

Tab 3:

**DV Assessment & Representation: New Research & Innovative
Approaches for Resolution of DV Cases**

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**Domestic Violence
Assessment & Representation:
New Research & Innovative Approaches
for Resolution of DV Cases**

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Agenda

- 1. Recent research on DV identifies and distinguishes several types of violent relationships**
- 2. Common issues with DV clients and how custody issues add further complications.**
- 3. Practical techniques for representation and settlement resolution.**
- 4. Review of Elkins' Task Force recommendations.**

**DV Dynamics:
Four types of DV as identified in recent research***

- 1. Coercive-Controlling Violence**
(battering relationship; power and control)
- 2. Situational Couple Violence**
(conflict-instigated or "common couple violence")
- 3. Violent Resistance**
(a violent response to being abused)
- 4. Separation-Instigated Violence**
(a time-limited reaction to trauma)

Note: Risk to children remains high in all categories

*Peter Jaffe, Ph.D., Janet Johnston, Ph.D. et al, Family Court Review, 2008.

DV Dynamics- Examples:
Which category as identified by recent research?

- Email received 12/09: "Someone I know needed help with a domestic violence situation. She had just had a baby but the couple had decided to separate. She was receiving threats, verbal abuse, and it was escalating and getting physical. The police had been called by neighbors on occasions. It was interfering with her ability to work and provide for her child. I referred her to your office in the courthouse. She said that your staff was wonderful. They expedited the paperwork and walked her through the maze of the court process. I thought you would be pleased to hear how it has worked out for her. The baby's father apologized to her after the court hearing and said he was so sorry that it took the court process to change how he was with her. Four months later, he is helping her instead of fighting her. They are not together but he is no longer fighting her and instead is helping her in concrete ways like getting the daughter to daycare so she can get to work."

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DV Dynamics- Examples:
Movie: Sin by Silence
Produced & Directed by Olivia Klaus

Portrays the stories of 6 women convicted for killing their abusive husbands. E.g. Glenda, married for 20+ years, suffered intimidation, threats, extreme physical and sexual abuse. They were out shopping and as he got out of the car, he calmly told her that when they got home he'd finally beat her to death. She ran over him in a public parking lot, many witnesses, he died of his injuries. Glenda was convicted of murder and is serving a life sentence.

www.SinBySilence.com

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DV Dynamics- Examples
Situational Couple Violence:

Note on Mutual ROs, CFC §6305 requires:

- Both sides appear personally.
- Both sides to put evidence of abuse in writing.
- Court must put findings on the record that both parties acted primarily as aggressors and neither acted primarily in self-defense. See Monterroso v. Moran, 135 Cal. App. 4th 732 (2006)
- Caution: Judicial Officers may issue dueling ROs even when clear disparity in levels of abuse.

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**DV Dynamics:
Typical Coercive-Controlling Violence**

Why does the abuser behave that way?

- Learned behavior (poor conflict resolution in family of origin)
- Victim of child abuse
- Lack of self esteem
- Need for power and control
- Inability to resolve conflicts peacefully
- Jealousy (usually without reason or provocation)
- Macho culture
- Historical standards of male domination

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**DV Dynamics:
Typical Coercive-Controlling Violence**

**Why do victims stay? Why do they reconcile so frequently?
Its important for advocates to be reminded:**

- Fear, esp. of increase in violence (dangerous to leave)
- Love . . . Hope . . . Guilt . . . Shame
- Lack of financial resources . . . Homelessness
- Family/Children . . . Fear of losing custody
- Staying as safer option (better the devil you know . . .)
- Cyclical/known pattern of behavior
- Religion . . . Self blame . . . Cultural pressures
- Low self esteem . . . Social Isolation
- Lack of knowledge regarding legal rights and procedures

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Challenges in Representing the DV Client

DV clients commonly present with:

- chaotic, imprecise memories (especially for those with head injuries)
- acute PTSD and difficulty focusing, reluctance to recall dates & details
- high levels of stress and anxiety
- embarrassment and shame, especially regarding sexual violence
- untreated PTSD, depression and mental health issues
- untreated drug and alcohol addictions
- anger (often released after separation because now safe to vent)
- grief (for the loss of their relationship and dreams)
- indecision (easily persuaded to reconcile, frequently decide to drop RO)
- minimization of DV incidents (will contact abuser, undermining RO)
- chaotic lives, forgetfulness (missed appointments)
- transportation problems
- childcare problems
- housing instability (repeated change of phone numbers and address)
- needs which change dramatically over time

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Restraining orders: Inherent problems

- Initial orders are issued *ex parte*, usually without a hearing
- Risk of false allegations
- 2-3 week lag time before court hearing occurs
- Cyclical nature
 - The hearing is scheduled during a period of reconciliation
- Intense, escalating DV
 - A paper order is a mere band-aid
- Periodic but low-level DV
 - can be like hitting a nail with a demolition ball
- 5-year order may be too long or too restrictive
 - Especially where children involved
- Necessary contact at church, place of employment, school?
- Victims frequently want ongoing contact with abuser
- Victims frequently are persuaded to drop RO & reconcile

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Abbreviated DV/Custody 101

Simple DV Math:

High conflict DV case + custody dispute = \$\$\$

- **Volatile:** High risk for parents, children, law enforcement
- **Consuming:** Disproportionate amounts of time for practitioners and courts
- **Exhausting:** Requires special knowledge, training and patience

Parenting Challenges in DV Cases

DV victim as Parent: Parenting Deficiencies

- unable to protect child from DV perpetrator
- brainwashed by abuser to treat child in abusive way
- direct child abuse by DV victim (hierarchical abuse)
- lacks confidence in own parenting skills
- inability to provide stable housing/schooling
- inability to provide emotional support for children
- difficulty managing children, especially boys
- acts irrationally or with poor judgment
- after separation, bathing/sleeping issues in other household
- problems with new significant other

**Legal Remedies:
Custody Basics in DV Cases**

Parenting restrictions proposed by Peter Jaffe et al Sarah Buel*and other researchers, include:

- Suspended or supervised access to children
- Monitored or public exchange
- Exchange with minimal contact (e.g. school pick up/drop off)
- Cessation of threats
- Support services: counseling, shelters, school-involvement, home visits
- Behavioral goals (completion of DV, parenting, substance abuse classes)
- (Reunification) counseling for children
- Family Wizard or written communication between parents require (text, email)
- Timely review by family court: compliance/consequences for failure to comply

*The Impact of Domestic Violence on Children: Recommendations to Improve Interventions, 2008

**Legal Remedies:
Custody Basics in DV Cases**

- **Order of Preference, CFC §3040(a):** (1) To both parents jointly or to either parent, considering which parent more likely to allow frequent and continuing contact with the noncustodial parent, (2) if neither parent, to person(s) in whose home child has been living in wholesome and stable environment, (3) any other suitable person.
- **Denial of custody in favor of nonparent:** "the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child." CFC §3041
- **DV Impact = Risk of Removal:**
One parent's complete refusal to allow visitation may cause them to lose custody. Ongoing high conflict may lead to DCFS removal (as detriment and failure to protect.) Caution DV victims! Could occur in any of the 4 types of DV relationship, especially where both parents are violent but also where court concludes victim has "failed to protect."

**Legal Remedies:
Custody Basics in DV Cases**

Why consider settlement in custody/ DV case?

- parents will have ongoing interaction because of children
- lengthy testimony divisive, acrimonious & expensive
- better for children if parents help craft parenting plan
 - this assumes appropriate services are a part of the plan
 - better chance of compliance and buy in
 - appropriate settlement includes very specific orders
- settlement negotiations may help establish parents as equal partners
 - this changes the power/control dynamic

DV Representation: Key Themes

Practical techniques in representation

- Alleged victim vs. alleged abuser
- DV is not "one size fits all"
- These cases are difficult for attorneys

Strategies for resolution

- Hearing or settlement?
- Settlement considerations
- Resolutions include "tailored" orders

Importance of aftercare

- Comprehension of orders, whether stipulated or not
- Reduction of violations

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Alleged Victim vs. Alleged Abuser

Why alleged?

- You are not the 'finder of fact'
- And even if they are violent, they are still parents

Believe your client

- Until you have reason to believe otherwise

How to assess credibility in DV matters

- History and context
- Work with alleged victims and alleged abusers within the context of how DV victims and DV abusers respond

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Challenges for DV Counsel

Safety

Ethics

Communication

Need for services for the whole family

Need for representation

Restraining order relief

- a shield, not a sword
- A word about 3044

"He said/she said"

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Representing Alleged Abusers

DV restraining orders have huge consequences

- Move out, custody and access to children
- Firearms, reputation, employment impact
- Immigration impact, especially if RO is violated

False allegations of domestic violence occur

- especially at times of heightened tension
- Orders should not be issued on the basis of false allegations

- Often the true victim is alleged to be the abusive party!

Representation can help mitigate the damage

- to the family relationships, especially when children are involved

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Representing Alleged Abusers

What's happening

- Is a criminal case ongoing? Consider obtaining consent to speak to their criminal attorney and coordinate.

Make sure the client understands their current orders

- No contact, even if the other party invites contact.
- Check for alignment between a Criminal Protective Order and a Temporary Restraining Order, because the CPO trumps.

Look at the context and background of the relationship

- Why are these allegations coming up now?
- Any previous filings that did not allege abuse?
- Money issues? Custody issues?

Evidence and witnesses

- Can your client's statements ("I wasn't there") be backed up?
- Look for corroborating evidence

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Representing Alleged Abusers

Proving the negative ("it did not happen") comes down to credibility

- Can anything in the accuser's declaration be proven false?
- Statements? Physical evidence? Injuries not consistent?

Review the declaration very carefully for consistency

- Compare to police reports of the same event
- Attack non-detailed declarations or inconsistent statements
- If allegations are exaggerations, the accuser may not be believable

Look at the character of your client

- Talk to family members, child care providers, others
- But remember possibility of bias

Prepare an Answer

- If there is no criminal matter, work with the client to prepare and serve an Answer to the allegations prior to the hearing

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Representing Alleged Abusers

If the case is indefensible, focus on **reducing risk**

- Continue the Family case until Criminal matter is resolved
- Many criminal matters resolve with non-DV dispositions
- Try to reserve a 3044 finding by conceding temporary sole custody

Was this a “one time” incident? a catalyst to separation?

- The accuser may drop the request now that separation has occurred
- Advise client to facilitate peaceful separation with reasonable interim orders that address stability issues for the victim
 - child & spousal support, property control
 - flexible visitation

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Representing Alleged Abusers

Was this prompted by alcohol or drug use?

- Advise client that addressing these issues may give a better chance at a stipulated agreement or vacating orders
 - enrolling in counseling, AA program, parenting classes, accountability classes or other resources

Urge the client to always “take the high road”

- don't alienate the kids
- don't make disparaging remarks about the other parent
- comply with all orders

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Resolving DV Cases

Keep temporary RO's in place while everyone obtains services

- This is the stated purpose of the DVPA
- Case management model addresses parenting concerns, accountability, compliance and the changing needs of the victim

Stipulate to tailored RO's of lesser duration/terms, rather than holding a contested hearing

- Avoid creating wounds that do not heal
- Petitioner still retains ability to request renewal

Stipulated orders re: conduct

- Disfavored and extremely difficult to enforce
- In many jurisdictions, may be inevitable

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DV recommendations from Elkins

Some recommendations are very good

Survival of custody orders in a DV matter
Stipulation to paternity in a DV matter

- No requirement to open a Parentage case

Form changes
Statewide consistency
Access to POP

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DV Recommendations from Elkins

Some recommendations could be better:

Specifically encourage certain best practices

- allow testimony and call witnesses in DV matters, many of which proceed as summary hearings.
- question victims to probe for evidence of abuse
- allow testimony/witnesses in matters where a request for a DVPA order was denied pending hearing and the victim is in pro per

Be extremely careful in seeking the child's point of view

- recognize the dynamic of domestic violence includes the abusive parent aligning the children and undermining the non-abusive parent.
- Information gleaned from children may not reflect the reality of the domestic violence in in the home or the parenting capacity of either parent

Ensure court-based mediators do not employ coercive tactics to rush a victim to agreement for the sake of expediency

- Ensure victims should be able to have a support person present in all court-sponsored mediation process.

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DV Recommendations from Elkins

A recommendation we'd like to see:

- **Judges and mental health professionals should be trained to use research-based methodologies for accurate differential assessment**
- **They should utilize "guiding principles" when creating custody and visitation plans.**
- **Courts should strive to achieve all 5 priorities and resolve conflict by abandoning the lower priorities one by one**

Priority 1: Protect the child from violent, abusive and neglectful parenting environments

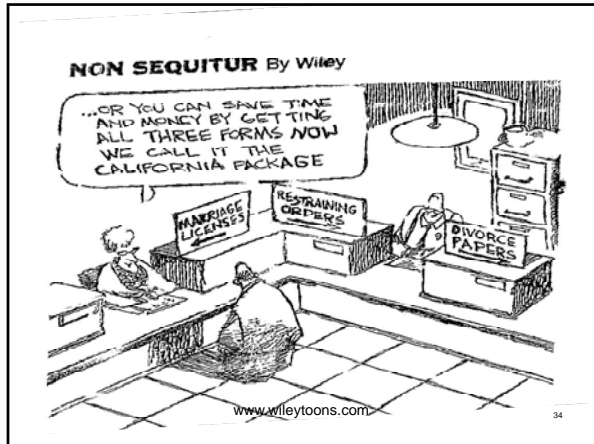
Priority 2: Protect the safety and support the well-being of the victim parent

Priority 3: Respect the right of the victim parent to direct own lives and make decisions in interests of child


Priority 4: Hold perpetrators of domestic violence accountable for past & future behavior

Priority 5: Allow and promote the least restrictive parent-child access plan that benefits the child

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