parent and child by impartially observing their contact in a safe and structured environment and . . . facilitat[ing] appropriate child/parent interaction during supervised contact."²² Chief Justice Harding also urged the Florida Legislature "to consider establishing a certification process, and designate an entity outside of the judicial branch to be responsible for oversight of supervised visitation programs."²³ In addition, Florida's Model Family Court identified supervised visitation as an essential component of family courts.²⁴

The state's efforts to bolster the level of services provided by visitation programs continue today. In 2007 the Florida Legislature enacted legislation authorizing the Clearinghouse on Supervised Visitation within the Institute for

18. See, e.g., *Directory of Florida Supervised Visitation Centers*, FAM. VISITATION TIMES (Clearinghouse on Supervised Visitation, Fla. State Univ.) Fall 2006, at 10-12, available at

<http://familyvio.csw.fsu.edu/phpBB3/viewtopic.php?f=13&t=78> (follow "vt.pdf" hyperlink to download).

19. WENDY P. CROOK ET AL., FLORIDA'S SUPERVISED VISITATION PROGRAMS: A REPORT FROM THE CLEARINGHOUSE ON SUPERVISED VISITATION 12 (January 2007).

20. See Directory of Service Providers, *supra* note 2.

21. Supervised Visitation Administrative Order (Fla. Sup. Ct. Nov. 18, 1999), available at <http://www.floridasupremecourt.org/clerk/adminorders/1999/sc99-59.pdf>.

22. FLA. SUP. CT., MINIMUM STANDARDS FOR SUPERVISED VISITATION PROGRAM AGREEMENTS 3 (1999), available at http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf.

23. Letter from Major Harding, Chief Justice, Fla. Sup. Ct., to Sen. Toni Jennings, President, Fla. Senate, and Rep. John Thrasher, Speaker, Fla. House of Representatives (Nov. 17, 1999) (on file with authors).

24. See *In re* Report of the Fam. Steering Comm., 794 So. 2d 518, 526-27 (Fla. 2001).

Family Violence Studies (“Clearinghouse”) to craft new standards for Florida’s supervised visitation programs to ensure the safety and quality of each program, and to develop criteria for the certification of programs that seek state funding.²⁵

II. THE CLEARINGHOUSE DATA: A PICTURE OF SUPERVISED VISITATION

Crucially, Florida has made substantial efforts to compile information about visitation activity within its borders. In particular, Florida is currently the only state that tracks the *statewide* usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect (juvenile dependency cases), and separation and divorce cases.²⁶ In January 2005, the Clearinghouse began collecting program and service data in a web-based database.²⁷ “Program-level data include information about the programs themselves such as location, funding sources, number of employees and volunteers.”²⁸ Service-level data consist of information on clients and the services that they receive.²⁹ At the time that the database was developed, 38 programs existed in the state, up from 15 programs in 1997.³⁰ As of February 2007, the Florida database housed at Florida State University (home of the Institute and Clearinghouse) was holding information on 5,776 cases, 8,738 children, 23,105 clients, and 77,988 services representing data entered since January 2005.³¹ Included are data on dependency cases, domestic violence cases, and divorce/paternity cases involving custody disputes.³²

The data reported in this article represent some of the results of an exploratory study of aggregated client-level information contained in the Clearinghouse study.³³ The intent was to determine what kind of cases and litigants are referred to supervised visitation programs in the state. The report includes only data entered for the children’s *first contacts with programs*; this resulted in a total number of clients that was substantially fewer than those

25. FLA. STAT. ANN. § 753.03 (West Supp. 2008) (amending FLA. STAT. ANN. § 753.03 (2005)).

26. See *Legislative Report*, *supra* note 9, at 5.

27. *Id.*

28. Wendy P. Crook & Karen Oehme, *Characteristics of Supervised Visitation Programs Serving Child Maltreatment and Other Cases*, 7 BRIEF TREATMENT & CRISIS INTERVENTIONS 291, 294 (2007).

29. See *Legislative Report*, *supra* note 9, at 5.

30. Karen Oehme & Sharon Maxwell, *Florida’s Supervised Visitation Programs: The Next Phase*, 78 FLA. B.J. 44, 44 (2004).

31. *Clearinghouse Study*, *supra* note 3, at 1 tbl.1. The difference between the number of cases (5,776) and the number of children (8,738) is accounted for by cases that involved more than one child. *Id.*

32. See *Legislative Report*, *supra* note 9, at 5.

33. *Id.* The project was funded initially by the Florida Department of Children and Families for an eighteen-month period and was directed by Dr. Robin Perry and a team of graduate assistants.

found in the database because the latter included multiple visits.³⁴ The majority of the case types in this study were dependency cases (in which the children had been removed from the home) followed by injunctions for protection against domestic violence. Another case type was the dissolution of marriage referral, but it was used much less frequently than other case types.

The study does not purport to present a comprehensive picture of supervised visitation in Florida during the relevant period. While all programs have been invited to participate in the database, some have not been willing or able to do so.³⁵ Notwithstanding the lack of information from some of the currently active centers, however, there is no reason to believe that the data obtained from the study is unrepresentative of supervised visitation across Florida. The following narrative summary below is succeeded by a more precise quantitative breakdown.

The most notable features that emerged from the study were:

1. Case Characteristics:

- a. The majority of case referrals reported were in Dependency cases (57%). Injunctions for protection against Domestic Violence accounted for 26% of referrals, followed by Dissolution of Marriage (12%).³⁶
- b. The most frequently reported reason for referrals was Domestic Violence (53%) followed by Child Abuse/Neglect (20%) and Parental Substance Abuse (17%).³⁷
- c. The most frequently reported type of service requested in referrals was Supervised Visitation (93%). Concurrently, the most frequently reported type of service provided was Supervised Visitation (93%). Monitored Exchange was requested and provided for 7% of the time.³⁸
- d. A paid staff provided the vast majority of services (91%), with unpaid staff providing services in 9% of the cases.³⁹

34. *Id.* As noted above, this report includes data for 8,738 children, which represents the total number of children who received services during the study period. Because there could be more than one child per case, for analyses of data related to characteristics of cases, custodians, and visitors, duplicate cases were removed. Thus, the total "N" for characteristics of cases, custodians, and visitors was 5,198 each. *See supra* note 31.

35. As of February 2007, there were 63 active supervised visitation programs in Florida. There are several reasons why complete data from all 63 programs were not analyzed. Five programs were open and offering services for a time during the study but closed before December 2006 leaving only partial information. Also, once a new program is started, it is immediately added to the list of active programs, but it might be several months before the program is staffed, trained, and ready to begin entering data. Approximately 14 of the currently active programs fell into this category and had not been able to enter data before the report was commenced. *Legislative Report, supra* note 9, at 5.

36. *Clearinghouse Study, supra* note 3, at tbl.1.

37. *Id.* at tbl.2.

38. *Id.* at tbl.3.

39. *Id.* at tbl.4.

2. Child Characteristics:

- a. The largest single age group is 4-6 years of age (27%), followed by 7-9 years of age (22%).⁴⁰
- b. The majority of children were aged 9 years or younger (65%).⁴¹
- c. The majority of children were white (63%), followed by black/African American (21%) and Hispanic (13%). Most of the black/African American children were in dependency cases.⁴²
- d. The gender distribution for children served was approximately equal, with males representing 51% and females representing 49%.⁴³

3. Visitor Characteristics:

- a. The proportion of males to females among visitors was almost equal, with males representing 50% of visitors and females representing 49% of the visitors.⁴⁴ In dependency cases, 57% of the visitors were females; in domestic violence cases, 63% of the visitors were males.⁴⁵
- b. The majority of visitors were parents (98%). Of the parents, mothers represented 51% and fathers represented 48%.⁴⁶

4. Custodian Characteristics:

- a. The vast majority of custodians were female (76%).⁴⁷
- b. The majority of the children's custodians were white (70%), followed by Hispanic (17%) and black/African American (11%).⁴⁸
- c. The vast majority of custodians were parents of the child (82%).⁴⁹ Grandparents made up 7% of custodians.⁵⁰ For parents, the majority were mothers (73%); fathers comprised 27% of parents.⁵¹

The large amount of data in this study present interesting issues concerning women and children. As the chart below reveals, the largest single age group of children at supervised visitation is ages 4-6 (27%, n = 2273), followed by 7-9 (22%, n = 1,890). The majority of children were aged 9 or younger (65%, n = 5,509). Thus, it is mostly young children who are spending time with their non-custodial parents at supervised visitation programs in Florida.

40. *Id.* at tbl.6.

41. *Id.*

42. *Id.* at tbl.16.

43. *Id.* at tbl.7.

44. *Id.* at tbl.8. The numbers do not add up to 100% because of missing identifier data.

45. *Id.* at tbl.17.

46. *Id.* at tbl.10.

47. *Id.* at tbl.12.

48. *Id.* at tbl.13.

49. *Id.* at tbl.14.

50. *Id.*

51. *Id.* at tbl.20.

Table 5
Descriptions of Children at Visits

<u>Child Age</u>	<u>Frequency</u>	<u>Valid Percent</u>	<u>Cumulative Percent</u>
Birth-3	1346	15.8	15.8
4-6	2273	26.6	42.4
7-9	1890	22.1	64.5
10-12	1381	16.2	80.7
13-15	1004	11.8	92.4
16+	645	7.6	100.0
Total	8539	100.0	
Missing	199		
Total	8738		

With respect to race and ethnicity, the bivariate analysis of child race/ethnicity and referral source (Table 16 below) reveals that 65% of the referrals in the study involved white children. In addition, of the total number of black/African American referrals, 64% were from dependency cases. While the data on race/ethnicity and referral source warrants further research, an expanded examination and discussion of the bivariate analysis is beyond the scope of this article.

Table 16
Child Race/Ethnicity by Referral Source

		Cases					
		Valid		Missing		Total	
		N	Percent	N	Percent	N	Percent
Child Race by Referral Source		4239	81.6	959	18.4	5198	100.0

		Referral Source				
		Dependency Case	Domestic Violence Injunction Case	Dissolution of Marriage/Modification	Other	Total
Race of Child						
Black/African American	Count	518	180	73	33	804
	Expected Count	460.3	206.5	100.3	36.8	804.0
	% within Child Race	64.4%	22.4%	9.1%	4.1%	100.0%
	% within Referral Source	21.3%	16.5%	13.8%	17.0%	19.0%
	% of Total	12.2%	4.2%	1.7%	.8%	19.0%
Hispanic	Count	211	209	83	50	553
	Expected Count	316.6	142.1	69.0	25.3	553.0
	% within Child Race	38.2%	37.8%	15.0%	9.0%	100.0%
	% within Referral Source	8.7%	19.2%	15.7%	25.8%	13.0%
	% of Total	5.0%	4.9%	2.0%	1.2%	13.0%

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White	Count	1618	671	353	103	2745
	Expected Count	1571.6	705.2	342.6	125.6	2745.0
	% within Child Race	58.9%	24.4%	12.9%	3.8%	100.0%
	% within Referral Source	66.7%	61.6%	66.7%	53.1%	64.8%
	% of Total	38.2%	15.8%	8.3%	2.4%	64.8%
Other	Count	80	29	20	8	137
	Expected Count	78.4	35.2	17.1	6.3	137.0
	% within Child Race	58.4%	21.2%	14.6%	5.8%	100.0%
	% within Referral Source	3.3%	2.7%	3.8%	4.1%	3.2%
	% of Total	1.9%	.7%	.5%	.2%	3.2%
Total	Count	2427	1089	529	194	4239
	Expected Count	2427.0	1089.0	529.0	194.0	4239.0
	% within Child Race	57.3%	25.7%	12.5%	4.6%	100.0%
	% within Referral Source	100.0%	100.0%	100.0%	100.0%	100.0%
	% of Total	57.3%	25.7%	12.5%	4.6%	100.0%

Chi-Square Tests

	<u>Value</u>	<u>df</u>	<u>Asymp. Sig. (2-sided)</u>
Pearson Chi-Square	121.681(a)	9	.000
Likelihood Ratio	117.784	9	.000
Linear-by-Linear Association	.119	1	.730
<hr/>			
N of Valid Cases	4239		

0 cells (.0%) have expected count less than 5. The minimum expected count is 6.27.

These data are interesting but not startling. While the above figures show a disproportion between African-American children involved in dependency cases (21%) and their presence in Florida's general population (16%)⁵² that bears further investigation, other authors have commented on the overrepresentation of black children in the child protection system.⁵³ Rather, our focus is on the surprising and troubling correlations that emerged when bivariate analyses of the data were conducted. Specifically, we address the implications of the conspicuous figure for women visitors revealed by these analyses.

III. THE INORDINATE NUMBER OF FEMALE VISITORS IN DOMESTIC VIOLENCE CASES

Our bivariate analyses disclosed the presence of women among visitors in domestic violence cases markedly higher than statistics for injunctions in such cases would project. The analyses are summarized in the tables below:

52. U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, <http://quickfacts.census.gov/qfd/states/12000.html> (last visited Mar. 10, 2008).

53. Anne M. Schuck, *Explaining Black-White Disparity in Maltreatment: Poverty, Female-Headed Families and Urbanization*, 67 J. MARRIAGE & FAM. 543, 550 (2005).

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Table 17
Visitor Gender by Referral Source (n= 5,198)

		Cases					
		Valid		Missing		Total	
		N	Percent	N	Percent	N	Percent
Visitor Gender by Referral Source		4648	89.4	550	10.6	5198	100.0

		Referral Source				
		Dependency Case	Domestic Violence Injunction Case	Dissolution of Marriage/ Modification	Other	Total
Male	Count	1130	777	321	133	2361
	Expected Count	1353.2	614.6	286.0	107.2	2361.0
	% within Visitor Gender	47.9%	32.9%	13.6%	5.6%	100.0%
	% within Referral Source	42.4%	64.2%	57.0%	63.0%	50.8%
	% of Total	24.3%	16.7%	6.9%	2.9%	50.8%
Female	Count	1534	433	242	78	2287
	Expected Count	1310.8	595.4	277.0	103.8	2287.0
	% within Visitor Gender	67.1%	18.9%	10.6%	3.4%	100.0%
	% within Referral Source	57.6%	35.8%	43.0%	37.0%	49.2%
	% of Total	33.0%	9.3%	5.2%	1.7%	49.2%
Count		2664	1210	563	211	4648

Total

Expected Count	2664.0	1210.0	563.0	211.0	4648.0
% within					
Visitor Gender	57.3%	26.0%	12.1%	4.5%	100.0%
% within					
Referral Source	100.0%	100.0%	100.0%	100.0%	100.0%
% of Total	57.3%	26.0%	12.1%	4.5%	100.0%

Chi-Square Tests

	<u>Value</u>	<u>df</u>	<u>Asymp. Sig. (2-sided)</u>
Pearson Chi-Square	183.356(a)	3	.000
Likelihood Ratio	185.112	3	.000
Linear-by-Linear Association	72.595	1	.000

N of Valid Cases 4648

0 cells (.0%) have expected count less than 5.

The figure that raises troubling questions is that women comprise nearly 36% of visitors in cases that originate from injunctions for protection against domestic violence. On the surface, this figure may seem unremarkable, since it indicates that men comprise nearly two-thirds (64%) of visitors in this category of cases. The proportion of female visitors, however, must be viewed in the context of the realities of domestic violence. Women represent the overwhelming majority of domestic violence victims.⁵⁴ Even though there are male victims of domestic violence by females, much of female violence is committed in self-defense and inflicts less injury than male violence.⁵⁵ In Florida, women are the petitioner in nearly 80% of domestic violence cases,

54. MATTHEW R. DUROSE ET AL., U.S. DEP'T OF JUSTICE, FAMILY VIOLENCE STATISTICS: INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 11 tbl.2.3 (2005), available at <http://www.ojp.gov/bjs/pub/pdf/fvs02.pdf> (demonstrating that between the years 1998-2002 women made up 73.4% of family violence victims in all kinds of family violence cases, 84.3% of all spousal abuse victims, and 85.9% of all "boyfriend or girlfriend" abuse victims).

55. VIOLENCE IN FAMILIES: ASSESSING PREVENTION AND TREATMENT PROGRAMS 42 (Rosemary Chalk & Patricia A. King eds., 1998).

according to a 2003 Florida Domestic Violence Court Assessment.⁵⁶ The percentage of male petitioners is about 20%.⁵⁷ Accordingly, absent other considerations, one would expect men to be the visitors in approximately 80% of the injunction cases referred to supervised visitation, since a batterer is presumed to be an unfit parent in Florida.⁵⁸ By the same token, women would presumably constitute about 20% of visitors, in proportion to which their partners allege that they are violent. Yet, the proportion of women visitors reported (36%) is some 75% higher than this projected number.⁵⁹ This incongruity has far-ranging implications for custodial decisions that are intrinsically linked to the complex dynamics of domestic violence.

A. The Role of Substance Abuse and Mental Illness

One possible explanation for the apparent overrepresentation of women as visitors in domestic violence cases may lie in the mental health and substance abuse problems suffered by many domestic violence victims. That theory finds support in the experience of a large supervised visitation program in Dallas, Texas that is funded in part by the Office on Violence Against Women. The Dallas program – which serves only domestic violence cases – currently includes women as visitors in about 33% of the program’s cases.⁶⁰ Although this number is still lower than the numbers revealed in the Florida study, it is noteworthy that the Texas director attributes these cases “largely . . . to substance abuse and mental illness.”⁶¹

According to one study, 66.4% of female battering victims are believed to abuse alcohol and drugs.⁶² Rather than resign themselves to a catch-22 of awarding children to either a violent father or struggling mother, courts should give greater consideration to holding batterers accountable for their actions and assisting mothers to obtain the social services that they need. While there is little ground for optimism that an inveterate batterer will suddenly turn gentle,⁶³ experience teaches that mental illness and addiction are treatable afflictions.

56. OFFICE OF THE STATE CTS. ADM’R, DOMESTIC VIOLENCE COURT ASSESSMENT 45-46 (2003), available at http://www.flcourts.org/gen_public/family/bin/dvreport.pdf.

57. *Id.*

58. See e.g., FLA. STAT. ANN. § 61.13 (2)(b)(2) (West Supp. 2008). For examples of other states with similar unfit parent presumptions, see e.g., IOWA CODE ANN. § 598.41(2)(c) (West Supp. 2007); TEX. FAM. CODE ANN. § 153.004(e) (Vernon Supp. 2007-2008); WIS. STAT. ANN. § 767.41(2)(b)(2)(c) (West Supp. 2007) (creating a rebuttable presumption against custody for those with a history of domestic violence).

59. *Clearinghouse Study*, *supra* note 3, at tbl.17.

60. Telephone Interview by Karen Oehme with Ona Foster, Dir., Faith and Liberty’s Place Supervised Visitation Ctr., in Tallahassee, Fla. (Sept. 12, 2007).

61. *Id.*

62. Larry Bennett & Marie Lawson, *Barriers to Cooperation between Domestic-Violence and Substance-Abuse Programs*, 75 FAMILIES IN SOC’Y: THE JOURNAL OF CONTEMP. HUM. SERVICES 277, 283 tbl.4 (1994).

63. Emerge, *Can Abusers Change?*, <http://www.emergedv.com/canabuserschange.html> (last visited Sept. 4, 2007) (“Change does not occur overnight, *if it occurs at all*, and many

Indeed, domestic violence victims may be especially responsive to treatment and counseling because their problematic behaviors are often intertwined with the circumstances of their abuse. Use of alcohol or drugs, for example, may serve as a way of numbing the fear or other emotional pain arising from the violence to which the victim is subjected.⁶⁴ Many victims may find that using substances helps them cope with the stress of anticipating the batterer's arrival home. Of course, battery also inflicts physical pain, and resort to prescription drugs is a common means of easing this and an array of other physical symptoms of violence.⁶⁵ In some instances, the batterer may consciously manipulate the victim to encourage her reliance on substances as a means of control. While overt coercion to use drugs or alcohol can occur, subtle pressure is more common: e.g., telling the victim that she will be "more fun" after taking these substances.⁶⁶

For many victims, addiction may be more a consequence of domestic violence than an independent illness. On one hand, many domestic violence shelters forbid women with substance abuse problems to enter their programs, believing that the client's first priority is to "get clean" at a chemical dependency program and then enter a domestic violence shelter afterward.⁶⁷ At the same time, however, many female victims of domestic violence are reluctant to enter an in-patient chemical dependency program because their children are not allowed to accompany them.⁶⁸ Under these conditions, victims must typically decide whether to leave their children with the batterer or sign the children (at least temporarily) over to the state.

Substance abuse is different when family violence is an issue. Thus, sending a substance-abusing victim to a twelve-step program might well be unhelpful, as the twelve-step program tends to ignore the complex dynamics present. Most twelve-step programs do not recognize the role of power and

group members drop out along the way. Long-term improvement in behavior is more likely for a group member who has a personal investment in making changes and completes the full program, but even that is no guarantee. Many abusers continue to be violent and controlling after attending batterer intervention groups." (emphasis in original)).

64. See Evan Stark & Anne Flitcraft, *Violence among Intimates: An Epidemiological Review*, in HANDBOOK OF FAMILY VIOLENCE 293, 302, 309 (Vincent B. Van Hasselt et al eds., 1988); see also MINN. COAL. FOR BATTERED WOMEN, SAFETY FIRST: BATTERED WOMEN SURVIVING VIOLENCE WHEN ALCOHOL AND DRUGS ARE INVOLVED 30, 32 (1992).

65. See MINN. COAL. FOR BATTERED WOMEN, *supra* note 64, at 30.

66. See N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE (OPDV), *Relationship of Victimization to Addiction*, http://www.opdv.state.ny.us/health_humsvvc/substance/aodvictims.html [hereinafter N.Y. OPDV] (last visited Apr. 25, 2008).

67. See Theresa M. Zubretsky, *Promising Directions for Helping Chemically-Involved Battered Women Get Safe and Sober*, in HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES 321 (Albert R. Roberts, ed. 2002), available at http://thesafetyzone.org/alcohol/safe_sober.html (last visited Mar. 10, 2008) (noting that chemically-involved battered women "face an enormous gap in emergency shelter services that systematically deny admission to chemically-involved women").

68. See N.Y. OPDV, *supra* note 66.

control and do not hold the abuser accountable for violence.⁶⁹ Indeed, traditional co-dependency treatment emphasizes the individual's obligation to take responsibility for her condition and recovery, implicitly rejecting the possibility that the overwhelming conditions of domestic violence may principally account for her abuse.⁷⁰ Twelve-step or co-dependency programs were not designed to be used with victims of abuse.⁷¹ The co-dependent behaviors that twelve-step programs deem harmful may actually be the behaviors that serve to protect victims of domestic violence. For example, if a victim uses alcohol to numb her pain, this may function as a coping mechanism; twelve-step programs, however, will call her "co-dependent." Even the words used by the two sets of professionals – domestic violence advocates and substance abuse treatment professionals – are conflicting.

Similarly, the link between domestic violence and mental illness may amount to cause and effect with the mental health issues resolved when the violence abates. Indeed, it is wholly to be expected that domestic violence could exert a harsh impact on victims' mental health.⁷² Numerous symptoms of grave psychological problems, ranging from eating disorders to suicide attempts, have been associated with the effects of domestic violence.⁷³ As a review of the literature on this topic observed, "[i]nitial reactions to domestic violence often include shock, denial, numbness, and withdrawal," while longer-term effects of violence "may include a wide range of psychiatric symptoms and diagnoses typically related to post-traumatic stress disorder or chronic depression."⁷⁴ A recent study of over 11,000 women in Australia found a

69. *Id.*; see also Bennett & Lawson, *supra* note 62, at 285 ("Addictions programs that do not formally address and intervene to terminate current violence are, at best, operating in an unsatisfactory manner and, at worst, are irresponsible. The same may be said of domestic-violence programs that do not take substance abuse into account.").

70. See Barbara G. Collins, *Reconstructing Codependency Using Self-in-Relation Theory: A Feminist Perspective*, 38 SOC. WORK 470, 470-76 (1993).

71. See N.Y. OPDV, *supra* note 66 ("Self-help programs such as Alcoholics Anonymous promote and support emotional and spiritual health and have helped countless numbers of alcoholics get sober. These programs, however, were not designed to address battering and are insufficient in motivating batterers to stop their abuse. Accordingly, a treatment plan for chemically dependent men who batter must include attendance at [a] program designed specifically to address the attitudes and beliefs that support batterers' behavior Most often, the partners of batterers in chemical dependency treatment are themselves directed into self-help programs such as Al-Anon or co-dependency groups. Like other traditional treatment responses, however, these resources were not designed to meet the needs of victims of domestic violence and often inadvertently cause harm to battered women.").

72. See generally D. E. Stewart & G. Erlick Robinson, *A Review of Domestic Violence and Women's Mental Health*, 1 ARCHIVES OF WOMEN'S MENTAL HEALTH 83 (1998) (emphasizing the impact that domestic violence has on a woman's health).

73. Marjorie W. Leidig, *The Continuum of Violence Against Women: Psychological and Physical Consequences*, 40 J. AM. C. HEALTH 149, 149-55 (1992); Question, Persuade, Refer (QPR) Inst., Domestic Violence and Suicide, <http://www.qprinstitute.com/CommunitiesDV.htm> (last visited Apr. 4, 2008).

74. Stewart & Robinson, *supra* note 72, at 86.

distinct correlation between subjection to domestic violence and adverse mental health.⁷⁵ The authors concluded that “[a]s psychological well-being decreased, the odds of having ever experienced domestic violence increased. The results indicate that a history of domestic violence is associated with decreased psychological well-being in mid-aged Australian women.”⁷⁶

Failure to recognize the connection between domestic violence and mental illness may lead to tragic consequences for the mother with faltering mental health who loses custody of her child. In many cases, then, the judge might regard the mother as so unbalanced or addicted to drugs or alcohol that her capacity to function as a parent is less even than that of her abusive partner. While this perception may be common, it also begs the question of whether some courts are ignoring these mothers’ potential to overcome their difficulties. The violence that she endured has left her triply victimized: physically brutalized, driven to psychological distress and/or destructive coping methods, and – as a result – deprived of her child. In a sense, the batterer is rewarded for his behavior by reducing his partner to a state that leaves him the more attractive parent in the eyes of the court. Rather than acting as accomplice to the batterer in such cases, courts could serve the best interest of mother and child alike by exploring the mother’s capacity for recovery. At a minimum, it is crucial to examine the phenomenon to ensure that judges are making determinations as to visitation and custody with a full understanding of the complex dynamics of family violence.

Understanding that a victim’s departure from her batterer may dramatically improve her ability to overcome substance abuse can reduce harsh and simplistic judgments about the victim’s responsibility for her addiction. Recognition of the ties between substance abuse and violence can therefore lead to more-informed and -sophisticated decisions about custody and visitation. This insight could assist judges in confronting an especially poignant dilemma confronting many victims who suffer from chemical dependency.

Greater appreciation of the decision facing the battered woman choosing between leaving her children with the batterer or signing the children over to the state could prompt judges to pursue alternative outcomes. Among these would be more emphasis on temporary custody with other relatives, such as grandparents, and efforts to generate resources that would spare victims this dilemma: e.g., child care at dependency programs and shelters that are tailored to accommodate the special needs of addicts.

75. See generally Deborah Loxton et. al., *Psychological Health in Midlife Among Women Who Have Ever Lived with a Violent Partner or Spouse*, 21 J. INTERPERSONAL VIOLENCE 1092 (2006) (explaining long-term impact of domestic violence over a woman’s lifespan).

76. *Id.* at 1092; see also AM. MED. ASS’N, DIAGNOSTIC AND TREATMENT GUIDELINES ON MENTAL HEALTH EFFECTS OF FAMILY VIOLENCE 6 (1995) (“Numerous studies have shown the high rates of victimization among those with a variety of psychiatric illnesses, particularly depression, some anxiety disorders, somatization disorder, eating disorders, substance abuse disorders, and certain personality disorders.”).

Thus, there may be a need for education of judges as to these possibilities, coupled with an emphasis on development of community treatment resources appropriate to victims' use of substances. Judges and supervised visitation programs should be aware of the context of substance abuse and domestic violence and should not refer victims of domestic violence to twelve-step, co-dependency programs unless the programs understand the link between domestic violence and substance abuse.

B. Alternative Explanation

At this stage, our explanation for the unexpectedly high number of female visitors at supervised visitation centers in domestic violence cases is only a working hypothesis. Additional study is required to ascertain whether some courts are insufficiently sensitive to the circumstances of domestic violence victims. We cannot reject out of hand alternative ways to account for the disproportion that our study has uncovered. To have greater confidence in the significance that we attribute to this figure, we would need to resolve of the following questions:

1. Is Florida representative?

While we know of no reason to think that Florida's experience is unrepresentative, we cannot uncritically embrace that assumption. The dearth of primary data from other states across case types leaves a gap in our ability to understand the context of our current Florida data. It should again be noted that supervised visitation programs exist in dozens of states across the U.S.⁷⁷

2. Do a small number of judges account for the incongruity between female domestic violence petitioners and female visitors in these cases?

Similarly, within Florida itself, we do not know whether the incidence of female visitors that we have documented is relatively uniform across the state. Because a few circuits account for a large proportion of reported cases in Florida, it is also essential to follow up with programs and targeted data analysis to determine whether this apparent over-representation is specific to certain circuits as compared to other judicial circuits. Additional study will help determine whether this number of women as visitors represents a statewide or local pattern.

3. Do the figures understate the number of men assigned to visitation?

It is apparent that there may be a large number of court referrals in injunction cases that are not counted in the set because the visitation never occurred. As Sharon Rogers of the Judge Ben Gordon Visitation Program has stated:

77. Directory of Service Providers, *supra* note 2.

The data do not reflect the reality that from 40-50% of the cases in which fathers are ordered to visit with their children in domestic violence cases, they never show up at the program. Many fathers refuse to visit. This may be part of the control issues of batterers. But almost all mothers who are ordered to use the program show up. Yet there is currently no collection of that data on fathers. We need to capture those numbers. I have had judges say to me, 'I've been sending so many domestic violence cases your way, I hope your program is not overwhelmed. But I say, no, half of them never showed up.'⁷⁸

With regard to referrals from the court, the director of the large visitation program in Dallas offers this comment, "I take referrals from 14 different judges, but our courts do not keep records on whether the non-custodial parent complies and comes to the program. In my experience, mothers nearly beat down the doors to come in and see their kids. Some Dads do, too, but some don't. They get an order and decide not to use it."⁷⁹

4. Do the figures become proportional once permanent custody is adjudicated?

In the Florida domestic violence cases in which 36% of the visitors are women, there is no mechanism to track whether any of these women eventually regain custody of their children. Longitudinal data would assist in this determination.

IV. RECOMMENDATIONS

The information produced by the Clearinghouse study, particularly on the gender makeup of visitors, prompts a number of recommendations. These fall broadly into three categories: collection of additional data, more extensive training of both judges and service providers, and the development of community resources for treatment of substance abuse appropriate to domestic violence victims. Though distinct, these categories should be viewed as intertwined components of a single project: helping the family court system, and especially supervised visitation, to operate in a manner that is sensitive and fair to victims of domestic violence and their children.

A. Additional Data Collection

The Clearinghouse study represents an important step toward a better understanding of supervised visitation decisions, but much remains to be learned that could guide the formulation of enlightened policy. More collaboration between local programs and their referring judges could help

78. Telephone Interview by Karen Oehme with Sharon Rogers, Dir., Judge Ben Gordon Visitation Program, in Tallahassee, Fla. (Sept. 12, 2007).

79. Interview with Ona Foster, *supra* note 60.

determine the number of injunction referrals with which parents do not comply. Collection of data on referrals received but never processed would help clarify the true proportion of female visitors ordered to supervision in domestic violence cases. Moreover, the role that mental health and substance abuse play in domestic violence referrals of women as visitors should be explored. Inquiry should also be conducted into whether referrals are being made with an understanding of the dynamics of domestic violence, the potential for batterer manipulation of the court system, and the unique needs of domestic violence survivors. From this information, other community resources, such as substance abuse treatment options that take domestic violence into account, may be identified and utilized.

B. Enhanced Education

To some extent, the ability to assist judges in dealing with this issue is constrained by limitations in our current knowledge. We do not have empirical confirmation that substance-abusing or mentally ill mothers account for a large proportion of visiting mothers in domestic violence cases in Florida and elsewhere. Still, even though the inferences to be drawn from our bivariate analyses are tentative, they decidedly point toward the need for education of judges on the often-complex circumstances of battered women and for intensive training of supervised visitation staff on domestic violence dynamics. Even without comprehensive data on this category of cases, heightened sensitivity by judges to the possible impact of substance abuse, as well as mental illness, can only improve their ability to make sensitive decisions in this difficult area. Indeed, these activities are intrinsically worthy of the significant commitment of time and resources. The implications of the data that we have found simply impart additional urgency to these enterprises.

Likewise, augmentation of visitation staff training on domestic violence issues is a meritorious project whose importance is heightened by the Clearinghouse study. Basic training on visitation protocol, while valuable, does not sufficiently prepare staff for the complex implications of domestic violence in the visitation setting. Ideally, staff would become acquainted with the links among domestic violence, substance abuse, and mental illness. With specific regard to the visitation context, staff should be educated about the unique dynamics of batterer manipulation and control at visits.⁸⁰ Thus instilled with a more sophisticated perspective on these issues, visitation personnel could identify and make appropriate use of community resources for the domestic violence victims that they encounter. Similarly, visitation programs would also be better equipped to call on the assistance of batterer intervention programs.

80. See, e.g., Maureen Sheeran & Scott Hampton, *Supervised Visitation in Cases of Domestic Violence*, 50 JUV. & FAM. CT. J. 13, 18 (1999) ("In order to develop a better understanding of domestic violence and to ensure that programs are rooted in that understanding, it is recommended that visitation providers receive significant training in domestic violence . . .").

C. Increase in Community Resources

A central aim of improving the education of judges and training of visitation staff is to bolster both groups' recognition of the spectrum of community resources that can further the mission of supervised visitation. Of course, this goal assumes the presence and availability of these resources. Many communities, however, may not be able to furnish the medical, counseling, and other assistance needed by a significant portion of mothers involved in supervised visitation. In these instances, the enhanced education of the judiciary may serve a second vital purpose: to galvanize judges to promote the creation or increase of these services in their local communities. While traditional programs for substance abuse (especially alcoholism) are common, there may be an immediate need for the development of more programs that treat substance abuse while accounting for domestic violence. As noted earlier, twelve-step programs and similar approaches are generally not considered helpful to resolving the dynamics of substance abuse within domestic violence. Thus, judges can not only become more enlightened decision makers in their referrals to supervised visitation, but also advocates for a more concerted community effort to address the interwoven problems that stem from domestic violence.

CONCLUSION

Our analysis of data obtained through the Clearinghouse study has enabled us to identify several areas of concern with regard to the administration of supervised visitation programs. In particular, the data call for further analysis of the use of supervised visitation in domestic violence cases. We believe that special examination of those instances in which women are referred as visitors is needed. The most notable finding of the study was that in the largest statewide data sample ever collected on supervised visitation programs, women accounted for a larger-than-expected percentage of this category. While this figure by itself does not prove that many mothers are being inappropriately deprived of custody, it raises sufficient concern about that possibility to warrant further investigation.

While supervised visitation is relatively new, domestic violence, tragically, is not. As judges and program supervisors continue to refine their approach to visitation, they should consult the insights gained from decades of studying the scourge of battery in the home. Failure to appreciate the destructive impact that domestic violence inflicts on its victims may lead to misguided assessments of victims' responsibility for dysfunctional behavior and their potential for recovery once removed from the batterer. Conversely, decisions about custody and visitation that incorporate these insights will benefit both victims and the children whose interests the family court system is designed to serve. Sensitivity to the information gleaned from the Clearinghouse study can play an important role in this vital enterprise.