

# Problem Solving In Cases Involving Poor Visitation Compliance in Parents and Visitation Refusal in Children

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## The Problem:

Over the past ten years my practice has seen a sharp upward trend in children refusing visitation with one parent, as well as parents who afford themselves “self help” by violating court orders for visitation that they disagree with. The two issues can be closely related with the custodial or “preferred parent” being guided by the protestations of a child who does not want to visit, or refuse to go when asked.

Visitation refusal is at what I believe to be an epidemic proportion, and sadly it often leads to long term estrangements between parents and children. In particular, the noncustodial parent is the one who generally becomes estranged. Judicial intervention in these cases can be a nightmare, with judges

hearing serious but unsubstantiated allegations of poor parenting, abuse and neglect; and worrying that failure to act in ways which eliminate concern might place the child in harms way.

This is countered by the argument that all a malicious parent has to do to cut the co-parent off from contact with a child is to make enough allegations to make a judge nervous. This leads to subjecting the allegedly “bad” parent to a kind of scrutiny and “precaution” that severely limits his or her relationship with their child, holds them to an unreasonable standard of parenting (you can’t lose your temper with your child, you can’t raise your voice, you can’t be forgetful or make an error -- all things that “regular” parents do at least some of the time, etc.) and all without due process.

This presentation describes some of the problems from the point of a view of a professional who has worked on some six thousand court appointed cases regarding custody, visitation, supervised visitation, therapeutic visitation, etc., over a twenty five year span. It also examines some suggestions, most of which are woefully difficult to carry out without some cost to the participants, or risk to the child, the latter being so because the accurate assessment of risk from either a psychological or judicial perspective is nearly impossible.

## What Exacerbates the Problem:

To make matters even worse, visitation problems can be long-standing prior to

a case even appearing before a judge. As a result, unhealthy family interactions can be very well ingrained and reinforced with habits and behavior that are resistant to psychological or judicial intervention. Parents come to court with affidavits from important sounding people like “therapists” who have often seen only one parent and the child, or who have developed alliance to one parent and a dislike of the other parent and who advise the court the the child is “in danger” if visitation us permitted. Judges who might be unfamiliar with the checks and balances that promote good quality control in a mental health practice can be easily swayed by a document claiming some sort of "emergency" that requires supervised visitation or some other limitation on a parent's time. This sets up an immediate imbalance of power and control between the co-parent and this promotes conflict and litigation.

Visitation problems are rarely attributable to the behavior of a single family member. More likely both parents have made errors, and the child has been permitted to insert him or herself into the conflict at the same level as the adults with the same or often greater influence over whether visitation will or will not happen. This is the most common situation, though there are cases where a parent’s malice is so far off the charts that they are the primary influence in a child's choice to visit or not visit. However, even in these cases, the noncustodial parent often makes a bad situation worse for themselves. Judges should be alert to the contributions all family members make to a bad situation.

## Children Refuse Visitation When They

## Are Tacitly Encouraged or Permitted To:

The issue of whether a child is either tacitly or directly given a "choice" in whether to go on visitation, either by protesting to the extreme or simply refusing to go plays a large role in successfully implementing visitation. Parents who do not want to lose favor with a child who prefers them, insist that they are doing nothing but "respecting their child's wishes," about visitation. If they want to go, they can go; if they don't want to go, *"I am not going to load them into the car kicking and screaming."* Sure they aren't: they don't want the children to reject them too!

Law Guardians and other court professionals can unwittingly make a bad situation worse by promulgating the child's position that they don't want to visit, even if it is not based on anything other than the child is "bored", "doesn't have as much fun," "thinks the parent is 'a liar'" or other vague complaints about life at the non-preferred or noncustodial parents house.

Whereas parents will refuse to permit their children to skip school, opt out of homework, refuse to do chores , not brush their teeth, etc., often children are given the opportunity to determine whether or not they need to attend visitation with the noncustodial parent. When this happens, the child is empowered, and since so many aspects of divorced and divorcing family life are chaotic and out of control, the child will latch onto this and become very insulted at even the "preferred parents" requests or demands for visitation. In

this instance, the longer a child refuses to visit and succeeds at avoiding it, the more serious the problem becomes. Often children are very aware that the parent they aren't visiting is upset and they simply do not want to go into a situation where they are going to have to face disapproval or guilt by the noncustodial parent.

## The Non-Preferred Parent Often Contributes To Their Own Undoing.

The noncustodial parent is often quite skilled at making their already unfortunate situation much worse. Instead of merely trying to cope with their child's lack of enthusiasm about visiting and showing the child why it is worthwhile to be with them, their agenda can be self-defeating. I have seen parents try "reprogramming" efforts which might feature reviewing photo albums depicting the time in their lives when the children "loved" them, and various other behavior designed to inspire compliance by guilt. Kids, often being much smarter than their parents, almost never fall for this sort of manipulation and use it as a platform for lacing into the non-preferred parent. Research performed in my office indicates that the easiest way to achieve reconciliation with a child who does not want to visit is to make small talk, and not talk about the "family situation." We feel so strongly about this that in our interventions we rarely permit parents and children to talk about their pasts, their feelings or

anything that might have taken them to this point. This is not to say we are disinterested in the feelings of children who might have had some bad experiences with a parent. We will refer children to outside therapy for that.

## Other Dynamics: The Child's Potential Contribution

In another common dynamic children weigh the “costs” of going to visitation against the benefit of remaining loyal to the “preferred” parent by refusing visitation. Children who know that the noncustodial parent is going to love them, work to have visit with them, jump through hoops, etc. can actually feel more secure in that parent's love. If the custodial parent directly or indirectly demands loyalty, there is no “cost” to the child for refusing visitation and more benefit to be gained by refusing visitation as a show of loyalty.

In the third most common dynamic, children advocate for the preferred parent by directing anger and rage of the preferred or custodial parent to the noncustodial parent. This is especially so when children have been sensitized to litigation or allegations. For instance, preteen girls will often refuse to see a father whose mother has told them that the reason for the divorce is because father “has found someone else.”

## Why The "Parental Alienation

## Hypothesis" Is Irrelevant:

Hypotheses such as “alienation” are given as reasons for why visitation can lapse or become nonexistent, however, this term implies that a single factor (or parent) is predominantly responsible for the lapsed relationship. In reality, the reasons for lapsed visitation are far more complicated than that. We all know that visitation can lapse and we all know that parents can exert influence on a child’s decision to visit or not visit. However, I believe that the reason why the “alienation hypothesis” has become so popular is that it fits in so perfectly within a system that reinforces adversarial behavior and binary outcomes -- one person is at fault or “guilty” , the other person is “innocent.”

I have found it more helpful to study lapses in visitation in light of the social psychology data on attitude formation. In other words, I prefer to look at visitation refusal as a collection of influences on a child that create a negative attitude toward visitation. One reason I find this so helpful is that there are more than five decades of empirical research on what creates attitudes, what the relationship between attitude and behavior is and what influences cause people to change their attitudes.

Although this research can be tricky to navigate, one helpful result that comes out of this area is that attitude-behavior relationships are a two way street. Attitudes can determine behaviors as in “I don’t like Chinese food so therefore is you ask me where I want to go out to eat for dinner I will probably not say the

name of the local Chinese restaurant.” However, what we find ourselves doing (what we wind up behaving like) can also create a change in attitude, as in “Gee I never really thought I would like the series ‘24’ until I caught a few episodes. Now I can’t stop watching.” So, there is a very important lesson to be learned regarding lapsed visits here: When a child refuses to visit we might think the child is telling us, “I don’t like my mother, therefore I refuse to visit her.” The reality is that if there is a substantial lapse in visitation we might actually be seeing the following “I don’t see my mother (the behavior) therefore I don’t like her and I don’t want to see her again in the future (the expressed attitude).

## How "Therapists" And Other Professionals Can Make a Bad Situation Worse:

Psychologists, psychiatrists, social workers and "therapists" (a catchall title to describe anyone who is not a licensed mental health professional but is self-appointed as a “family helper”), are often called in to "treat" or "evaluate" the reasons for visitation refusal. While it might seem logical to bring in "an expert about people" to solve some of the problems associated with visitation refusal, more often than not, and under anything other than very prescribed conditions, "interventions" are likely to be expensive, difficult to find and schedule; and largely ineffective. Intensive therapy to “promote visitation” often concludes in



the therapist recommending “time for the child to become accustomed to the idea of visiting.” Over the years my observations and office research suggest this type of thinking, though “intuitive and sensible” is more often than not hurtful to goal of promoting visitation.

## When Allegations are Unsubstantiated, Therapists and Evaluators Have Little Skill in “Uncovering the Truth”

If the issue is unsubstantiated allegations that the co-parent is an unsafe, incompetent or otherwise bad caregiver, assigning a mental health professional to determine the "goodness" or "badness" of a parent is pretty much a waste of time if the professional uses the standard array of evaluation techniques which rely predominantly face-to-face interviews/psychological tests/cursory in office observations.

During face to face interviews which almost always comprise the major portion of mental health evaluation technique, all the evaluator is evaluating is the hearsay accounts of both parents. Evaluating hearsay inevitably requires some determination of credibility and all of the research I have found over the last 25 years indicates that mental health professionals are notoriously bad judges of credibility. This is not to mention the fact that the issue of credibility is

restricted to the ultimate trier of the fact and the Matrimonial Commission wisely identifies this issue in its February 2006 brief.

Psychological tests do not identify "good parent" or "bad parent" personalities, so while they might be useful in determining major mental health issues (whose manifestations are so severe they don't need to be identified by tests), they are not useful in determining fitness for visitation.

In office observations which involve watching children in a strange place or playing checkers for an hour with a parent do not identify whether a parent can handle the day to day parenting challenges that come up in the course of having a parent spend significant caregiving time with a child or children.

In office observations also carry with them, the potential burden of a child feeling the need to advocate for the point of view that says they should not visit if they don't want to. Children have come into my office with written scripts, pictures of why they want to see the non-preferred parent dead, and outright anger and disgust at me for placing them in a position of having to defend their opinion that they never want to see their less preferred parent again. As silly as the reasons a child might give for not wanting to see a parent for visitation ("I hate her car because she stole it from my father"). To have the child express such an opinion in an evaluator's office might be a necessity as part of the evaluation. However, when the child does this week after week as part of expressing their feelings "in therapy" this can become a major problem. Most behavioral psychologists know that when a child practices something they

generally get better at it. If a child is given the opportunity to practice talking about why they refuse to see their parent, they will generally become stronger in their convictions. Therapists are notorious for “validating” a child’s feelings whether they are well founded or not. I am strictly opposed to this point of view. If a child walked into my office with a mind made up that they were shipping off to Alaska to go king crab fishing, I would not engage them in a lengthy discussion about their feelings, or how unfair it is for their parent to forbid it. I would merely tell them that it was a dumb idea and refer them to the Discovery Channel to see how many people die doing that job. Same goes for engaging a child in a lengthy discussion about why they have to go to school despite the fact that their teacher is “mean.” Perhaps I am a bad psychologist because I strongly believe that children should be expected to deal with all sorts of people and situations in life including not having the parents they wish they had. Perhaps, I am worse than bad because I believe that there is value in teaching children that parents are imperfect, and a parent’s desire to have a place in their children's life is admirable despite their disabilities, whatever they might be (discounting of course those parents who abuse and neglect).

My biggest problem with many experts is the fact that they forget that they grew up with somewhat dysfunctional parents of their own but they turned out OK nonetheless. At least I did.

## Is There Any Value In Having Mental Health Expert Participate in Trying to

# Figure Out What Can Be Done About Visitation Refusal or an Interfering or Overly Anxious Co-Parent?

The most valuable data a psychologist or other qualified mental health professional can provide about visitation is the most inconvenient to obtain, and that's why it is presented to judges with such scarcity.

If the issue is whether a visiting parent can maintain a safe environment for a child, feed the child, bathe the child, establish routine with the child, assist with homework, etc., then it makes sense for the assigned professional to be able to give a judge information on just that AFTER SEEING AND POSSIBLY RECORDING IT. This way if there are unsubstantiated allegations of poor fitness for visitation, someone has tried to observe the behavior directly can provide good assistance to the ultimate trier of the fact.

There are several reasons why the direct observation of parenting is important:

1. On countless cases that I have evaluated by directly observing parenting behavior (in the natural environment of the parent's home) I have seen how important the notion of "stimulus control" is. When a behavior is under "stimulus control," the behavior is being exhibited in the presence of one

stimulus, but not necessarily other stimuli. With less psychological gibberish this means that a child might protest in the presence of the preferred parent, but when outside the presence of that parent, they might behave completely normally. In one case, where two children protested so violently over having to see their father they would vomit repeatedly prior to visitation, I scheduled a surprise home visit and walked into the house to find the two girls hanging off their father's back, behaving affectionately toward him and displaying none of the discomfort they displayed for the mother. In another case of outright visitation refusal I walked in unannounced to discover that the children had gleefully transformed the non-preferred parent's home into a restaurant eager to serve a new "customer."

2. While the argument can be made that anyone can keep it together for an hour long observation, the fact of the matter is that over the course of my career, many parents have shown that they can't manage their children when observed in a natural setting. Also, it depends on what standard parents are held to. How "perfect" is the average parent? Should a litigant accused of being a lousy parent be held to a different standard than the billions of other parents out there who do not have limited contact with their children?

3. Security in which one can make a judgment about the quality of one's parenting increases with the number of observations performed and the length of the observation time itself. Would most judge feel better hearing that an evaluator spoke to the parents in their office for fourteen hours or that they were observed being parents for fourteen hours?

I am in favor of recording observations between parents and children whenever possible because I find it useful to show the parent who has no confidence in the skills or abilities of their co-parents to see what they have to say. Often their comments can be quite enlightening. For instance, I once showed a six hour tape recording of an interaction between her three year old daughter and her father. After the first hour of seeing father and daughter completely at peace with one another and having a good time, the daughter climbed up on her father's lap. "I think that's inappropriate," the mother blurted out. I asked why. Mother opined that the father was engaged in an act of "inappropriate touching" because father was rubbing her back. I asked her if she ever cuddled with her child or rubbed her back. "Of course," was the answer. When asked what the difference was, her reply was, "I am not a pervert."

Finally, when allegations of bad parenting are not substantiated, who should pay for the services of a professional observer? Given the staggering costs of high conflict matrimonial litigation, should the alleged "bad parent" have to pay thousands of dollars to disprove a potentially spurious allegation? That is, of course, completely up to the judge. However, as a psychologist it is hard for me to escape the question of how much is it worth to the accusing parent to have the opportunity to "protect" their child? Also, if I were permitted to evaluate people in such a nonstandard way, I would ask the accusing parent, "How many observations at \$200 an hour would you be willing to pay for, before you would think that I had enough information to know how bad your co-parents parenting is?"

In evaluating the costs of finding the truth, I would also wonder if parents would agree to the contingency that if the parenting observations came back showing the accused parent was competent would the accusing parent be willing to pay; and vice versa if the evaluation showed a lack of competency.

## OK, What About People Who Can't Afford Services, Professional Observers, Etc.

At this point the discussion has been limited to unsubstantiated allegations and services to address them that even when they are available might be difficult to schedule, and very expensive. The fact is that finding a professional to do a series of observations might not be possible, might create lengthy delays before and during a trial and might not actually accomplish anything.

In the course of my mediation practice (not my forensic practice) I have found that there are a number of techniques that can be employed that can solve some visitation/compliance issues. I believe that some of these techniques might also bring success as interim measures to solve these types of problems while cases are ongoing and pretrial. These suggestions limit the use of costly interventions/evaluations, minimize incursions on the right that parents have to be parents, and require contributions of good faith by both parents. With the vast majority of scenarios, it is my belief that the parent who makes an

allegation should be subject to the same recommendations, procedures, examinations, etc. as the parent who the allegation is made against.

## Recommendations by Fact Pattern and Age of Child.

### Infants

Infant visitation problems can be very difficult to address, especially if there has never been a marriage, if there is an ex parte order of protection, if this is a first child for both parents, etc.

New mothers can be very reluctant to permit visitation outside of the home.

Infants can have very fussy temperaments. Sleep over visitation before age 18 months or so can polarize parents. Fathers might feel shut out of a child's life if they are not permitted adequate time to bond. They can also underestimate the unique nature of an infant's bond with their mother. The fact of the matter is that the developmental research shows that in the first year and a half of life infant attachment between mother and father is important but for different reasons. For instance, father interaction with infants greatly enhances their social development. Mothers, however, appear to be the ones who are most likely to be able to provide comfort to an infant, followed by fathers, but only slightly better than complete strangers. When trying to figure out how to apportion



time, the temperament of the child is very important as well. Some children are very easy to soothe and will quiet down for almost anyone. Some children really need a lot of attention and even then will be difficult to soothe. Often, young infants in this state of distress will look for mother.

It is my belief that the best way to promote a healthy interaction between an infant child and both parents is to try as much as possible to keep the setting comfortable and familiar and to permit frequent interaction with the father as a high priority. Infants need high frequency interaction so they can attach themselves to the sights, sounds, smells and handling of their caregivers. This simply does not happen when a child sees a father for an hour or two a week. Interaction should be daily or almost daily.

When a father is able to interact daily, mother, under good circumstances, should be able to see skills of caregiving develop and hopefully become more trusting. It is also a good idea if a maternal grandmother or another child-competent relative can be there to help and assist. Obviously, this type of circumstance can only succeed if everyone is capable of having a civilized relationship with one another, but it is a worthwhile first try or step. Visitation should be re-assessed at 18 months to two years of age to begin expanding to overnight.

Under less ideal circumstances mother and father cannot occupy the same space. Mothers clearly have the upper hand here, because they usually control the environment the baby is living in. In these situations the presence of an

older family member who can help to keep peace and will not contribute to the primary conflict is helpful, though often difficult to find.

When this is not available, parents have few options but to hire a professional who can supervise the interaction outside of the babies regular environment. This is especially so when there is an order of protection and the parents are not legally permitted to occupy the same physical space.

Fathers are often anxious to know when they can have overnight visits with their infants, or longer days. The answer to this is complicated. My experience has indicated that the more good faith there is between the parents, the less anxious a new mother is going to be about letting an infant out of their site. Fathers who are experiencing trust problems would do well, if not with respect to the mothers, then with respect to the judges they are in front of, to educate themselves about newborns, be able to provide references of books that they have read, discuss newborn care with the babies pediatrician, take a continuing education course on the first years of life. I have found that most infants can tolerate an overnight visit by age 18 months, provided that father is a stable and familiar figure in a babies life. Presumption is also that father has an adequate knowledge of baby care. Children regularly experience "separation anxiety" during this period of development. Again, temperament will be a strong indicator of how easily a child will settle down after experiencing stranger anxiety. In most cases that I have evaluated, children settle and soothe rather easily after some initial separation discomfort.

The bottom line is that with children under two years of age and with parents who are in high conflict with one another, this would be the combination of circumstances where it would be most helpful to have a professional do some observing to assure that both parents have the requisite skills to manage a relatively young child. Also, if problems can be solved at this age and station in life, there might be less to fight about in the future. The costs of some professional observation are more likely to yield adequate benefit to the ultimate trier of the fact.

A log book which memorializes babies habits, feeding, sleeping, bowel movements and developmental milestones can be an excellent “homework assignment” with the requirement that each parent makes a log book entry every day assessing these areas and reporting on what they see. Even a cursory look at the effort each parent makes in filling out this type of log will speak to parenting capacity.

### Toddlers/Pre-Schoolers Through About Age Six

Children two through six are still in their formative years, can be fickle and are easily influenced by the behavior of the parents. Typical objections coming from one parent to the other regarding visitation focus around the mistrusted parents ability to be responsible for a young child, not being able to follow routines, not being able to set appropriate boundaries or limitations. High conflict parents of children in this age range will fight and argue about permissiveness, appropriateness of different media, bedtime routines, presence

of another caregiver whom the mistrustful parent does not like (i.e. a family member or boyfriend/girlfriend), an unacceptable environment for longer term visitation, use of drugs or alcohol, permitting the child to sleep in the parents bed, improper safety precautions (failure to use sunscreen, not being vigilant enough, poor driving habits). Finally, the mistrustful parent will express concerns about the parenting temperament of the mistrusted parent (uses corporal punishment, does not apply consequences to bad behavior, disciplines by fear and yelling, poor temper control).

Aside from concerns about how the child will be cared for, parents of children in this age range will resist liberal visitation schedules on the basis of beliefs that they have about visitation schedules, most of which are either myths or not supported by empirical research. Parents will claim that children need a “home base,” that children do not do well when they are shuttled back and forth like ping pong balls, that when children share residences with both parents they have no “stability.”

In many instances, in high conflict parenting dyads, these are nothing more than rationalizations to prevent one parent from having an equal or equivalent relationship with the other. “Stability” and “continuity” are words that are a part of the law, but the concepts have little practical connection to the real world because they have not been operationally defined. In other words there is no universally accepted notion of what stability and continuity are, so with liberal interpretation, parents and their lawyers can assume “stability” means “no change in residence during the week.” I often counter by saying that there is

plenty of stability and continuity in any schedule that happens on a predictable and regular basis, even if it is an ambitious one that parents have to work a little bit harder at making happen.

Solutions to the issue of whether a more equivalent or shared parenting schedule benefits a child are generally handled in a needlessly costly way: the case is sent to an evaluator who asks the parents a series of questions often completely unrelated to the practical aspects of visitation. Recommendations are made, which are often disputed, requiring an expensive trial. A lower cost solution would be to try a “bottom up” approach to solving the problem of shared parenting time, where one of the parents does not agree with the idea that the other parents should have as much time as they do. That solution would be to examine whether or not a particular visitation schedule works and adjust from there while the case is ongoing. It is virtually impossible to test the practicality of a decision to change visitation as the “end point” in a discussion about creating a long term schedule of visitation. As a matter of fact, this almost guarantees the reincarnation of allegations and future post action litigation. If an evaluator is going to evaluate anything, why place that evaluator in the position of having to predict the future? Instead, would it not be better for an evaluator to be able to observe the pros and cons of a particular arrangement and report on why it does or does not work?

The answer to this question is the ongoing fear that we will be placing a child in a situation that does not benefit him or her. Instead, for some reason the choice we make is to dissipate what might be a years worth of their college education

money to engage the parents in a psychological evaluation that does not and cannot predict what visitation schedule will actually benefit a child.

So what we are dealing with is the difference between a “try-see-evaluate” approach versus an “evaluate and predict” approach. Even if we could ignore the fact that psychological data collected in the process of a forensic study does not predict good parenting schedule outcome, we have fooled ourselves into imagining that at the end of a contested custody or visitation case there is an ideal or even preferred parenting schedule. How do we know, for instance, that a case that concludes with alternate weekend visitation for the noncustodial parent would not be as successful as a more ambitious, more equivalent shared schedule? If we accept the fact that none of us can predict the future, why would we accept the validity of any future projection at all, let alone one that provides one parent with the majority portion of parenting time, and the other with two forty eight hour weekend periods of time, and a few hours for dinner during the week?

Part of what I am saying is that in an adversarial situation, it becomes very easy to oversimplify the issue of “parenting quality” by giving people something to fight for (i.e. the majority portion of time, and the monetary bonus the can come with it); and a meaningless way of fighting for it (i.e. competing in the office of a psychologist). The exercise of utilizing expensive professionals who provide data that is not useful enough to determine a good future outcome is simply not good value for the money.

***Suggestions at this stage:***

1. Consider collecting basic information about practical aspects of parenting -- availability to provide care, appropriateness of the caregiving environment. Add to this important information about prior history of behavior that might impact a child's safety -- drug, alcohol abuse, mental illness, criminal or violent behavior.

--Collecting this information can quick, cost effective and directly relevant to the child's care. I have provided a document online that collects this information, as well as a free service that collects and stores this information, compiles it into a narrative and e-mails it to any e-mail address specified. See RESOURCES at the end.

2. If availability is equivalent, and there are no substantiated issues of concern, consider a trial of the most liberal visitation schedule possible and assess through fact finding or by consultation with a professional the efficacy of that schedule. Make adjustments as indicated. Currently we assume visitation should start of with an advantage to one side or another with the other side in a constant position of wanting to "get more time." Many states outside of New York (i.e. Texas) begin with a presumption of equivalent or equal time. In appropriate circumstances it might be more worthwhile to assess why equivalent schedules do not work as opposed to having one person continually begging for more time, and the other side continually rejecting the request.

3. When parents continue to be mistrustful of the other parent's abilities to give care: Consider asking both parents to show an offer of good faith by obtaining parenting education that covers:

- a. discipline and child behavior management
- b. hands on aspects of day to day child rearing
- c. effective co-parenting communication

In addition, both parents might submit themselves for a home inspection (as a standalone evaluation measure and therefore much less costly) which concentrates on appropriateness of living space, childproofing, adequate clothing, food and resources that stimulate early education and proper socialization.

Parenting courses which focus on young children can be achieved at low cost/no cost at local libraries and colleges as part of their continuing education offerings.

A basic parenting course with a quizzes/online verification of participation and a certificate of completion is available for \$15 dollars see RESOURCES section.

4. After a visitation schedule has been established, when complaints about one parent or the other are still being levied, it should be much more cost effective to have a professional observe and report on the following:



-child's behavior and demeanor at drop off.

-child's behavior and demeanor at arrival to each home

-ability of each parent to make a meal

-ability of each parent to keep and establish routines (bed time, morning, dressing, etc.)

-enough observation time to observe limit setting, discipline and basic child management

5. Implementation of a log book for parents to pass information back and forth to and from one another on basic routines, health management and other important child care duties and responsibilities. Ongoing conflicts which then require the intervention of a professional become more efficient and less expensive when a log book exists and has memorialized past issues. However, just passing basic information back and forth can reduce a lot of co-parenting stress.

6. For children this age who tantrum when it is time to visit, the following recommendations can produce positive results:

a. Try having another family member or friend drop the child off.

b. Schedule a ten to fourteen day series of visits where the child, spends 15 minutes with the visiting parent and then move upwards in time and back to a normalized schedule of visitation. This should not take longer than two to three weeks in most circumstances.

c. "drop and dash" -- usually best with a family member or when (absolutely necessary) a professional observer to make certain it really happens.

d. Avoid supervised visitation for the purposes of placating a nervous or accusatory parent whenever possible. Supervised visits send a clear message to a child that the supervised parent is bad. It can also increase the child's motivation to "play up to" the supervisor with complaints which take precedent over promoting normal interaction. It also reinforces in the complaining parent that their complaints were valid and justified and sets up a circumstance where that parent will persist in seeing problems that might not exist.

e. Be specific in how frequent telephone contact with the custodial or preferred parent takes place. When children refuse to visit, even in this portion of the age spectrum, children use telephone time as a "lifeline" to the other parent. This can be very destructive to the quality of the visiting parent's time and might increase feelings of homesickness at the noncustodial parent's home.

In general, the more a child must accommodate to the influence and direction of the parent they are with, the more compliant they will be and the more they will enjoy their visitation. Telephone time is perfect at a once per day interval. No need for the custodial parent to speak to the child upon waking to "say good

morning and have a nice day, during the day to “say hello” and before bed to “say goodnight.” One of these instances of contact is more than enough.

Limiting telephone time to once per day also makes it much easier for judges to sort through allegations that the child is not permitted telephone time while away from the custodial parent.

Caveat: Remember, the suggestions listed above are most appropriate for cases where allegations are unsubstantiated and there appears to be a desire for one of the parents to severely limit contact with the other parent, with no verifiable history to support the limitation.

Imposing limitations on one parent’s parenting time without a strong reason to can actually worsen an already difficult situation.

Finally, if things become so difficult that intervention by a professional is required as a measure of last resort, it is worthwhile considering requesting from the professional, a written summary of everything that was done to assess the capacity of each parent to promote visitation. In other words if a child is refusing to go to visitation (tantruming, screaming, running away) experts need to be able to tell their judges what they personally observed that would indicate that the “preferred parent” adequately prepared the child for visitation, and did everything possible to promote it. Likewise the professional should be capable of assessing what self-defeating behavior or bad judgment the visiting parent is showing and what to do to improve and eliminate these behaviors.

## Ages Six Through 12

Circumstances in visitation refusal in this age group are similar to previous, with additional factors being:

- that it is often harder to “drop and dash” with a child who is strong enough to physically resist.
- oppositional and disrespectful behavior is more difficult to discipline for fear that the child will return to the preferred parent’s home with exaggerated claims of abuse.
- children this can be more manipulative and demanding and behave in ways that escalate conflicts between already stressed out co-parents
- the existence of two separate sets of parenting rules, different standards for permissiveness, media use, household chores and managing school responsibilities can create more conflict within the family system.
- children at this age and station in life are more likely to react more emotionally to the presence of stepparents and other “significant others.”
- children at the older end of this age spectrum can and will refuse visitation on the basis that it takes them away from their friends and that it is “boring.” This

is more likely to occur in children who are empowered under the pretzel logic of “being responsible enough to make their own decisions about how they spend their time. Often the most insidious kind of visitation interference comes from parents who claim, *“I tell him he can spend as much time as he wants with his (mother or father), but that it is his decision and I respect his decisions because he is a mature child. If my (ex-husband/ex-wife) is not skillful enough to provide an environment that my child wants to visit I really don’t see that as my problem. They are going to have to work that out between themselves.”*

Those who cannot see the absolute destructiveness of statements such as these are usually lost causes, but gratefully very little work has to be performed to derive this information from any parent who believes it to be so -- they express it outright in words that are virtually identical to the above italicized soliloquy above.

Judges who believe that children, even as old as twelve cannot be forced to attend visitation against their will are not correct. Empirical data from evidence based practice research done in my office suggests that reconciliation of estranged parents and children who are forced to see a parent they are complaining about reconcile without any special “therapy” about 65 percent of the time. It is also true, however, that the older children get and the longer the length of the estrangement, the less likely reconciliation or continued visitation will take place.

It is usually at this age and station in life that many noncustodial parents will take a “wait and see” approach to see if visitation problems subside. I don’t know how often this representation accurately reflects the reality of the situation because who wants to have to manage a kid that is hell bent on avoiding or worse yet possibly even sabotaging visitation. I was managed a case where the eight year old boy would dial his mother’s home, on the father’s cordless phone, wait for her to pick up and leave the actively connected phone in strategic places in the father’s house so that mother could hear everything that was going on. Mother made hours and hours of recordings of their interactions and finally captured an instance of the father raising his voice to the child, after which she immediately attempted to use as the basis for an Order of Protection and supervised visitation. Ultimately, she lost custody. That kind of justice is hard to beat!

Nonetheless, the non-preferred parent who does nothing when week after week their visitation is canceled, scheduled over, protested against or otherwise thwarted does not get any extra credits for inaction on his or her own behalf, at least not from my point of view.

Judges might want to consider how loudly they yell at litigants who make frequent complaints about visitation cancellations or interferences within a relatively short period of time.

Problems like these are sometimes easily solved by asking both parents to submit a copy of the next thirty days visitation schedule along with a request to

see a document which informs which visits did or did not happen. Demand that any cancellation or deviation from the visitation schedule by the visiting parent be accompanied by a written statement as to why the visitation was canceled. There have been too many cases where I have observed both parents behaving badly. The visiting parent cancels or makes weekly requests to reschedule, the other parent assumes this is sufficient enough reason to interfere with visits that aren't canceled.

Finally, it is important for judges as well as evaluators to know whether the preferred parent is interested in or capable of assessing consequences to a child who refuses to visit. Removal of privileges, and a clear show of support for visitation with the visiting parent can often completely eliminate visitation refusal problems.

## Teens

Aside from the difficulty of understanding why anyone would want to spend any more time than is absolutely necessary with a teenaged child (my attempt at humor); teens present their own problems and issues with respect to refused visitation.

A fact of cognitive life for teenagers since the dawn of time, is their presumption that they know more than the adults around them, and are therefore beyond the need or requirement for adults to tell them what to do and by extension who to visit (unless they need a lift somewhere).

Refusal to yield to the authority of parents is a significant parenting challenge, but contact with parents in an intact household, although fleeting, can be difficult to avoid. They have to come home to eat, sleep and grub money at least until they are old enough to work or go off to college. Avoidance of responsibility in place of having complete freedom over one's time is a strong urge in many teens. When parents are separated teens often conclude that they are just too busy to devote a chunk of time to a parent. This is the norm even when everyone is getting along. When tension and conflict exist the circumstances can go from mildly annoying to full blown dysfunctionality. If the visiting parent pressures the teen to spend time they don't want to spend, the teen will often reason that the visiting parent has nothing to offer the child that will make it worth his or her while. This can be very insulting to the visiting parent who believes he or she has done a lot to earn some time with their child in their last few years before they leave the nest. Teenaged logic being what it is, will often cause them to completely rewrite the history of their relationship with a parent, in service of being let off of the responsibility of having to visit.

Do not mistake any of this to suggest that we should let the teen have their way so as to avoid a hard time with them. That is the worst possible approach because it can lead to very long term estrangements between teens and their parents (that often still manage to correct themselves in mid to late college years).

Instead, I suggest incentivizing a teen to earn control over some of their time by



complying with what they are responsible for doing. In that regard I introduce the notion of “flex” or optional time. For instance, in a visitation schedule where the noncustodial parent sees the teen or is supposed to see the teen on an every other weekend schedule, one weekend can be a requirement, one weekend can have an “optional segment” say, the child can either choose to attend the Friday/Saturday portion of visitation or the Saturday/Sunday portion of visitation. There are myriad variations on this. Ironically I find that most teenagers accept this compromise rather readily, and can even encourage more communication with the visiting parent especially if the choice of flex time comes with the responsibility of notifying the parent at least a week or two in advance. Also, there is no use in utilizing this technique unless the teen complies with the non-optional portion of the visitation.

## What About When Allegations ARE Substantiated?

The far less frequent fact pattern, but problematic for different reasons are cases which present with either a finding or some other credible information (like an indicated CPS report) that some dangerous circumstance might be present in the personality or environment of the visiting parents home.

Some fact patterns make it impossible to consider any other visitation but little to none and supervised -- a pattern of physical abuse or injury to a child,

domestic violence, substantiated drug or alcohol abuse which has led to an arrest or an inpatient hospitalization are examples but not a complete list of those circumstances.

In my opinion, if you physically harm your child, buy drugs, drive drunk with your child or commit an act of extreme violence on the co-parent (or anyone else) you lose your privilege to see your child for any significant point in time.

Department of Social Services has mechanisms in place to limit or permanently delete parental access to a child in the most heinous of circumstances.

Thankfully, these situations are very rare but they are a bit easier to justify in terms of punishing the lack of judgment that occurs.

Where things get particularly difficult are in patterns like these:

A parent gets a DUI after a holiday party.

A parent smacks a child too hard and leaves a mark on a leg, in a moment where stress has led to a loss of control.

A parent runs up the block to get some milk, leaves a five year old child watching television for under fifteen minutes, during which portion of time the co-parent calls the house, makes a report to CPS and it is indicated.

A parent, while not physically violent or aggressive, shows extremely poor

judgment by over punishing a child, being emotionally abusive to a child or exhibiting poor judgment in how they supervise a child.

A parent takes self help and disappears with a child for several weeks without contacting or making visitation available to the visiting parent.

It is often difficult to avoid referring cases with these histories to professionals and facilities who can observe and report. However, there are pitfalls and considerations here as well which include:

1. Anger management programs are largely ineffective in curtailing or eliminating future angry behavior. While I believe they have some usefulness I do not believe that people should rely on them as a "cure."

2. Supervised visitation in a facility can create as many or more problems than it solves. This is especially so when supervised visitation is a condition of settlement for a case. There must be a point in time when supervised visitation transitions to more normalized contact. As a person who runs a sv facility we will not take an sv case as a condition for settlement because when we have seen enough to conclude that visitation no longer requires supervision, it often has no influence on the custodial parent who insists that supervision continue. Most court orders do not specify the condition upon which supervised visitation should end.

3. One model we use for supervised visitation is a series of graduated steps

- a. supervised visitation for ten hours
  
- b. if the sv sessions show that the parent is still in need of improvement we do a maximum of ten more hours.
  
- c. if there is no improvement an affidavit is written suggesting that sv is not the right modality for solving the problems the case presents. Therapy and/or intensive parenting education should proceed with re-evaluation for sv in three months, then ten session blocks begin again. This type of very resistant to change scenario rarely occurs.
  
- d. if parent shows appropriate behavior in throughout the the first ten to twenty visits, “monitored visits” are recommended. Monitored visits require the child to be picked up and dropped off at the sv facility so that the child can be observed. This protects all the parties as the visiting parent is less likely to be charged with an allegation of any impropriety if the child is examined and/or debriefed by us.
  
- e. After six to ten monitored visits, a home visit is performed to assess the safety and appropriateness of that environment for day long, no sleep over visits. These visits are subject to random social worker visits to the home

to assess the quality of visitation.

f. After 10 day long visits under the conditions of (e) arrangements are made for an experimental “overnight visit” also subjected to short notice home visit.

g. Assuming success in (f) normal unsupervised shared parenting can be considered.

This process, though potentially quite lengthy provides lots of data on which to make a long term recommendation and even though tedious has a beginning, middle and end with lots of opportunity to observe and report.

## Things that Can be Done When There Is No Feasibility or Availability of Professional Service

While inherently more risky, controls can be placed on cases where concerns exist. These controls include:

1. Supervision by a family member.
2. Visitation at a restaurant for a meal. (not if flight risk is assumed.)
3. Visitation in at an outdoor park. (not if flight risk is assumed)
4. Visitation with an admonition against driving a vehicle (when drug or alcohol history is positive)
5. Visitation with regular drug/alcohol testing and an admonition to abstain from drinking 24 hours before and for the entire period of visitation (hard to enforce)
6. Visitation contingent upon production of a 30, 60 or 90 day “coin” from AA (which suggests the participant has attended 30,60 or 90 meetings in as many days.)
7. Requirement of litigant to obtain a report from any licensed mental health professional who has observed parent-child interaction for ten hours or more with an accompanying report (cheaper than supervised visitation in many instances, and more appropriate for cases where the fact pattern does not suggest multiple, regular or severe patterns of poor judgment).

## Conference Resources:

Many helpful resources such as checklists, online tools, and a very low cost (\$20) online basic parenting education course are available for download/review at <http://www.behavioranalytics.net/judges/>

contact Dr. Favaro directly at [pfavaro@aol.com](mailto:pfavaro@aol.com) or 516.883.5747

