

## Judicial Council Podcast

### Rules Are Not Meant to Be Broken: The Important Role of Supervised Visitation and Professional Providers

#### Characters

Sonia Melara (S) - Director of center that provides affordable supervised visitations

Judge Victor Hwang (H) - Judge of SF Superior Court, Family Law Division

Sarah Jacobvitz (J) - Attorney, Bay Area Legal Aid

Mary (M) - Custodial Parent

Crystal (C) - Visiting parent / Non-custodial parent

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CRYSTAL: it was the most heartbreaking experience of my life. I felt like everything was against me. The facility that I'm having my visits at are against me, the court system was against me. And even to this day, I mean, it's traumatic even thinking about what I had to go through.

*[INTRO MUSIC]*

**Welcome to the Judicial Council of California Podcast. I'm Julia Scott. In this episode, we'll be exploring a little-known part of family law: California's supervised visitation and exchange services, and how they intersect with domestic violence. Before we begin, I want to let you know that today's episode contains conversations about physical and sexual abuse and domestic violence that some listeners may find disturbing.**

#### **POST / PAUSE**

**Here in California, the family law system of the Superior Courts and the Judicial Council's Center for Families, Children and the Courts collaborate on family law cases because they are amongst the most important, challenging, and emotionally taxing for all concerned. They are situations in which parents can't agree on custody and visitation for their children. And all too often, trauma is involved... relating to domestic violence and abuse.**

HWANG01: The cases that we see are cases usually where the parents have already attempted to come up with their own solution and for whatever reasons, they're not able to.

**This is Judge Victor Hwang, one of only two judges in San Francisco Superior Court who handles these sorts of family law cases. He sees cases where the parties want to resolve something like custody or parental support... or get a restraining order or a divorce. Often, by the time they get to his courtroom, one parent is alleging domestic violence or**

**some other form of abuse by the other. The parent claiming abuse may not feel safe handing off their child to the other parent without supervision. Sometimes there's already a restraining order in place. These are cases where Judge Hwang orders what's known as "supervised visitation."**

HWANG02: Supervised visitation usually happens as sort of the first step after some sort of traumatic episode where there is an allegation of domestic violence or whether it's an allegation of child abuse. Supervised visitation is a good first step to have safe visitation and maintain contact with both parents while the court is trying to assess what's the best way to proceed.

**Surveys suggest that more than one third of women in the U.S. have experienced rape and sexual abuse, physical violence, or stalking by an intimate partner in their lifetimes. Men do, too. It's estimated that a quarter of U.S. men experience intimate partner violence in their lifetimes.**

**So, it might be a surprise to learn that even in cases of domestic violence or abuse, parents may have a legal right to still see and visit with their children under certain controlled conditions where the court can ensure safety for all.**

**In civil court or family court, the definition of domestic violence is much broader than in criminal court.**

HWANG03: In criminal court, they tend to focus more on either physical violence or sexual violence. And they may not consider something which is milder in terms of whether it's stalking behavior or verbal abuse or somebody who's simply disturbing the peace, which is enough to grant a civil restraining order.

**If a parent is proven to have committed domestic violence, Judge Hwang may order them as a condition of their civil restraining order to either do domestic violence classes or to get therapy. And that might be a condition of them having visitation and expanding the visitation with their children.**

[BEAT] MUSIC

**So that gives you some idea of how high the stakes are for both parents when they receive a court order for supervised visitation. And the stakes are also high for the person who's assigned to act as a neutral provider between both parents during the supervised visit or exchange... who's present during the visit between the non-custodial parent and the child.**

[MUSIC TRANSITION]

**Here's how supervised visitation usually begins at a center that provides these services.**

SONIA01: [00:54:00] It starts with the intake process.

**This is Sonia Melara, Executive Director at Rally Family Visitation Services at Saint Francis Memorial Hospital in San Francisco.**

S02: The court sends us the paperwork. We contact each parent. We set up an appointment for each parent to come for an intake.

**Sonia's job is to provide court-ordered supervised visitation to the parents who need it.**

S03: Neither one of them knows when the other parent is coming, they come in. They sign off on an agreement that says how much you're going to pay, that they have read the guidelines, they sign off on the guidelines.

**The program guidelines require that the parents never come into contact with each other. The custodial parent -- the one who's dropping off their child so the other parent can have a supervised visit -- sometimes risks being retraumatized by such contact. They don't want to see the other parent, or talk to them. And Sonia has to make sure of that.**

S04: So the visiting parent comes first. We check them in 15 minutes before they go into a room to wait for the child in the supervised visits. Custodial parent comes 15 minutes later with a child and then a supervised visit, we will take that child to that visit for approximately an hour.

**And it's in that hour that the supervised visit takes place, as per the court order. The only people involved here are the visiting parent, the child or children, and the visitation provider.**

S05: And then the staff the whole time when there is a supervised visit, the staff is watching and documenting. We do not do any assessments, recommendations or interpretation of what is happening in the visit. We only document what we see.

**This is a key point, and we'll come back to it again. The provider's job is to be a neutral party observer, to report on what happens during each visit and to make sure the visiting parent follows the rules and court order. The reports provide the court all the information judges don't have: what the parent and child talked about, what their behavior was like, and whether the parent crossed any lines. But sometimes they do cross a line, or the providers themselves don't stick to the rules. That can make things dangerous for everyone.**

*[TRANSITION TO MARY]*

MARY01: [00:16:07] So it was for sure a very hard and difficult two hours, very stressful and of course, very, very anxious during these two hours.

**Mary -- we're not using her real name for this story -- found it hard enough going through the supervised visitation system after she gained custody of her two children. Her ex-husband, she says, was an abusive and highly manipulative man, even to the point of winning the supervisor to his side as he broke the rules.**

M02: Yes, I know he will manipulate anybody he come across.

**Mary left her native Sierra Leone in 2008 to join her husband in the Bay Area. He started abusing her and their children, and in 2011, she took the children and went to live in a domestic violence shelter. She'd called the police several times, but their visits never made a difference.**

M03: I have no idea how the system works and I'll be talking to police telling them my God's truth and the police will turn around and just ignore it and just trash it. I remember countless police officers who could have actually stopped one more episode, but they didn't do anything.

**Eventually she found stable housing and got her nursing degree. But her husband was still in the picture, and she wanted full custody. She had no idea the process would take four years, but that's how long it took for her to prove her allegations in court and a judge to grant her a restraining order.**

M04: He ruled that the allegations were proven and they were right.

**But while all that was playing out, the husband still had court-ordered supervised visitation. Mary was worried that he, an outwardly charming and charismatic man, would find a way to take advantage of the situation. Her worst fears came true.**

**The most ironclad rule of supervised visitation besides safety visitation, besides safety, is that the visiting parent should not be alone with the children. But the woman who supervised the visits, an independent provider, allowed him to take the children into the bathroom with him, alone.**

M05: And that was clear based on the nature of the case, that should not be happening.

**There were other clear violations, like when the provider permitted the visit to occur in a public space... but one where she was not in sight and could not hear their conversation.**

M06: Not just taking them to the bathroom, but he will push the lady to take them to the areas where the visitation is not, it's not professional and effective. If he can do a lot of things, for example, he will take them to a park that's very loud or he will take them to Chuck E. Cheese, which is very loud.

**And of course, if it's super loud at Chuck E. Cheese, then how is the provider doing her job, which is to report *everything* that the parent and child do and talk about? And**

**sometimes they talked about things that were off-limits. He made future promises to them that he would never keep. And he would criticize his children's weight and their appearance.**

M07: Every time the kids come home one of them will say, I'm fat. My stomach is so big. And I go, like, wait a minute.

**To Mary, the most frustrating thing about those supervised visits was not knowing what happened. She could only imagine what was happening. She hoped for the best, but...**

M08: ... but I'm not really inside there and I'm not there. Reports of visits is not made available to me. That was another frustrating thing because I don't know what you're talking about. I don't know what's going on.

**This went on for several months. During that time, Mary raised concerns about the supervised visits and their effects on the children, and eventually the judge ordered something even stricter: therapeutic supervised visitation. The father didn't agree to this, and he has not been in the picture since. But the family still copes with the effects and impacts from that traumatic time.**

*[MUSIC TRANSITION]*

**Mary's experience is not the norm, but it's not unheard of, either. What is consistent with her story and many others... according to experts... is that the imbalance of power and control dynamics from the relationship between the parents... can repeat itself in the supervised visits, too.**

**There are so many ways a parent can break the rules... and they don't always get reported as they should, which means they aren't held accountable for their behavior... OR the parent's behavior continues to pose a safety risk for victims and their children.**

JACOBVITZ01: [00:17:44] the supervisor is supposed to be a neutral party whose obligation is to neither parent but to promote the safety of the children.

**This is Sarah Jacobvitz, an Attorney at Bay Area Legal Aid. She regularly represents survivors of domestic violence and other forms of abuse, primarily in civil proceedings, related to family law.**

J02: [00:18:14] And that person, the professional supervisor, would write reports [00:18:19] ...[00:18:24] And then we might go back to court and discuss whether supervision should continue. [00:18:30]

**That's how it's *supposed* to go. But as we saw with Mary's case, the practice often falls short of what the law requires.**

J03: if there's one thing I can't stress enough is that the rules are there for a reason an abuser might present as like a very charming person. Maybe if they're the non-custodial parent, you're going to spend more time with them. You're going to become sympathetic to them. But that's that's not your job, right. Like your job is to be a neutral party observer, to report things that happen and to follow the rules. [00:36:06]

**This gets at one of the biggest problems in supervised visitations: not everyone is playing from the same rulebook. Not every professional provider receives the same training.**

**There are *some* rules that every provider is supposed to follow—they were first established in 1998 and as recently as 2019—but there is no oversight or enforcement if they don't. That's even true for independent providers like the one Mary was assigned. Others, like those who go through Rally Family Visitation Services in San Francisco—the place where Sonia works, as we heard from her earlier in the episode—are more likely to closely enforce the rules and regulations.**

J04: [00:03:56] And sometimes supervisors make judgments. 'OK, I'm going to make different rules for this case than another case because this person didn't really abuse their children because they're such a nice person.' // [00:04:12] And the spouse is the one who's the manipulative one. And then once you have made that judgment call and you then decline to follow the rules, that is the point in which the children become in danger because you don't have access to all of the evidence.

**The result can be an inconsistent experience, which some parents take advantage of.**

J05: And that is very traumatic and very stressful for the survivors, because here they are supposed to be in this protected setting and usually no one cares about these violations. [00:32:28]

**Crystal—we're not using her real name either—witnessed this first-hand when the father of her children made a point of ignoring the rules that said he should come in through a certain door at the visitation, and came in through hers instead.**

CRYSTAL01: [00:29:03] Unfortunately, this guy, because he's an abuser and a manipulator, he came in through my entrance twice. And the second time I had to call the police because the facility didn't really, you know, help me or help, you know, the person. I understand that, you know, I feel unsafe and unprotected and he needs to follow the rules. [00:29:23]

*[QUICK POP OF SCENE TAPE WITH CRYSTAL AND DAUGHTER]*

**Crystal is a domestic violence survivor. She met her former partner when she was 16, and he was 36. Today, she lives at home with her youngest daughter.**

C02: [00:02:36] he convinced me to run away from home. I ran away from home and I had my son at 16 years old with him. I lived in homeless shelters. // [00:02:54] And for two years, I was away from my family just living under him and under his manipulation, just living this life of, you know, poverty. [00:03:04]

**Crystal was 19 when she gave birth to her second child with this man. Eventually she put herself through school, started working and got an apartment. That forward momentum gave her the push she needed to end the relationship, which was abusive nearly from the start. She was 23.**

C03: [00:03:34] the physical abuse was there. The mental abuse is there. And I'm young and I'm thinking like, you know, I'm in love. So, yeah, it lasts a very long time. And I thought, you know, this is going to be my Prince Charming. [00:03:47]

**He insisted on seeing their kids, who were very young at the time. Eventually he convinced Crystal to enroll them in a school near his house... and then to let him keep the kids all week. But when he learned that she was seeing someone else -- he said she'd never see their kids again.**

C04: [00:11:56] He threatened my life, my partner's life. He told me he's going to shove a gun down my throat and that I would never see my kids again. [00:12:04]

Julia: [00:12:06] He said he was going to shove a gun down your throat?

C: [00:12:08] That's exactly what he said.

Julia: [00:12:12] And did you take him seriously at the time?

C: [00:12:15] Absolutely. Yes, I did.

*[MUSIC TRANSITION]*

**Crystal decided to give him some space and hoped he would calm down. But months of silence turned into years. She became pregnant with her youngest child, and became more and more frantic to see her kids. Her calls and texts were not returned. Only when she hired a lawyer and went to court to seek custody... did she discover that he had kept his word that he'd do everything he could to keep her from seeing her kids again.**

C05: [00:13:25] He went to the Alameda County Court system and told them that I was deceased, and they gave him full custody of my children. [00:13:32]

**A judge had granted Crystal's ex full custody of her children without checking to verify his claim that she was actually deceased. When it became clear she wasn't... it also became clear that she was going to have to fight for time with her kids.**

C06: [00:22:42] Everybody was just kind of like, shocked to hear what was going on. Me, I was, of course, just heartbroken. I have read everything, all the lies. So I was shocked to see that the way it went. So we went to trial. [00:22:56]

**Not all non-custodial parents are the abusers when it comes to domestic violence and court-ordered supervised visitation. A judge allowed Crystal to reunify with her children, but only in a supervised setting at a facility. She was obliged to pay for the visits herself.**

C07: I was kind of confused by that and it was hurtful. [00:24:45] // And it was a horrible experience because [00:27:56] you kind of just have a room, that's kind of small, a little outdated. And you visit with your children, with someone watching you. And it's kind of uncomfortable. [00:28:07]

**Once a week for a month and a half, Crystal spent time with her kids under the supervision of a professional provider to ensure that she followed the rules. But when her ex didn't follow the rules, there appeared to be no consequences for him.**

C08: Well some of the consequences were it took from my time with my children, because we ended up not having one of the visits because I felt unsafe. I felt like he saw my car. He saw my license plate because he was right behind me. So I didn't feel safe staying there anymore. And honestly, when I called the cops, they told me to brush it off, kind of sort of like, well, he is dropping his kids off. You know, if he does it again, we'll make an arrest.

**This happens more frequently than you would suspect, says Sarah Jacobvitz. And she might only hear about it long afterwards, as an attorney, after the provider mentions it in a report.**

J06. [00:31:26] One category that's very problematic is not the visits themselves, but the exchanges. Right. Because these exchanges are the only setting in which the abuser usually is legally allowed to see the victim or the survivor. [00:31:41] // And [00:31:55] in most cases, there's a rule that says, OK, you know, like this is when the custodial parent has to get here and this is where they have to be. And this is when the non-custodial parent has to get here and this is where they have to be.

**Sometimes a provider will choose not to report a violation like this one, she says. But it can have very real safety consequences.**

J07: [00:33:34] Here you are finally seeing your children who this person may have kept from you, // [00:33:45] And then, you know, this person is playing these games. And sometimes if you report the violation, then your visit is canceled. So you're punished for their actions. [00:33:54]

*[MUSIC TRANSITION]*

**Co-parenting under court-ordered supervised visitation is challenging enough. The COVID-19 pandemic has brought many more layers of difficulty to the process... starting with the fact that, for many families, in-person visits and service delivery stopped for months. Rally Family Visitation Services has just recently been able to start seeing clients again in San Francisco, says Sonia Melara.**

SONIA06: And there's still families who are saying, I'm not going to come, not yet. You know, I'm not sure that is still a good time to do it. // And, of course, it creates extra conflict between the parents, because especially if it is the custodial parent saying, no, I'm not going to do this and expose my kid to potentially being, you know, um, being exposed to the virus.

**And virtual visitation as an alternative to in-person visits have been challenging... and is not an option for some parents and their children.**

SONIA07: [00:47:16] In this year because of the pandemic we've been in, um, in a situation where we had to offer [00:47:31] online services to parents and some parents didn't have technology. Some parents refused to do it.

**Judge Victor Hwang says the pandemic has contributed to a significant backlog in his courtroom. He estimates the quickest he can have a parent back in court is two to three months. And the court is trying to find alternative options for supervised visitation, so families can move through this difficult time in their lives.**

HWANG04: Folks are being forced into close quarters, which creates a lot of stress and conflict.....We have a lot of conflicts between parents over how to react to the COVID-19 pandemic. ....So if one parent is not following our shelter in place and taking the child on international vacations or having backyard barbecues, they're not only endangering their family, but they're endangering the other parent's family as well. So we're seeing a lot of cases related to that.

**There's also the financial stress that COVID has placed on parents, who suddenly can't afford to remain in the Bay Area.**

HWANG05: [00:42:53] we are seeing a lot of folks being hit hard by the economics of COVID and having a difficult time staying in San Francisco. So those are a lot of the cases I see right now... where one parent is forced to move from the city to a further location to be with relatives. And what do you do in that case? How do you manage visitation with a three year old, for example, if one's going to live in Texas and one's going to live here [00:43:19]?

*[MUSIC TRANSITION]*

**Supervised visitation falls along economic lines. In some places it can cost around \$75 an hour. And most families ordered to supervised visitation cannot afford that. Here's Sonia Melara again.**

SONIA08: And yet the families that come to Rally are usually the poor of the poor. You know, I mean, uh, we have a data that shows that over 60 percent of our parents make less than thirty thousand dollars a year. // And when you think about living in San Francisco, that's nothing.

**Melara says there is not enough money to support the work that Rally does. The Judicial Council's Access to Visitation Grant Program helps subsidize the fees for supervised visitation services across the state, but demand still outpaces supply.**

**And then there is the burden on families who can't afford legal representation. So a family has the stress of figuring out how to pay for supervised visitation... and also the stress of being their own lawyer and advocate in court. Unlike in criminal court... in California, you're not entitled to a family court attorney. There are just a few Bay Area pro-bono law firms that represent victims of domestic violence in custody cases, and they often have a waiting list.**

**When they get their day in court, the judge may order one parent to pay for all of the court-ordered supervised visits. Considering that visits could go on for months, this financial hardship could prevent them from happening at all.**

SONIA09: They may order a parent who's unemployed, let's say, to pay all of the fees for the case. And they have to pay an intake fee to us and they have to take pay the hourly fee. And sometimes and because we assess fees on both parents, the parent who's not working may end up paying the fees of both of them. And in some cases, these parents are might be homeless, you know, or living on the street, and and they have to carry that load.

*[MUSIC TRANSITION]*

**By its very nature, supervised visitation is an in-between step... and often, a painful one. Neither of the mothers we talked to for this story, Mary or Crystal, can say they felt well served by that part of the process.**

MARY09: You know, honestly, I would have wished not to have a supervised visitation at all.

CRYSTAL09: It kind of prevented me from really re-establishing a relationship with my children. And it definitely had an effect on me and it made the experience just much, much harder.

**But it was a necessary phase in getting them where they are today. Mary has full custody of her children and the other parent has dropped out of the picture. Crystal has worked out a joint legal custody arrangement with her former partner.**

## MUSIC POST

**I asked all the people I interviewed for this episode what they would change about the supervised visitation process... or what they would advise others to do.**

HWANG06: [00:49:19] I always encourage parents to show flexibility, be generous to the other side.

SONIA10: I think the best outcome is when the child and the parent that is visiting have developed a relationship such that the other parent recognizes it and they stop using our services because they're going to be doing independent visits. // I would also like to see more, um, services for the visiting, for the I would say for perpetrators of domestic violence to go to, uh, domestic violence anger management programs. Uh, I don't think we have enough of that in San Francisco. We don't have any services that are provided to low income families. And so // that's lacking.

MARY10: To get somebody who can make a report bias-free, that will go that that goes a long way and that's the most painful thing to read, something that's not true... in a case, that you just believe one person is the liar. Those people are not there to assess who who is right or wrong. // If they can change the way they set up the system, they can have somebody who they've can account to. To follow the rules that lay down, I think that's that will be helpful.

CRYSTAL10: I would definitely do an intake, // to have a counselor, get to know the parents. So that way they can kind of judge for themselves, especially when things like my situation has transpired. Who was the manipulator? You know, why some of the things are coming about. That's what I would change.

JACOBVITZ08: Just to reiterate, like, everyone should just please follow the rules and the laws and everyone has their rule and they have the rule for a reason, and we should all just do our best to fit within our role and follow the rules to a T, and that benefits everyone.

*[OUTRO MUSIC]*

**If you or someone you know is experiencing domestic violence or sexual abuse, call the Domestic Violence Hotline at 1-800-799-SAFE. That's 1-800-799-7233... or the National Sexual Assault hotline at 1-800-656-HOPE... That's 1-800-656-4673.**

**Thanks for joining us for this episode of the Judicial Council of California Podcast. This episode was co-produced by me, Julia Scott, and Chris Hoff, who is also our sound designer. Special thanks to everyone who spoke to us for this story -- Mary, Crystal, Judge Victor Hwang, Sonia Melara, Sarah Jacobvitz and Debbie Comstock. And to Frances Ho and Shelly La Botte at the Judicial Council, Center for Families, Children & the Courts.**