DOMESTIC VIOLENCE:

The Crucial Role of the Judge in Criminal Court Cases

A NATIONAL MODEL FOR JUDICIAL EDUCATION

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> *This material was adapted from the Family Violence Prevention Fund's publication entitled* "Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases. A National Model for Judicial Education." *This publication was developed under the leadership of the Family Violence Prevention Fund's National Judicial Education on Domestic Violence Advisory Committee, and co-authored by Janet Carter, Candace Heisler, and Nancy K.D. Lemon. Production was made possible by a grant from the State Justice Institute.*

Any adaptation or reprinting of Chapter Two, *"The Impact of Domestic Violence on the Defendant and the Victim in the Courtroom," must include the author's name, Dr. Anne Ganley, in addition to the paragraph above.*

To facilitate the adaptation of this material into a Benchguide relevant to state statutes and case law, its contents are available on computer disk from the

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Judge Morgan also co-chaired the California Judicial Education on Domestic Violence Advisory Committee that met in 1989 to develop the first comprehensive program for judges on criminal court domestic violence cases. Judge Morgan's leadership in the development of the California program and in the production of the California Benchguide on Domestic Violence for the Criminal Courts set the stage for the development of the national judicial education program presented in this manual.

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Introduction

Only recently has national attention been focused on the tragic problem of domestic violence. Ten years ago, violence against wives, girlfriends, or other adult intimates was not viewed by the public as a serious problem with devastating consequences affecting us all. Even in the most severe cases where violence within the home resulted in homicide or severe injury, domestic violence was rarely seen as a violent crime. The traditional response of the criminal justice system to these cases was to defer domestic violence cases to the civil courts. Police were encouraged to mediate "domestic disputes," and prosecutors were told not to file these "no-win" cases.

This lack of response reinforced the escalating, recurring, and often lethal nature of domestic violence. It was rooted in the belief articulated in early law that man, as master of the household, had the absolute right and authority to chastise and discipline his wife and children. English Common Law enforced this notion of entitlement, but limited the man's use of this power to "a rod no thicker than his thumb" (See, Stedman, Beirne, "*Right of Husband to Chastise Wife*," 3 Va. Law Reg. 241 (1917); *State v. Oliver* (1874) 70 N.C. 44; *State v. Rhodes* (1868) 61 N.C. 445). Thus, the "rule of thumb" was established. Then, in 1842, a limit was placed on the "rule of thumb" and a husband's authority to chastise his wife was only permitted in cases of great emergency. (*Bradley v. State* (1824) 2 Miss. Walk. 73).

The statistics on domestic violence are sobering. It is estimated that each year, 2.1 million married, separated, or divorced women in the United States are beaten by their partners. (Langan, Patrick., Innes, Christopher, Bureau of Justice Statistics Special Report "*Preventing Domestic Violence Against Women,*" Washington, DC: U.S. Department of Justice, August 1986, p. 3). This means a woman is beaten once every 15 seconds in this country. The social cost of this violence is seen on a daily basis in newspapers across the country as they report the latest homicide of a woman, her children, and/or other family members, at the hands of a husband or boyfriend. Police officers, innocent bystanders, or neighbors who try to intervene, are often also the victims of the violence.

The F.B.I. reports that each year almost one-third of all female homicide victims in this country are killed by a husband or boyfriend. (F.B. I., Uniform Crime Reports, 1988). Studies also show that 22% to 35% of women visiting hospital emergency rooms are there due to symptoms related to ongoing abuse by a partner. (Journal of the American Medical Association, August 22/29, 1990-Vol 264, No.8, pg. 943).

The silent victims of violence within the home are too often the children who watch, listen, and learn the violence. Research shows that boys who witness violence between their parents are almost three times more likely to become batterers than are sons of nonviolent parents. (Straus, M.; Gelles, R.; Steinmetz, S. *Behind Closed Doors: Violence in the American Family.* Garden City, New York: Anchor Press/Doubleday, 1980. pg. 16).

The lethality of this violence has prompted efforts in nearly every state to improve the criminal justice system's response to violence within the family. The public is now demanding that domestic violence no longer be dealt with as merely a civil court matter or

as a private, "family affair" that does not belong in the courtroom, but as a serious crime with consequences reaching far beyond the family.

Every day hundreds of victims of domestic violence turn to the criminal justice system for protection, viewing it as the primary institution to abate and condemn violence within the home. Legislative changes in almost every state now clearly define domestic violence as a crime for which victims must have access to the justice system. During the last ten years, over 80% of the states have expanded police arrest powers in domestic violence cases. In the early 1970's, thirty-two (32) states did not permit warrantless probable cause misdemeanor arrest in domestic violence cases under any condition. Today, law enforcement can make warrantless misdemeanor arrests under specified conditions in all but two states. In almost one quarter of the states, police are required to arrest without a warrant where probable cause exists to believe that domestic violence has occurred. These changes were prompted by studies showing arrest as a more effective deterrent in domestic violence cases than mediation or arrest avoidance. (Sherman, L., Berk, R. "*The Minneapolis Domestic Violence Experiment,*" Police Foundation Reports Washington D.C.: The Police Foundation, 1984).

Further legislative enactments have added new domestic violence charging sections to many states' criminal codes. These changes, combined with mandated training programs for law enforcement on responding to domestic violence calls, have dramatically increased the number of arrests for domestic violence. Several states have introduced legislation which strengthens the prosecution of domestic violence, and training programs on prosecuting domestic violence cases are now being offered on both state and national levels.

As a result of changes in law enforcement and the prosecution's response to domestic violence, courts throughout the country are seeing a dramatic increase in the number of criminal domestic violence cases brought before them. The courts play a crucial role in society's ability to prevent the devastating consequences of violence within the home. The U.S. Attorney General's Task Force on Family Violence states in their Final Report:

> *Judges and the sentences they impose can strongly reinforce the message that violence is a serious criminal matter for which the abuser will be held accountable. Judges should not underestimate their ability to influence the defendant's behavior. Even a stern admonishment from the bench can help to deter the defendant from future violence...* at 36.

> *Judges are the ultimate legal authority in the criminal justice system. If they fail to handle family violence cases with the appropriate judicial concern, the crime is trivialized and the victim receives no real protection or justice...* at 41.

The unique challenges presented by these cases have prompted judges around the country to provide leadership in developing judicial education programs on domestic violence. The National Council of Juvenile and Family Court Judges recommends in their publication, *Family Violence, Improving Court Practice*, that judges be trained in the dynamics of family violence and how to address it fairly and properly. They state:

> *"Education courses on family violence should be required for all judges hearing civil or criminal aspects of these cases in order to provide effective intervention and to prevent further injury to the victim and other family members in family violence cases. The judiciary must be proactive in insisting*

that this training be made available on an ongoing basis. Training will enable judges to understand these complex issues, become more sensitive to the barriers facing victims, and eliminate any gender bias which contributes to the judicial system's failure to afford the protection of the law to the victims of family violence."

In 1988, the Family Violence Prevention Fund (formerly the Family Violence Project of San Francisco) received a grant from the State Justice Institute to develop a Curriculum for Judicial Education on Domestic Violence. Under the leadership of an Advisory Committee composed primarily of judges, judicial educators, and domestic violence experts, an eight hour program was developed, and a Benchguide on Criminal Court Domestic Violence Cases was published. The program and the Benchguide were pilot-tested in California, and received excellent reviews from the fifty judges in attendance. Since that time, the California Center for Judicial Education (CJER) has expanded the program to three days and incorporated it as a regular offering of their Continuing Judicial Studies Program. In addition, the Benchguide has been published as a regular edition of the CJER Journal, and distributed to every judge in California.

Following the success of the pilot program in California, the Family Violence Prevention Fund received support from the State Justice Institute to develop a National Judicial Curriculum on Domestic Violence Criminal Court Cases. Under the leadership of a National Advisory Committee on Domestic Violence, this publication, *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases. A National Model for Judicial Education*, was developed and published.

The program reflected in this manual was pilot-tested in California during September of 1989, and then in Michigan and Connecticut during the Spring of 1991. The Michigan Judicial Institute sponsored the pilot program in Michigan, and the Connecticut Judicial Department sponsored the pilot program in Connecticut. Each pilot program received excellent reviews from the judges in attendance.

This manual reflects the success of the pilot programs, and the combined experience and wisdom of the National Judicial Education on Domestic Violence Advisory Committee members, listed on page iv. It is designed to assist judicial educators in developing and conducting a similar program, and in publishing a Benchguide on Criminal Court Cases specific to individual state statutes and case law. Issues arising in civil court domestic violence cases are not covered in this Curriculum, but will be included in the second edition, to be published in the Fall of 1992.

Chapter 1

Developing a Judicial Education Program on Domestic Violence

A. Purpose and Use of Manual

This manual is intended to guide the development of a comprehensive judicial education program on domestic violence criminal court cases. The program is comprised of two essential and related parts: a Benchguide on Domestic Violence Criminal Court Cases and an eight hour judicial education seminar.

The Benchguide plays an integral role in the judicial education seminar. It serves as preparatory reading for participants prior to the seminar, as a reference to statutes and case law for faculty and participants during the seminar, and as a reference for judges upon returning to the courtroom.

The program is most effective when both the seminar and the Benchguide are developed. However, this manual has been designed to assist in producing a Benchguide specific to the needs of the state either in conjunction with, or separately from the seminar. The contents of this manual may be copied verbatim for the Benchguide, and/or can be adapted to suit the needs of the state.(1)

This manual assists in developing both the Benchguide and the eight-hour seminar by providing:

1) Content for the Benchguide, which can be copied from this publication and adapted to the needs of the state.(2)

2) Citations to leading statutory authority and case law.(3)

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(1) When reproducing this manual, the original source must be credited by including the acknowledgements found here on page i. To facilitate reproduction of this material, the manual's contents are available on computer disk from the Family Violence Prevention Fund, 1001 Potrero Ave. Bldg. 1, St. 200, San Francisco, Ca. 94110. Phone number: (415) 821-4553 (see order form in appendix).

(2) Ibid.

(3) The citations to statutes and case law included herein are by no means an exhaustive list of all statutes and case law relevant to the given topic. Instead they are representative of the leading trends in the field as of June, 1990. WESTLAW keynotes have been included to guide researchers in identifying relevant state statutes and case law.

3) WESTLAW keynotes for topic areas to assist in identifying relevant state statutes and case law.

4) An eight-step guide to developing the program.

5) Teaching outlines for program faculty.

6) Handouts included in the appendix, designed for distribution to participants at different points in the program.

The following sections describe the judicial education program and the Bench-guide on Criminal Court Domestic Violence Cases.

B. Program Purpose and Format

This program provides a forum for judges to:

1) Develop an understanding of domestic violence and the societal and familial context in which it occurs.

2) Examine individual and societal beliefs regarding domestic violence that influence judicial fact-finding and decision-making.

3) Review current statutes and case law governing the handling of domestic violence criminal cases.

4) Discuss court practices designed to improve the criminal justice system's handling of these cases.

The program focuses on judicial practices and decision-making at each of the three main stages of a criminal court case:

1) Pre-Trial/Release

2) Evidentiary Hearing and/or Trial

3) Case Disposition

Each of these stages is the subject of a small group deliberation, followed by a plenary session highlighting the key issues arising from the small group discussion. The program agenda is included here, followed by a brief description of the content and purpose of each program section.

Domestic Violence: The Crucial Role Of The Judge in Criminal Court Cases

Sample Program Agenda

8:30 - 9:00	**Registration** Coffee, Tea, and Pastries
9:00 - 9:15	**Welcome and Program Overview** Faculty:
9:15 - 11:15	**The Impact of Domestic Violence on the Defendant and Victim in The Courtroom** Faculty: (domestic violence expert) Faculty: (judge)
11:15 - 11:30	**BREAK**
11:30 - 12:30	**Small Group Deliberations**
	Group I **Pre-Trial/Release Considerations** Facilitator:
	Group II **Evidentiary Hearing/Trial Considerations** Facilitator:
	Group III **Case Dispositions** Facilitator:
12:30 - 1:30	**CATERED GROUP LUNCH**
1:30 - 2:30	Plenary Session I: **Pre-Trial/Release Considerations** Faculty:
2:30 - 3:30	Plenary Session II: **Evidentiary Hearing/Trial Considerations** Faculty:
3:30 - 3:45	**BREAK**
3:45 - 4:30	Plenary Session III: **Case Dispositions** Faculty:
4:30 - 5:00	**Judicial Action Planning:** Wrap-up and Evaluation Faculty:

C. Program Description

1. The Impact of Domestic Violence on the Defendant and Victim in the Courtroom

This session gives participants the opportunity to examine how domestic violence affects the behavior of the defendant and the victim in the courtroom, and how the court can intervene effectively in these cases. Commonly held beliefs which affect the court's response to domestic violence are examined in light of their implications on judicial fact-finding and decision-making.

The session is taught primarily by a domestic violence expert who has experience working directly with domestic violence offenders and victims. A judge who has presided over domestic violence criminal cases facilitates this session by asking the domestic violence expert questions that the participants may be reluctant to voice themselves in the larger group. The content of this presentation is outlined in Chapter 2.

2. Small Group Deliberations

Small group deliberations give participants the opportunity to apply the information presented in the first session directly to the issues they face in court, and encourage detailed discussion of key issues that arise in domestic violence cases. The deliberations also ensure that the subsequent sessions address issues identified by the participants as those of primary concern to judges when hearing domestic violence cases.

Prior to attending the program, each participant receives a copy of the Benchguide and is randomly assigned to one of the three small group deliberations listed on the agenda. They are asked to review the section of the Benchguide pertaining to the topic of their assigned small group.

Following the presentation on the impact of domestic violence on the defendant and the victim, participants are broken into the three small groups. The groups meet concurrently for one hour and are facilitated by the faculty member who will conduct the plenary session on the small group's assigned topic. The domestic violence expert who presented during the first session should rotate between each of the groups to answer questions that arise regarding how the court's actions can affect the defendant, the victim, and the children.

The small group deliberations focus on the hypothetical domestic violence case included in Chapter 3. Each group is given only the information regarding the case that it would receive during the assigned stage of the criminal court process. For example, the Pre-Trial/Release group receives information it would have before it when asked to release the defendant from custody prior to trial. Similarly, the Evidentiary Hearing/Trial group is asked to rule on evidentiary issues and victim/witness testimony concerns based only on information it would have at that point in the process, while the Case Disposition group reviews only the information normally provided at the time of sentencing or other disposition.

The facilitator asks the group to rule on several issues of law that arise at the group's assigned stage of the court process. Examples of these issues are included in Chapter 3 along with a sample hypothetical domestic violence court case for each of the three small groups.

The facilitator leads the group in a discussion of how their rulings accomplish the following objectives. These objectives are displayed at the front of the room at the beginning of the small group deliberation.

1. To stop the violence
2. To protect the victim
3. To protect the children and other family members
4. To protect the general public
5. To uphold the legislative intent that domestic violence be treated as a serious crime, and to communicate that intent to the defendant and to the victim
6. To hold the offender accountable for the violent behavior, and for stopping that behavior
7. To rehabilitate the offender
8. To provide restitution for the victim

In the process of ruling on the hypothetical case issues, the small group is asked to identify and list the main problems facing the court during the assigned criminal court stage. By having the small group identify and prioritize the issues, the facilitator can focus the plenary session discussion on those matters of greatest concern to judges in the state.

3. Plenary Sessions

The purpose of the three plenary sessions is to give all participants the opportunity to discuss the problems identified by each of the small groups as being of particular concern to judges, and to discuss solutions to these problems that accomplish the objectives listed above.

Plenary session I, entitled Pre-Trial/Release Considerations, focuses primarily on setting bail, releasing the defendant on his/her own recognizance, and issuing a protective order, or ordering other conditions of release. The content of this session is outlined in Chapter 4. Plenary session II, entitled Evidentiary Hearing/Trial Considerations , focuses primarily on evidentiary concerns and issues relating to domestic violence victim/witness testimony, and is outlined in Chapter 5. Plenary session III, entitled Case Dispositions, focuses on dispositional alternatives in domestic violence cases, and on the assessment of how a particular disposition can accomplish the eight objectives listed above. Chapter 6 outlines the content for this session.

Each plenary session is lead by the same judge who facilitated the small group deliberation on the given topic, and the domestic violence expert who presented the first session. The judge leads the discussion on the problems facing judges at the specific stage in the criminal court process, and the domestic violence expert answers questions arising in the discussions regarding how the proposed solutions effect the defendant, the victim, and the children. Faculty avoids using a lecture format and instead utilizes interactive learning techniques designed to encourage discussion among participants regarding their courtroom practices and beliefs concerning domestic violence cases.

Faculty begins the plenary session by asking all of the participants to review the hypothetical domestic violence case deliberated on by the small group. Faculty then asks judges who did not participate in the small group to rule on the issues contained in the hypothetical, and to comment on the factors taken into consideration in their ruling.

The rulings of the small group are then displayed at the front of the room along with the list of problems facing the court identified by the small group. Faculty calls on members of the small group to discuss their rulings and the factors considered in those rulings. Individual judges who participated in the small group are asked to explain how the group arrived at the rulings. Faculty then focuses discussion on the problems identified by the small group, and on solutions to these problems that accomplish the above objectives.

Throughout the discussion, faculty refers frequently to the chapter of the Benchguide corresponding to the plenary session topic. In this way participants become familiar with the Benchguide and are able to use it as a reference on issues arising in court that do not get covered in the plenary session.

The planning committee tailors the length of the three plenary sessions to the

needs of the state. Each of these sessions can last between 45 minutes to an hour, depending on the problems faced by the court in a particular state at the various stages of the criminal process. Difficulties in handling domestic violence cases depend on individual state statutes and case law, resources available to the court, and the response of other branches of the criminal justice system to domestic violence.

4. Judicial Action Planning: Wrap-Up and Course Evaluation

The judge who introduces and moderates the program conducts this session, and begins by asking participants to complete the "action plan" questionnaire included here in the appendix. The questionnaire asks participants to list specific ways in which they intend to handle domestic violence cases differently as a result of attending this program. Faculty leads the group in a discussion of the ideas presented on the action plans, and then concludes the program with a discussion on the role of the judge in criminal domestic violence cases. Suggestions for this discussion are included in Chapter 7.

D. Use of the Benchguide and other Materials during the Program

Prior to the program, participants are randomly assigned to one of the three small group deliberations (Pre-Trial, Evidentiary Hearing/Trial, or Case Dispositions), and are advised of this assignment at the time their registration is confirmed. Participants are sent a copy of the Benchguide three weeks before the program, and are asked to read the chapter of the Benchguide that corresponds to their small group topic. By sending out the Benchguide prior to the program, participants are given the opportunity to review the statutes and case law governing the issues to be discussed in the small group deliberation.

Throughout the program faculty refers to sections of the Benchguide to familiarize the participants with the document and to encourage them to use it as a reference upon returning to the courtroom.

Another excellent resource for participants is the publication entitled, "*Family Violence: Improving Court Practice. Recommendations from the National Coun-*

cil of Juvenile and Family Court Judges[4]. This manual contains recommendations for the courts on improving the handling of domestic violence cases.

E. Eight Steps To Program Development

Step I: Recruit the program planning committee

Step II: Convene the program planning committee meeting

Step III: Produce a Benchguide on domestic violence criminal court cases by adapting the contents of this manual to the needs of the state's court system

Step IV: Select program faculty

Step V: Adapt the hypothetical domestic violence case in Chapter 3 to the needs of the state.

Step VI: Conduct a faculty development session

Step VII: Oversee the coordination of program logistics

Step VIII: Design a program evaluation

(4) Copies can be ordered for $5 each from the National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada, 89507.Contact Joe Bliss (702) 784-4829.

Step I: Recruit the program planning committee

The key ingredient to a successful program is the Program Planning Committee. The Committee provides the leadership in the development of the program, specifically in the following areas:

1. Producing a Benchguide on Criminal Court Domestic Violence Cases using the content provided in this manual, and inserting relevant state statutes and case law.

2. Selecting program faculty, including five judges and a domestic violence expert.

3. Adapting the hypothetical domestic violence case in Chapter 3 to the needs of the state.

4. Planning a faculty development session.

5. Overseeing the coordination of program logistics.

6. Designing a program evaluation.

Suggested Areas of Planning Committee Members' Expertise

The ideal program planning committee includes individuals with the areas of expertise listed below. The combination of these perspectives enables the judicial education program to reflect a rich diversity of knowledge and experience.

1. Judges with experience in handling criminal domestic violence cases who have an expressed interest in improving the criminal court's response to these cases.

2. Judges who have demonstrated leadership in developing judicial education programs.

3. Judges with demonstrated experience and expertise in serving as faculty for judicial education programs.

4. Experts on domestic violence who have worked with domestic violence victims and offenders, and who have experience in working with the criminal courts.

5. State judicial educators with experience in developing judicial education programs and program materials.

6. Representatives from the criminal defense bar, the prosecution, and probation or parole services who have handled domestic violence cases, and who have experience in developing educational programs for criminal justice personnel.

Judges and domestic violence experts who will serve as program faculty should be on the program planning committee. This ensures that each faculty member is fully aware of the purpose, intent, and content of the program by virtue of having played a leadership role in its development.

Judges who have demonstrated leadership in developing judicial education programs can be identified through the state judicial educator's office, or by consulting with judges involved in the development of judicial education. Judges who have provided leadership in efforts to improve the criminal court's response to domestic violence, and experts on domestic violence with experience working with the criminal courts, can be identified by contacting the statewide domestic violence coalition (see appendix for national directory) or a local domestic violence program.

As with any planning committee, it is important that the membership reflect the diversity of the local area. Although domestic violence knows no racial, economic, social, or religious boundaries, it can affect communities differently, particularly when the local criminal justice system's response to violence varies between communities. In addition, domestic violence is often misperceived as "only a woman's issue." For these reasons, it is important that the planning committee reflect both ethnic and gender diversity.

Step II: Convene the program planning committee meeting

The program planning committee will need to meet only once if the agenda is specific and is followed closely. The list of tasks for the program committee provided above can be used to develop the meeting's agenda. A suggested meeting agenda is included in the appendix. It is important that the committee select a strong chairperson who will ensure that the meeting agenda is completed, and who can make decisions following the meeting regarding approval of program materials and the planning of the faculty development session.

The committee should identify a subcommittee whose purpose is to oversee the development and production of the Benchguide. This subcommittee should be available to the Benchguide researcher(s) to make decisions on the content of the Benchguide, and to approve the final version.

Step III: Produce a Benchguide on domestic violence criminal court cases by adapting the contents of this manual to the needs of the state's court system

This manual has been designed to facilitate the preparation of the Benchguide. The Benchguide plays a key role as preparatory reading for participants prior to the program, as a reference for faculty and participants during the program, and as a guide for judges upon returning to the courtroom.

The Benchguide can be prepared by reproducing portions of this manual relevant to the state's laws and court system, and adding the appropriate citations for state statutes and case law in the margin next to each topic.(5) The information in the margins of Chapters 4 through 6 identifies the types of statutes that should be researched for each topic. In addition, Westlaw keynotes are listed, and space is made available for writing in citations to local authority.

Each of the chapters should be thought of as a "menu" of issues arising in domestic violence criminal court cases. Issues included in the chapters that are not relevant to the state's laws and court structure should be deleted, and matters needing additional attention should be expanded.

Step IV: Select program faculty

Roles of Faculty

1. A judge to introduce and to moderate the entire program, and to conduct the action planning and evaluation session.

2. A judge to ask the domestic violence expert questions during the presentation on the Impact of Domestic Violence on the Defendant and the Victim in the Courtroom.

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(5) When reproducing this manual, the original source must be credited by including the acknowledgements found here on pagei. To facilitate reproduction of this material, the manual's contents are available on computer disk from the Family Violence Prevention Fund, 1001 Potrero Ave. Bldg. 1, St. 200, San Francisco, Ca. 94110. Phone number: (415) 821-4553. A sample Benchguide prepared for one of the pilot-test states which follows the outline presented in this manual, is also available from the Family Violence Prevention Fund. (See appendix for order form).

3. A domestic violence expert to conduct the presentation on the impact of domestic violence and to serve as a resource for questions arising in each of the small groups and the plenary sessions regarding how the court's actions may affect the defendant, the victim, and the children.

4. A judge to facilitate the Pre-Trial/Release Small Group Deliberation, and to conduct the plenary session on Pre-Trial/Release Considerations.

5. A judge to facilitate the Evidentiary Hearing/Trial Small Group Deliberation, and to conduct the plenary session on Evidentiary Hearing/Trial Considerations.

6. A judge to facilitate the Case Dispositions Small Group Deliberation, and to conduct the plenary session on Case Dispositions.

Three of the six faculty members are asked to conduct one of the three plenary sessions and to facilitate the small group deliberation pertaining to the topic of their plenary session. It is important that these individuals have a flexible presentation style that allows them to adapt the content of their plenary session to the issues that arise in the small group deliberation. This presentation style should be discussed and practiced during the faculty development session.

Step V: Adapt the hypothetical domestic violence case in Chapter 3 to the needs of the state.

The hypothetical domestic violence case forms the basis for the small group deliberations, and must therefore elicit discussion on issues most pertinent to the courts of a particular state. By altering the fact patterns of the hypothetical slightly, and/or by changing the questions asked of each group, the issues most pertinent to the laws and court procedures of the state can be examined in detail by the small groups. Chapter 3 includes guidelines on adapting the hypothetical to the state.

Step VI: Conduct a faculty development session

The purpose of the faculty development session is to give faculty the opportunity to practice presenting a small group deliberation session and a plenary session, and to receive suggestions from other faculty on the content and format of their presentations.

Prior to the faculty development session, faculty should use the contents of this manual to outline their presentation. Each faculty member who will be leading a small group deliberation and a plenary session should practice conducting these sessions by presenting a ten minute segment of their presentation at the faculty development session. These sessions can be simulated by asking the rest of the faculty at the development session to serve as participants of the small group and the plenary session. Faculty should present this segment as a "dry run" of their presentation and not as a summary of its content. The group should then review the presentation by answering the following questions:

- ❑ what worked
- ❑ what did not work
- ❑ how the presentation could be improved

It is essential that faculty use an interactive style of presentation that avoids a lecture format and encourages discussion among participants.(6)

Step VII: Oversee the coordination of program logistics

The following is a list of program logistics that should be coordinated for this program:

1. Select date and location of program.
2. Reserve a large plenary session room, and three smaller break-out rooms. A

(6) Further information on conducting faculty development sessions can be found in the publication "*Judicial Education: A Guide to Program and Faculty Development.*" National Judicial College, Reno, NV. 1989.

flipchart and markers and/or an overhead projector should be placed in each room. The large room should have a microphone for faculty.

3. Produce the Benchguide.

4. Produce handouts included here as appendices to be given to participants during the program.

5. Send out program invitations to judges.

6. Randomly assign participants to the three small group deliberations.

7. Send each of the judges a registration packet containing a copy of the Benchguide, a pre-program questionnaire (see appendix for sample questionnaire), and a letter advising them of their assigned small group deliberation topic and asking them to review the chapter of the Benchguide corresponding to their small group topic.

Step VIII: Design a program evaluation

A program evaluation should answer the following questions:

1. Did the program address the areas most relevant to judges when handling domestic violence cases?

2. Did participants change the manner in which they handle domestic violence cases as a result of their participation in the program? If so, in what ways?

3. Do the judges use the program materials when handling domestic violence cases? If so, in what way?

4. Did the participants consider the program a valuable use of their time?

The following is a program evaluation design developed to answer the above questions:

1. Registration materials sent to participants prior to the program should include a questionnaire asking each participant to describe the three most serious problems encountered when handling domestic violence criminal cases, and to identify issues arising in these cases that he/she would like addressed by the program. Completion of the questionnaire is a prerequisite for attending the program.

2. At the end of the program, participants are given a copy of the questionnaire they completed before the program. They are asked to evaluate whether the program adequately addressed issues they identified, and to rate the effectiveness of each faculty presentation. In addition, they are also asked to complete an "action plan" questionnaire in which they identify specific changes they plan to make in the way they handle domestic violence cases as a result of attending the program.

3. Three months after the program, participants are sent a post-program questionnaire. At that time, they receive a copy of the "action plan" they completed at the program. They are asked to evaluate whether they have been able to make the changes they identified, and whether attending the program was useful in making those changes. Participants are also asked to rate how useful the Benchguide has been to them when hearing domestic violence cases. A sample post-program questionnaire is included in the appendix.

Chapter 2

The Impact of Domestic Violence on the Defendant and the Victim in the Courtroom

By Anne L. Ganley, Ph.D.

Learning Objective:

To apply an understanding of domestic violence to judicial fact-finding and decision-making.

Recommended Length: 2 hours

Faculty: A domestic violence expert who has worked with both domestic violence offenders and victims, is familiar with the criminal court's response to domestic violence, and has experience providing training and education on domestic violence to various branches of the justice system.

A judge who is familiar with the content of this chapter, and who has experience handling domestic violence cases in the criminal court. The judge should also be familiar with community services for victims and available intervention programs for offenders.

Format: The plenary session should be introduced by the judge who sets the tone with a brief introduction regarding the goals of the program, and how the content of this plenary session can assist the judiciary in handling domestic violence criminal court cases. The judge then introduces the domestic violence expert with a brief summary of her/his credentials.

The session is taught primarily by the domestic violence expert. The expert presents the material outlined in this chapter.

A minimum of two hours is necessary for this session; however, evaluations completed by judges at the pilot programs have recommended that more time be allotted to this segment. The length of this plenary session will determine how much of the material covered in the content outline can be presented. Prior to the program, faculty should determine which of the topics included in this chapter are most relevant to the state's judiciary, since two hours will not allow for all the material to be presented.

The judge's role during this session is to ask the domestic violence expert questions regarding the presentation that would most likely arise for the participants, but that they may be reluctant to voice themselves in the larger group. The judge asks questions intermittently during the presentation. It is important that the judge limit his/her questions to each sub-section of the material being presented in order to avoid disorganization of the material. For this reason, the domestic violence expert and the judge should agree on the content outline prior to the presentation.

The judge can either sit at the front of the room with the expert or participate as a member of the audience. Either way, it is important that he/she voice the questions that may be more difficult for participants to raise. Time should be allowed for questions and answers from the participants at the end of the presentation.

Subject Overview

Domestic violence is a widespread societal problem with consequences reaching far beyond the realm of the family. It is a crime that has devastating effects on the victims, the children, and the community. In addition to its immediate victims, there is increasing evidence that violence within the family becomes the breeding ground for other social problems such as violent crimes of all types, substance abuse, and juvenile delinquency.

The roots of domestic violence are embedded in our social structures and customs. (Pence, E. & Paymar, M. *"Criminal Guide for Policy Development,"* Duluth: Domestic Abuse Intervention Project, 1985.) To eliminate the abuse and to bring about change, a coordinated community response is required. Each part of the community has a role to play: law enforcement, prosecutors, defense attorneys, judges, court personnel, probation departments, corrections, victim advocates, mental/medical health personnel, educators, clergy, and social activists. How we carry out our respective roles to respond to this problem is greatly influenced by our understanding of what domestic violence is, why it occurs, and who is involved.

This content outline covers:

I. The What: Definitions of Domestic Violence

II. The Why: Causes of Domestic Violence

III. The Who: Domestic Violence Perpetrators and Victims and How They May Appear in Court

Domestic violence is a pattern of behavior that consists of multiple, often times daily behaviors, including both criminal and non-criminal acts. While the legal process focuses on the criminal behaviors, it is the entire pattern of abuse that shapes how the perpetrator and the victim function in court and how each responds to the intervention of the criminal justice system. Understanding the "what, why, and who" of domestic violence enables judges to improve the court's fact-finding and decision-making in domestic violence cases, and to develop appropriate court procedures designed to handle these cases more effectively and efficiently.

Content Outline

I. The What: Definitions of Domestic Violence

A. Domestic violence is a pattern of assaultive and controlling behavior that one adult intimate does to another.

1. The legal definition of adult intimates varies from state to state. However, the behavioral pattern and effects of domestic violence are similar for all adult intimate relationships regardless of whether they are spouses, ex-spouses, boyfriend/girlfriend, ex-boyfriend/girlfriend, adult child/adult parent, gay and lesbian relationships, individuals who currently live together and are intimately involved, those who have lived together in the past, or individuals who have children in common. (See the following chart on relationships specifically provided for by domestic violence statutes).

2. The definition of domestic violence focuses on violence in relationships between adults and does not technically include child abuse or neglect. However, in many domestic violence cases, children may also be the victims of the violence between the adults, either because they are also physically injured, or because they are emotionally injured as a result of witnessing the violence (see section on children as victims).

B. Relationships provided for by domestic violence statutes

This chart should be completed and included in the Benchguide, and/or used as a handout during the program. The state statutes pertaining to each of the areas listed on the top of the chart should be identified, and a check should be placed in the column underneath, indicating the relationships covered by the statute. The completed chart should be referred to during the presentation.

Victim's Relationship to Defendant	Law Enforc. Response Statute:	Charging Sections Statute:	Court Mandated Treatment Prgms Statute:	Civil Court Restrain. Orders Statute:	Victim/ Counselor Privilege Statute:	Marital or Cohabitant Sexual Assault Statute:	Restraining Order Issued by Criminal Court Statute:
Spouse							
Former spouse							
Living together (cohabitants)							
Former cohabitants							
Dating relationships							
Co-parents							
Child							
Parents & other people related by consanguinity (aunts, uncles, grandparents, etc.)							
Household members							

1. Domestic violence cases on the court docket may not be readily identifiable. They can often only be identified by looking at the relationship between the victim/witness and defendant. They cannot always be identified by looking for specific criminal charges typically associated with domestic violence cases. For example, a charge of arson would not necessarily be identified as a domestic violence case until the relationship between the victim and defendant is noted, e.g. the defendant allegedly set fire to the local battered women's shelter after his wife had fled there for her life.

2. Since in domestic violence the victim and offender are family or ex-family to each other, some effects of the violence will be different from the effects of violent crimes done by a stranger or an acquaintance. Both victims of intimate violence and victims of stranger violence are traumatized and fearful. Since they are in crisis, they may appear disorganized and may be reluctant to testify in court regarding the incident. However, such effects of trauma are accentuated in domestic violence cases by the fact that the perpetrator, unlike the perpetrator of stranger violence, has on-going access to the victim, knows the victim's daily routine, and continues to exercise considerable power and control over the victim's daily life both physically and emotionally for some time (see victim/perpetrator section below for discussion). The intimate context of the abuse as well as the pattern of behaviors committed have a profound impact on the victim's and perpetrator's responses to the criminal justice system.

C. Domestic violence is a pattern of assaultive and controlling behaviors including physical, sexual, and psychological attacks against the victim as well as those against children, property or pets.

1. Understanding the definitions of domestic violence (whether it is called battering, spousal assault, wife beating, etc.) requires an understanding of both the behavioral definitions as well as the legal definitions of domestic violence. (See chart on page 24).

2. Domestic violence consists of a wide range of behaviors, including some of the same behaviors found in stranger violence. Some domestic violence behaviors are criminal (hitting, choking, kicking, assault with a weapon, shoving, scratching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence,

harassment at work, destruction of property, etc.) and some of the pattern may not constitute criminal conduct (degrading comments, interrogating children or other family members, suicide threats or attempts, controlling access to the family resources: time, money, food, clothing, shelter, as well as controlling victim's time and activities, etc.). Chargeable or not, all are part of the perpetrator's controlling pattern.

3. Some of the acts may appear to be directed against or involve the children, property, or pets when in fact the perpetrator is doing these behaviors to control or punish the adult victim (for example, physical attacks against a child, throwing furniture through a picture window, strangling the victim's pet cat, etc.). Although someone or something other than the victim is damaged, the assault is part of the abuse directed at the adult intimate.

D. Criminal charges that can result from domestic violence.

1. The following chart illustrates both the behavioral and legal definitions of domestic violence as well as the criminal charges that can result from these acts. Note that some of the behaviors are not considered criminal, but they are nonetheless used by the perpetrator to control the victim.

This chart should be completed prior to the program, and included in the Bench-guide, and/or used as a handout. Criminal statutes which pertain to the behaviors listed should be included in the third column. The chart should be referred to during this presentation.

Type of Domestic Violence	Behavioral (Includes both criminal and non-criminal acts)	Crimes	Relevant State Statutes
Physical Battery	slapping, punching, kicking, choking, hitting, burning, assault with a weapon, shoving or pushing, etc.	simple assault, aggravated assault, attempted homicide, homicide, etc.	
Sexual Battery	forced sex, attacks against genitals, forcing sex in front of children, pressured sex, unwanted sexual touching, etc.	assault and sexual assault laws, child abuse laws, etc.	
Psychological Battery	threats of violence, suicide, child snatching, reckless driving to intimidate victim, isolating, interrogating, controlling, or degrading victim, etc.	harassment, menacing, custodial interference, threats, stalking vehicle offenses, etc.	
Battery on Property/Pets	attacks against property to control victim, hitting walls, destroying objects, giving away property, setting fire to property, tormenting pets, etc.	theft, property destruction, arson, vandalism, trespass, cruelty to animals, etc.	
Battery on Children	Children witnessing violence, kidnapping, child concealment, threats of violence, injury to child during assault on victim, etc.	child endangerment, child concealment, kidnapping, child abuse, etc.	

E. Domestic violence results in a pattern of control and domination exerted by one person over the other in the relationship.

1. Domestic violence is not an isolated, individual event. One battering episode builds on past episodes and sets the stage for future episodes. All incidents of the pattern interact with each other and have a profound effect on the victim. There is a wide range of consequences, some physically injurious and some not; all psychologically damaging (see victim section on page 38).

2. Not all verbal attacks or insults between intimates are necessarily psychological battering. A verbal attack done by a person who has not been physically assaultive is not the same as a verbal attack done by a person who has been violent in the past. It is the perpetrator's use of physical force that gives power to their psychological abuse. The psychological battering becomes an effective weapon in controlling victims because victims know through experience that perpetrators will at times back up the threats or taunts with physical assaults. The reality that the perpetrators have used violence in the past to get what they want gives them additional power to coercively control their victims in other non-physical ways. For example, the abuser's interrogations of victims about their activities becomes an effective non-physical way to control the victim's activities when the victim has already been hit or the victim knows of the abuser's physical violence against others. Sometimes abusers are able to gain compliance from the victim by simply saying "remember what happened the last time you tried to get a job?" (where she was assaulted because he did not approve of the job).

3. The psychological control of victims through intermittent use of physical assault along with psychological abuse (verbal abuse, isolation, threats of violence, etc.) is typical of domestic violence and is the same as the tactics used against prisoners of war and hostages. Perpetrators are able to control victims by a combination of physical and psychological battering since the two are so closely interwoven by the perpetrator.

4. Some mistakenly argue that both the perpetrator and the victim are "abusive", one physically and one verbally. While some victims may resort to verbal insults, the reality is that verbal insults are not the same as a fist in the face. Furthermore, perpetrators use both physical and verbal assaults, and research indicates domestic violence perpetrators are more verbally abusive than either their partners, or other persons in distressed/non-violent or in non-distressed intimate rela-

tionships (Margolin, G., Gleberman, L., John, J., & Ransford, T. *"Interpersonal Factors Associated with Marital Violence."* Paper presented at the Third National Family Violence Research Conference, University of New Hampshire, Durham, 1987).

5. Some argue that there is "mutual battering" where both individuals are physically using physical force against each other. Careful fact-finding often reveals that one is the primary physical aggressor as in the case where the perpetrator's violence is more severe, (e.g., punching/choking versus victim's scratching) or as in cases where the victim's violence was found to be in self defense (e.g. she stabbed him as he was choking her). (Saunders, D. *"When Battered Women Use Violence: Husband-abuse or Self-defense?"* Violence and Victims, 1(1), 47-60, 1986).

6. The pattern of power and control over the victim resulting from domestic violence influences how the perpetrator and victim function outside as well as within the criminal justice process (see section on victim and perpetrators).

F. The overwhelming majority of domestic violence victims are female, and perpetrators are male.

1. National crime statistics show that approximately ninety-five percent (95%) of spouse abuse victims are women. (Klaus, Patsy. Band, Michael *"Family Violence,"* Bureau of Justice Statistics Special Report U.S. Department of Justice, Washington, D.C, p. 4, 1984).

2. A review of arrest statistics in Seattle, Washington, (a state with a mandatory arrest with probable cause law for misdemeanor domestic violence cases) reveals the following pattern in domestic violence assaults: 80% male to female, 10% male to male, 6% female to female, and 4% female to male (Ganley, Anne. *"Integrating a Feminist and Social Learning Analysis of Aggression: Creating Multiple Models for Intervention with Men Who Batter,"* in P.L. Caesar and L.K. Hamberger Eds., Treating Men Who Batter: Theory, Practice, and Programs New York, Springer, 1989).

3. While women sometimes use physical force against partners, it is often self-defensive violence (Saunders, *infra*).

4. Furthermore, studies indicate that while both men and women sometimes use some of the same behaviors, the effects of male vio-

lence are far more serious than female aggression as measured by the frequency and severity of injuries (Berk, R. A., Berk, S.F., Loseke, D.R., & Rauma, D. *"Mutual Combat and Other Family Violence Myths,"* in D. Finkelhor, R.J. Gelles, G.T. Hotaling, & Straus, M.A. Eds. The Dark Side of Families: Current Family Violence Research Beverly Hills, CA: Sage, 1983).

5. Although there seems to be a gender pattern to domestic violence, the courts must determine the primary aggressor and take domestic violence seriously regardless of who is doing it to whom.

> Faculty may want to indicate that given the overwhelming statistics of male to female domestic violence, this presentation may include several examples where the perpetrator is male and the victim is female.

G. The consequences of domestic violence are often lethal.

1. The F.B.I. reports that each year almost one-third of all female homicide victims in this country are killed by a husband or boyfriend. *(F.B.I. Uniform Crime Reports,* 1988*).*

2. Between 22% to 35% of women visiting hospital emergency rooms are there due to injuries sustained as a result of domestic violence. (*Journal of the American Medical Association*, Vol. 264, No.8, pg. 943, August 22/29, 1990).

3. Battering is the single major cause of injury to women, even more significant than the numbers injured in auto accidents, rapes, or muggings combined.(O'Reilly, Jane, 1983. *"Wife Beating: The Silent Crime,"* Time Magazine, September 5.)

4. Without intervention, the pattern of assaultive behaviors will escalate in both frequency and severity. The pattern may change with more emphasis on psychological assault, with only intermittent physical assault, or the physical may get increasingly worse. Regardless of these variations, the overall pattern will escalate and physical and psychological injuries to the victim will become more severe.

5. The lethality of domestic violence often increases at times when the perpetrator believes that the victim has left the relationship. (Campbell, Jacquelyn. *"If I Can't Have You No One Can: Power and Con-*

trol in Homicide of Female Partners" To be published in Radford, J. Russel, D. (Eds.), Femicide: The Politics of Woman Killing. Boston. Twayne Publishers). For this reason it is critical that the court use all available legal remedies, such as protective orders, etc., to provide the victim with protection throughout the duration of the criminal justice process.

6. Some courts have been reluctant to use legal remedies that enforce temporary separation because they fear the perpetrator will retaliate against the victim for requesting such a remedy. Avoiding protective remedies in an effort to prevent further violence only serves to further escalate the violence by reinforcing both the defendant's and the victim's beliefs that no negative consequences will result from the violence. Instead, protective remedies can play a critical part in an over-all plan to hold the perpetrator accountable and to safeguard the victim and the children.

7. The lethality of domestic violence is tragically clear when the perpetrator kills his partner as well as the children or other family members, and then kills himself; or when the victim, desperate to protect herself and her children, kills the perpetrator. Research on battered women who kill, has found no distinguishing characteristics between battered women who kill and those who do not. The only differences found in comparing these two groups of battered women were found in their batterers (the men who were killed had been more violent against the victim as well as the children, etc. than those who were not killed). (Browne, Angela. *When Battered Women Kill*, Free Press, N. Y., 1987). When hearing misdemeanor and felony level domestic violence cases, the court has the opportunity to stop the violence before it becomes a homicide case.

(For a more complete discussion on the legal issues involved in cases where an alleged battered woman kills the alleged perpetrator, see Gillespie, Cynthia. *Justifiable Homicide*. Ohio State University Press, 1989).

II. The Why: Causes of Domestic Violence

A. Most domestic violence involves learned behavior rather than biological or genetic behavior.

1. Domestic violence is learned through modeling (as in cases of the male child witnessing the abuse of his mother by his father, or in the proliferation of images of violence against women in the media), as are the rules and regulations of when, where, against whom, and by whom domestic violence is to be used.

2. Domestic violence is learned and reinforced by interactions with all of society's major institutions: the familial, social, legal, religious, educational, mental health, medical, entertainment/media, etc.. In all of these social institutions there are various customs that perpetuate the use of violence as legitimate means of controlling family members at certain times (e.g. religious institutions that state that a woman should submit to the will of her husband, etc.) (For a more complete listing see Dobash, R.E. & Dobash, R.P. *Violence Against Wives.* New York: Free Press, 1979). Until recently, domestic violence was rarely considered a crime and was often discounted as a private matter not worthy of the criminal courts' attention. These practices inadvertently reinforced the use of domestic violence to control intimates by failing to hold the perpetrator accountable.

3. Domestic violence is repeated because "it works". It gets overtly, covertly, and inadvertently reinforced by all of society's institutions (see Dutton, G., *The Domestic Assault of Women*, Boston: Allyn and Bacon, Inc. 1988; Ganley, A. *"Integrating a Feminist and Social Learning Analysis of Aggression: Creating Multiple Models for Intervention with Men Who Batter."* In P.L. Caesar, & L.K. Hamberger (Eds.), Treating Men who Batter: Theory, Practice, and Programs, New York, Springer, 1989). The pattern of domestic violence described in the previous section allows the perpetrator to gain control of the victim. Family members become compliant in attempts to avoid the abuse.

4. The fact that most domestic violence is learned means that the perpetrator's behavior can be changed. Most individuals can learn not to batter when there is sufficient motivation for changing that behavior. Perpetrators can be rehabilitated, and the court can play a strong role in providing them with sufficient motivation to change. The court participates in that rehabilitation process by holding perpetrators accountable for both the domestic violence and for stopping the pattern of coercive control, while prioritizing the safety of the victim and the community throughout the criminal justice process.

B. A very small percentage of domestic violence is caused by organic or psychotic impairments (e.g.. Alzheimer's disease, Huntington's Chorea, psychosis, etc.).

1. Illness-based domestic violence is rare, but it does happen, and such cases may end up in court. It is relatively easy to distinguish illness-based violence from learning-based violence. With illness-based violence, there is usually no selection of a particular victim (whoever is present when the "short circuit" occurs will get attacked, so it may be a helper, family member, etc.). Also, with illness-based violence there is usually a constellation of other clear symptoms of the disease. For example with an organic brain disease there are changes in speech, gait, physical coordination, etc. With psychosis there are multiple symptoms of the psychotic process, (e.g... He attacked her "because she is a CIA agent sent by the Pope to spy on him using the TV monitor.").

2. Poor recall of the event alone is not an indicator of illness-based violence (see section on perpetrators for discussion of their minimization and denial).

3. Knowing in these rare cases that domestic violence is caused by a disease will not alter the fact that domestic violence occurred, but it may influence pre-trial release considerations (see Chapter 4) regarding the safety of the victim and the protection of the public. Furthermore, this finding may influence case disposition considerations since rehabilitation through specialized domestic violence counseling is contraindicated for illness-based violence. In these rare cases, the violence can be more effectively managed by appropriate external constraints and by appropriate medical or mental health intervention.

C. The majority of domestic violence is not "out of control" behavior, but a pattern of behavior that is directed by the perpetrator. (Ganley, A., *"Court Mandated Counseling for Men Who Batter."* Available from the Center for Women Policy Studies, Washington, D.C., 1981).

1. Some perpetrators will batter only in particular ways, e.g. hit certain

parts of the body, but not others; use one weapon but not another; only use violence towards the victim even though they may be angry at others (their boss, other family members, etc.); break only the victims' possessions, not their own. They are making choices even when they are supposedly they "out of control." Such decision-making indicates they are in control of their behavior.

2. Some battering episodes occur when the perpetrator is not emotionally charged and are done intentionally to gain victim compliance. The perpetrators choose to use violence to get what they want or to get that to which they feel entitled.

D. Domestic violence is not caused by "stress".

1. We all have different sources of stress in our lives (e.g. stress from the job, stress from not having a job, marital and relationship conflicts, losses, racism, poverty, etc.). We can respond to stress in a wide variety of ways (e.g. problem solving, substance abuse, eating, laughing, withdrawal, violence, etc.) (Bandura, A. *Aggression: A Social Leaning Analysis,* Englewood Cliffs, NJ: Prentice Hall, 1973). People choose ways to reduce stress that have worked for them in the past.

2. It is important to hold people accountable for the choices they make regarding how to reduce their stress, especially when those choices involve violence and other destructive approaches. Just as we would not excuse a robbery or a mugging of a stranger because the perpetrator was "stressed," we can no longer excuse the perpetrator of domestic violence. Moreover, as already noted many episodes of domestic violence occur when the perpetrator is not emotionally charged or stressed.

E. Domestic violence is not caused by alcohol or most drugs.

1. Alcohol and drugs such as marijuana, depressants, anti-depressants, or anti-anxiety drugs do not cause non-violent persons to become violent. Many people use or abuse those drugs without ever battering their partners. Alcohol and drugs are often used as the excuse for the battering, although research indicates that the pattern of assaul-

tive behaviors which comprise domestic violence are not being caused by those particular chemicals (Critchlow, B. *"The Powers of John Barleycorn: Beliefs about the Effects of Alcohol on Social Behavior."* Amer. Psychol. 41: 751-764, 1986).

2. There does seem to be some evidence that certain drugs (PCP, speed, cocaine or its derivative "crack") may chemically react within the brain to cause violent behavior in individuals who show no abusive behavior except under the influence of those drugs. Further research is needed to explore the cause and effect relationship between these drugs and violence.

3. Regardless of the exact role of alcohol and drugs, it is important to focus on the violent behavior and not allow substance use or abuse to become the justification for the violence.

4. While the presence of alcohol or drugs does not alter the finding that domestic violence took place, it is relevant to certain pre-trial considerations and in dispositions of cases. The use of substances may increase the lethality of domestic violence and needs to be carefully considered when weighing safety issues concerning the victim and the community.

5. Dispositions in cases where the domestic violence defendant also abuses alcohol and/or drugs must be directed at both the violence and the substance abuse. For individuals who abuse alcohol and drugs, changing domestic violence behavior is impossible without also stopping the substance abuse. However, it is not sufficient for the court to order the substance abusing perpetrator of domestic violence *solely* into treatment for substance abuse or domestic violence. Intervention must be directed at both problems either through (a) concurrent treatments for domestic violence and substance abuse or (b) through impatient substance abuse treatment with a mandatory follow-up program for domestic violence or (c) jail/prison time or an involuntary mental health commitment with rehabilitation directed at both the substance abuse and the domestic violence.

F. Domestic violence is not caused by the relationship between the two individuals or by the victim's behavior.

1. People can be in distressed relationships and experience negative feelings about the behavior of the other without being forced into

responding with violence or other criminal activities. Domestic violence is a pattern of control that perpetrators bring into their adult, intimate relationships. Without intervention, it is likely that they will be violent in each consecutive relationship with an intimate. (Ganley, *infra*)

2. Experts agree that victims are sometimes assaulted when they are not engaging in any behavior that could be construed as resisting the perpetrator (e.g. when the perpetrator assaults while the victim is asleep or when the victim is doing exactly what the perpetrator wants). Other incidents occur when the victim is resisting the perpetrator's demands that she engage in unethical or unlawful behavior (e.g. when the perpetrator is insisting that she call in sick to her employer because he doesn't want her to go to work, when the perpetrator is insisting that she buy him unlawful drugs, when the victim is protecting her children against the violence of the perpetrator, etc.). (Hart, Barbara. Personal Communication 1991).

3. Looking at the relationship or the victim's behavior as a causal explanation for domestic violence takes the focus off the perpetrator's responsibility for the violence, and unintentionally supports the perpetrator's minimization, denial, externalization, and rationalization of his violent behavior. Blaming the victim or locating the problem in the relationship provides the perpetrator with excuses and justifications for his conduct. This inadvertently reinforces the perpetrator's use of abuse to control family members and thus contributes to the escalation of the pattern. Victims are placed at greater risk and the court's duty to protect the public as well as its role in rehabilitating offenders is greatly compromised.

III. The Who: Domestic Violence Perpetrators and Victims, and How They May Appear in Court

A. Perpetrators of domestic violence

The following information cannot be used as a predictive profile to determine whether or not a defendant is a perpetrator of domestic violence. Individuals can have some of the following characteristics and not act in abusive ways. Obviously, only by evaluating the facts of the case and having evidence of the behavioral pattern can we determine if do-

mestic violence occurred and who the perpetrator was. However, knowing some of the issues related to perpetrators can assist in fact-finding, decision-making and in determining how the court can intervene most effectively.

1. Perpetrators of domestic violence can be found in all age, racial, socioeconomic, educational, occupational, and religious groups.

Perpetrators are a very heterogeneous population whose primary commonalty is their use of violence. They do not fit into any specific personality diagnosis. Sometimes the criminal justice system as a whole, or a particular court, deals with one group more than another, e.g., a particular socioeconomic class or a particular race. This may lead to some inaccurate generalizations about perpetrators or victims. When the criminal justice process (law enforcement, prosecution and the judicial process) is evenly applied to all domestic violence cases, then the diversity of perpetrators will be apparent.

2. Certain cultural groups are viewed as being more violent than others in the United States, in spite of a lack of systematic study of this issue.

Most often the question of whether there are cultural differences in the frequency or severity of domestic violence is raised regarding cases that involve persons of color or third world immigrants. The reality is that most cultures, including the white culture in the United States, have until recently been unwilling to take a stand against domestic violence. It is premature, without careful research, to say whether some cultures perpetrate more domestic violence than others. The tendency to view other cultures as being more violent than one's own results from a combination of factors:

a) The tendency to focus only on another culture's more obvious cultural supports for domestic violence without also being aware of that culture's prohibitions against it. Cultural illiteracy results in the failure to see that most cultures have a mixture of conflicting messages about domestic violence ("you never hit a woman" versus "sometimes women just ask for it", etc.)

b) The failure to acknowledge just how violent one's own culture is, and how it gives permission to, and tolerates its own domestic violence.

Just as the court would not find the values of a defendant's culture to be a mitigating circumstance in crimes such as robbery, speeding, or violence against a stranger, so should it not treat domestic violence any less seriously based on assumptions regarding a particular culture's acceptability of domestic violence.

3. Some domestic violence perpetrators minimize or deny while others lie about their violence even though police reports and other evidence give a very different picture.

For some, minimization and denial are defense mechanisms against the psychological pain of recognizing they are abusing those they supposedly love, or those who are family to them. This kind of minimization and denial is a "self con" rather than an attempt to lie to someone else. Some do lie, even in court, to avoid the consequences of their behavior and to maintain control of their partner. Unlike the "self conners" who are deluding themselves, those who are lying know they are not telling the truth.

4. Perpetrators of domestic violence externalize responsibility for their behavior to others or to factors supposedly outside of their control.

Perpetrator's externalization is apparent when they blame others for their abusive behavior as in the following collection of offenders' statements about why they had been referred to a specialized domestic violence intervention program: "she wouldn't listen to me", "she's an alcoholic", "I have PTSD (post traumatic stress disorder)", "the cop didn't like me", and "I got a hanging judge". At intake none of these perpetrators mentioned their violence as the reason they were court referred to the program, even though most had committed felony level assaults. In court, perpetrators may go into great detail to "explain" their abusive behavior by focusing on the victim's behavior that supposedly caused their violence while avoiding the court's attempt to get the facts about their own behavior during the incident.

The court can cut through the defendant's minimization, denial and/or externalization by focusing on the defendant's behavior during the incident rather than on the circumstances surrounding the behavior. How and when the defendant acted gives more relevant

information for the court than why he/she acted, and allows for more productive fact-finding.

5. Domestic violence perpetrators have a great need to be in control of others, especially of the victim.

Those who batter are very controlling of situations and other people. Perpetrators often direct their behaviors in court primarily for the purpose of controlling the victim, and secondarily to control the court process. They will use whatever tactics will work in a particular situation. The following are examples of controlling behavior that can occur during the court proceedings as the perpetrator attempts to impress on the victim that he/she, not the judge or the victim, is in charge:

- ❒ Physical assaults or threats of violence against victim and others inside or outside the courtroom, threats of suicide, threats to take the children, etc. in order to coerce the victim to express reluctance to testify, or to recant previously given testimony
- ❒ Following victims in or out of court
- ❒ Sending victim notes or "looks" during proceedings
- ❒ Bringing family or friends to the courtroom to intimidate the victim
- ❒ Long speeches about all the victim's behaviors that "made" the defendant do it
- ❒ Statements of profound devotion or remorse to the victim and to the court
- ❒ Requesting repeated continuances
- ❒ Requesting changes of counsel or not following through with appointments with counsel
- ❒ Intervening in the delivery of the subpoena to the victim so that the victim will be unaware of when to appear in court

The court can intercede in the above by:

- ❒ Ensuring that a safe place is available in the courthouse for victims to wait until their case is called.

- ☐ Calling domestic violence cases as early as possible on the court calendar.
- ☐ Making it clear to both the defendant and the victim that whether the case proceeds is up to the court, and is based on an evaluation of the evidence, and not solely on the victim's willingness to testify.
- ☐ Ensuring that any statements made from the bench indicate that the court takes domestic violence cases seriously.
- ☐ Ensuring that subpoenas are personally served to victim/ witnesses in domestic violence cases.

6. Domestic violence perpetrators tend to be excessively jealous and possessive.

Some perpetrators are very possessive of the victim's time and attention. They often accuse victims of sexual infidelity, and of other supposed infidelities, such as spending too much time with the children, with her family, with his family, with work, with friends, etc. With or without social networks, perpetrators see themselves as being very isolated and only able to talk to the victim. Their jealousy talk is usually not based on reality but instead is one more part of the perpetrator's pattern of coercive control.

7. Domestic violence perpetrators may have good qualities in addition to their abusiveness.

Those who batter may have positive qualities as well as being abusive. Some may be good providers, hard workers, good conversationalists, witty, charming, intelligent, etc. and still batter their victims. Sometimes both the court and the victim are misled by these positive qualities and assume then that the violence did not really happen since only individuals who are "monsters" could commit such acts, or that the violence can be ignored because this "good" person will soon stop. The reality is that even seemingly normal and nice people may batter and may be very dangerous. Battering stops only when perpetrators are held accountable for both their abuse and for making the changes necessary to stop the violence.

B. Victims of Domestic Violence: The Women, the Children, and the Community

1. The Primary Victims: The Women

a. National crime statistics show that approximately ninety-five percent (95%) of spouse abuse victims are women.

(Klaus, Patsy. Band, Michael *"Family Violence,"* p. 4, Bureau of Justice Statistics Special Report, U.S. Department of Justice, Washington, D.C, 1984).

b. Victims of domestic violence are not limited to any race, age, socioeconomic class, educational level, or occupation.

Victims of domestic violence come from all groups and are a very heterogeneous population whose primary commonalty is that they are victims of a violent crime. They do not fit into any specific "personality profile." Being the victim of domestic violence is the result of behaviors done by another rather than the result of personal characteristics. Consequently, just as with victims of other crimes, there is no particular type of person who is battered.

c. Victims may or may not have been abused as children, or in previous relationships.

There is no evidence that previous victimization either as adults or as children results in women seeking out or causing current victimization. (Walker, Lenore. *The Battered Women's Syndrome.* Springer Publishers, N.Y., 1984). Domestic violence is under the control of the perpetrator, not the victim.

d. Victims of domestic violence may be very isolated as a result of the perpetrator's control over the victim's activities, friends, contacts with family members. etc.

Some of the victim's behaviors within the criminal justice process can be understood in light of the control the perpetrator has managed to enforce by isolating the victim.

Through incremental isolation of the victim, some perpetrators

can increase their psychological control of the victim to the point that they literally determine reality for the victim. At first perpetrators cut victims off from other supportive relationships by claims of "loving her so much and wanting to be with her all the time". In response to these statements, the victim initially spends ever increasing amounts of time with the perpetrator. These tactics are replaced with more overt controls such as verbal and physical assaults in order to separate the victim from family or friends. Without outside contact, it becomes more and more difficult for victims to avoid the psychological control of the perpetrator. Some victims come to believe the perpetrator when they are told that they cannot survive alone, while others resist such distortions, but only at great emotional cost.

The psychological control tactics used by perpetrators are similar to those used in brainwashing prisoners of war and hostages. The more successful a perpetrator has been in isolating the victim, the more he controls what she believes and does. Breaking that isolation of the victim requires intervening in the control that the perpetrator has imposed on victim.

e. Some victims of domestic violence may minimize or deny the violence, or rationalize it by blaming themselves for making the perpetrator angry.

Just as some perpetrators minimize and deny their battering behavior because it is psychologically painful to admit the truth, some victims also find it very painful to acknowledge that their husbands/partners/lovers are battering them. Violence is supposedly done by hateful strangers, not loving intimates. It is easier to acknowledge the violence done by a stranger than by a loved one.

The victim's minimization and denial in certain situations may assist her in surviving the abuse. For example, a victim may learn to block out the physical pain of the assault in order to be more able to protect the children from the violence. When asked by police if she was injured or if her husband "hurt" her, the victim may honestly say no because she has been so successful in blocking the pain.

Some victims may tell only parts of the violent episode in court because openly acknowledging all that happened is too distressing. This "self con" becomes part of surviving domestic violence.

In the courtroom, the victim's minimization and denial of domestic violence may be decreased when she/he is encouraged to

behaviorally describe what happened at specific dates and times rather than by asking the victim to evaluate whether or not the perpetrator's behavior was abusive. Using questions such as "when he got angry, what did he do or what did he do next?", etc. rather than "did he hurt or beat you?" will often provide the court with the information (what, when, who?) necessary to ascertain the facts.

Sometimes victims are not minimizing or denying the violence to themselves but are instead lying because of fear of retaliation by the perpetrator (see section in Chapter 5 on reluctant witnesses). The perpetrator may have terrorized the victim over the period of time between the assault and the time of the hearing or trial, in order to coerce her/him into lying about the assault.

f. What may appear at first to be "crazy" behavior (i.e. wanting to return to the perpetrator in spite of severe violence) may in fact be a normal reaction to a "crazy" situation.

It is a myth that victims of domestic violence stay with the perpetrator because they like to be abused. Even in cases where the victim was abused as a child, she/he does not seek out violence and does not want to be battered.

The reasons for staying in a violent relationship are multiple and vary for each victim. There is a myth that a battered woman could easily leave the relationship if she wanted to, and that the perpetrator would let her leave without using violence as a way of preventing her from going.

The primary reason given by victims of domestic violence for staying with the perpetrator is the realistic fear of the escalating violence. The victim may know from past experience that the violence gets worse whenever she attempts to get help. Research shows that domestic violence tends to escalate when the victim leaves the relationship. National Crime Statistics show that in almost 75% of reported spousal assaults, the partners were divorced or separated. (U.S. Dept. of Justice, 1983, Washington D.C.). The perpetrator may repeatedly tell the victim that she will never be free of him. The victim believes this as a result of past experience when she has attempted to leave. The perpetrator may have tracked the victim down or kept the children away from her in his attempts to get her back. He may have enlisted help from family, friends, and others to pressure the victim to return.

In addition to the fear, other reasons why victims stay in the relationship include:

- ❒ the lack of real alternatives for employment and financial assistance, especially for victims with children (often the perpetrator controls the finances).
- ❒ the lack of affordable housing that would provide safety for the victim and the children.
- ❒ being immobilized by psychological and physical trauma (victims of trauma may not be able to mobilize all that it takes to separate and to establish a new life for themselves and their children, particularly during the period immediately following the trauma).
- ❒ believing in cultural/family values that encourage the maintenance of the family unit at all costs.
- ❒ being told by the perpetrator, counselors, the courts, ministers, family members, etc., that the violence is her fault, and that she could stop it by complying with the perpetrator's demands.

(See section on Victim/Witness Testimony in Chapter 5, page 102, for further discussion.)

g. A victim who appears reluctant to testify against the perpetrator has to the same goal as the court: to stop the violence.

Contrary to the myth that all victims of domestic violence are passive and submissive, victims use many different strategies to cope with, and to resist the abuse.

Sometimes the victim will turn to the justice system for help, and will follow through on the court process only to see that the court does not stop the violence in the short-term. Thus, the victim re-engages in prior survival strategies of complying with the perpetrator during the court process because it appears that the perpetrator is more in control than the court.

While the court can stop the violence in the long run using the legal remedies available, the victim may be attempting to stop the violence immediately. Using a variety of strategies, such as agree-

ing with the perpetrator's denial and minimization of the violence in public, accepting promises that it will never happen again, requesting that the court terminate the protective order, not showing up to court hearings, saying that she "still loves" him, and sometimes believing it, etc., the victim may be able to stop the violence temporarily.

A victim's behavior, including being a reluctant witness in a criminal trial, is consistent with being traumatized by violence, and with being a person battered by an intimate. Often how the victim is acting is in direct response to what the perpetrator did prior to the court appearance or is doing during the proceedings. The victim's safety plan is merely different than the one the court may have.

Rather than viewing the victim's behavior as either masochistic or crazy, it should be viewed as normal and as contributing to the victim's survival and the survival of the children.

2. The children as victims

a. Children of domestic violence may be physically or sexually abused by the perpetrator.

Sometimes children are used as a weapon by the perpetrator against the victim (e.g. child physically injured when thrown at the victim; child abused as a way to coerce the victim to do certain things, etc.).

Sometimes the children are accidently injured when the batterer is assaulting the victim (infant injured when mother was thrown while holding the child; small child injured when attempting to stop the perpetrator's attack against the victim, etc.).

Researchers estimate the extent of overlap between wife assault and child physical or sexual abuse to be approximately 30% to 40%. (Jaffe, Peter., Wolfe, David., Wilson, Susan., *Children of Battered Women,* Sage Publications, Newbury Park, Ca. 1990) Shelters report that the number one reason women give for fleeing is that the perpetrator was also attacking the children (Based on a survey conducted at New Beginnings, a shelter for battered women in Seattle, Washington, 1990).

b. Children are victimized by witnessing domestic violence.

Research reveals that children who witness domestic violence are effected in the same way as children who are physically and sexually abused. (Goodman, G. Rosenberg, M., *"The Child Witness to Family Violence: Clinical and Legal Considerations"* In Sonkin, D., Ed, Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence, Springer, 1986).

The negative effects of domestic violence are immediate in interrupting childhood development with cognitive, psychological, and physical symptoms: eating/sleeping disorders; mood related disorders such as depression; emotional neediness; over compliance/ clinginess/withdrawal; aggressive acting out/destructive behavior; detachment/avoidance/a fantasy family life; somatic complaints/finger biting/restlessness/shaking/stuttering; school problems; suicidal ideation. (Jaffe, P.G., Wolfe, D.A., & Wilson, S.K. *Children of Battered Women*, Newbury Park, CA.: Sage, 1990).

There are also long term effects as these children become adults. Male children in particular are affected and have a high likelihood of battering intimates in their adult relationships (Hoteling, G.T. & Sugarman, D.B., *"An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge"* Violence and Victims, 1(2), 101-124, 1986).

Sometimes the children do not wait to become adults before using violence themselves (e.g. against the victim, the abuser, their peers, other adults, etc.).

c. Children are often pawns in the perpetrator's abuse of the victim after the victim and perpetrator are separated.

Some perpetrators continue the abuse through visitation violations or through lengthy custody battles. Some hold children hostage or abduct the children in efforts to punish victims or to gain the victim's compliance. Some visitation periods become nightmares for the children either because of physical abuse by the perpetrator or because of the psychological abuse that results from the abuser interrogating the children about the activities of the victim. In these cases the intent is to continue the abuse of the victim with little regard for the damage of this controlling behavior to the children (Walker, E.A. & Edwall, G., *"Domestic Vi-*

olence and Determination of Visitation and Custody in Divorce." In Sonkin, D., Ed., Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence, Springer, 1986).

3. The Community as Victim

a. Domestic violence ripples out into the community as the perpetrator's violence against the victim also results in the death or injury of those attempting to assist the victim, or those who are innocent bystanders.

Examples of the tragic consequences to the community resulting from domestic violence can be seen on a daily basis in newspapers across the country as they recount the latest homicide of a domestic violence victim, the children, innocent bystanders, as well as those who attempt to intervene in the violence. For example, in California a domestic violence perpetrator kills the victim, his daughters, and several of the victim's co-workers , as well as a police officer; a nightclub is burned down in New York by the boyfriend of an employee, resulting in numerous deaths of patrons inside; in Colorado, a lawyer is shot in court by a domestic violence defendant; in Washington, a lawyer is killed by the husband of a client he was defending in a custody case where domestic violence was alleged.

> Faculty should use local examples of the impact of domestic violence on the community.

b. The financial cost of domestic violence to the community in terms of medical care, days missed from work, response of the justice system, etc., is phenomenal.

The National Crime Survey estimates the annual medical costs incurred as a result of domestic violence to be $44 million each year. Indirect costs include the 175,000 days per year missed from paid work. (*National Crime Surveys: National Sample, 1973-1979.* American Journal of Public Health; 70:65-66, 1989).

c. **The cost to the community in lost lives and resources is a constant reminder that domestic violence is not a family affair and it is not a private affair, it is a community affair demanding a community response.**

Conclusion:

Domestic violence cases present unique challenges for the courts. These cases can be handled more effectively and efficiently if fact-finding and decision-making are based on an understanding of the societal and familial context in which domestic violence occurs and is reinforced.

The criminal justice system's response to domestic violence must be part of a coordinated community effort to end the devastating consequences of violence within the family. Judges in the criminal courts can play a powerful role in this coordinated response by holding perpetrators of domestic violence accountable for stopping their abuse, and by ensuring that victims have access to the justice and protection of the courts.

Chapter 3

Small Group Deliberations: Hypothetical Cases

Learning Objectives:

1) To apply an understanding of domestic violence, and the societal and familial context in which it occurs, to judicial fact-finding and decision-making.

2) To identify issues which are of primary concern to judges when handling domestic violence cases, and judicial practices that meet the goals of judicial intervention in these cases.

Recommended Length: 1 hour

Faculty: Each of the three small groups is facilitated by the faculty member who will conduct the plenary session on the small group's assigned topic.

The domestic violence expert who presented the previous session rotates between the small groups and answers questions arising during the deliberations regarding how the court's actions may effect the defendant, the victim, and the children.

Format: 1) Prior to attending the program, each participant receives a copy of the Benchguide and is randomly assigned to one of the following three small group deliberations:

1. Pre-Trial/Release Considerations

2. Evidentiary Hearing/Trial Considerations

3. Case Dispositions

Assignment of participants to the small groups should take into consideration the realities of the state court system. For example, if only Municipal Court judges hear domestic violence cases at the pre-trial release stage, then only Municipal Court judges should be assigned to the Pre-Trial/Release small group deliberation.

Ideally each small group should be limited to twelve participants. It may be necessary to have more than one small group on the same topic depending on the number of participants attending the program.

2) At the time of registration, each participant is sent a copy of the Benchguide and advised of their small group assignment. They are asked to re· iew the chapter of the Benchguide pertaining to the topic of their small group prior to the program.

3) At the beginning of the small group, the facilitator passes out the small group's hypothetical domestic violence case. The hypothetical case includes all the information a judge would receive at the point in the criminal court process assigned to that particular group. Participants are given approximately five minutes to review it.

4) The following list of objectives that the court can accomplish when handling domestic violence cases are displayed at the front of the room. (See appendix for a reproduction of this list which can be used as an overhead transparency).

   1. To stop the violence.

   2. To protect the victim.

   3. To protect the children and other family members.

   4. To protect the general public.

   5. To uphold the legislative intent that domestic violence be treated as a serious crime, and to communicate that intent to the defendant and to the victim.

   6. To hold the offender accountable for the violent behavior, and for stopping that behavior.

   7. To rehabilitate the offender.

   8. To provide restitution for the victim.

5) The facilitator asks the group for its ruling on the first question posed for small group deliberation. (See the Small Group Hypothetical section entitled "How Would You Rule?" for questions.)

6) The facilitator asks for a show of hands as to whom would rule in a particular manner on the issue at hand.

7) The facilitator asks each participant to state which factors he/she took into consideration in making the ruling, and which of the above objectives he/she is seeking to achieve through that ruling.

8) The group is asked to reach consensus on each of the rulings and on the objectives it seeks to achieve with the ruling. The rulings are recorded on an overhead transparency or on butcher paper.

9) This process is repeated for each of the issues outlined under the Small Group Hypothetical section entitled "How Would You Rule?"

10) During the deliberation, problems identified by participants as being of greatest concern to judges when handling domestic violence cases are listed on an overhead transparency or on butcher paper.

11) Additional questions for discussion by the small groups are identified under the section entitled "Questions for Discussion." If time allows, the facilitator may choose to pose these questions to the group for discussion.

12) Facilitators may also choose to use a role play format to elicit discussion. By selecting one participant to act as the defense counsel, one to act as the prosecutor, and one to act as the witness or the defendant, group members can act out courtroom situations which present difficult problems for participants. Participants are then asked to rule on the issue at hand.

Development of the Hypothetical Domestic Violence Case Relevant to Your State

Included here is a hypothetical domestic violence case for each of the three small groups which can be modified for use in your state.

In revising the case, the issues to be deliberated by each group should address as many of the following areas as possible:

1. They should ask for a finding on an issue where there is a significant degree of judicial discretion.

2. They should address an area where there is wide variation within the state as to how judges handle the issue before them.

3. They should reflect an issue where an understanding of the nature of domestic violence would assist the court in determining the best course of action, and where the actions of the court would accomplish one of the eight objectives listed above.

4. They should be related to an area of law where recent statutory changes or case law rulings have significantly affected the authority of the court or the admissibility of evidence, or where novel issues of law are presented.

Hypothetical Criminal Court Domestic Violence Case

Case Summary

PEOPLE v. THOMAS

Defendant:	**Bill Thomas**	**23 years old**
Victim:	**Nancy Marshall**	**23 years old**

The parties have known each other for six years. They currently live together, and have cohabited intermittently for the last two years. They are not married, but are the parents of a five year old child, Danny.

Bill came home from work to find that Nancy had not yet returned from the child care center where she works and Danny attends. Bill got a beer from the refrigerator and waited for Nancy to return.

Nancy arrived home with Danny one hour later. Bill accused her of seeing another man. She denied his accusations and explained that one of her co-workers needed a ride home. Bill interrupted Nancy and accused her of lying. He said, "You have been fooling around for too long, bitch." Nancy again explained why she was late, but Bill continued to verbally abuse her.

Danny became scared and started crying. Danny grabbed onto Nancy's legs. Bill screamed, "Look what you've done to my child, you are a terrible mother." Bill accused Nancy of not loving him. He repeatedly threatened to kill her, called her a whore, and said he would not let her hurt his child like this.

As Nancy reached down to comfort Danny, Bill picked up a glass ash tray and threw it at her head. The ash tray hit Nancy in the temple causing a cut. Nancy fell to the floor. Bill kicked her in the stomach numerous times and screamed, "I'll kill you, you bitch!"

Nancy broke away from Bill, grabbed Danny and ran out of the apartment to a neighbors house down the street. She called the police and told the dispatcher: "Help! Help! My husband is trying to kill me and my child." She gave the dispatcher her name and address.

The police arrived five minutes later and found Nancy and Danny standing on the street in front of the neighbor's home. The police interviewed Nancy who was taken by ambulance to the hospital. Danny stayed with the neighbors.

The police went to the apartment occupied by Bill and Nancy. There they found Bill sitting on the couch. Bill told the police that his wife came home late from work acting crazy, and was yelling and screaming. He tried to calm her down, but she fell and cut her head. Bill was arrested.

Nancy was treated at the County Hospital. The cut to her head required ten stitches to close. She was held for observation for several hours after complaining of dizziness. While in the hospital, Nancy gave the police a written statement of the events as outlined above. She signed the written statement.

Bill was taken to the county jail and booked. Unable to raise bail, he remained in custody. The next day he called home and spoke to Nancy. He told her he loves her and is really sorry about the other night. He asked her to call his boss and make an excuse about his absence.

Nancy was unable to return to work for four days. Her head hurt and she had a black eye. Danny was upset and wanted to know when Daddy would come home and whether he would hurt them anymore.

Bill was arrested on the following charges:

Hypothetical Criminal Court Domestic Violence Case

GROUP 1

Pre-Trial / Release Considerations

PEOPLE v. THOMAS

Defendant is charged with violating the following Criminal Code Sections:

_____

_____

Statutory bail for these offenses is _____.

At the arraignment, defendant is advised of the charge. Counsel is appointed to represent him. The victim is not present at the arraignment.

ISSUE I

Defense counsel requests that the court release defendant on his own recognizance ("OR"), and makes the following offer of proof:

1) Defendant is currently employed as a tire salesperson and has held the job for nine months. He will lose the job if he remains in custody.

2) Defendant is currently on probation for a DUI conviction and has met all the requirements of his probation.

3) Defendant has only one other conviction. It is for reckless driving when he was 21. He is now 23 years of age.

4) Defendant received an honorable discharge from the military two years ago.

5) Defendant and victim have lived at their current address for eight months, and defendant has lived in the community for five years.

6) Defendant and victim have been together for five years. They are the parents of a five year old child.

The prosecutor opposes OR and requests statutory bail, the issuance of a no-contact order, and makes the following offer of proof:

1) Defendant is currently on probation for DUI.

2) Defendant threatened to kill the victim during the incident.

3) Defendant caused serious injuries to the victim which required that she receive ten stitches to her head, and stomach x-rays.

4) Defendant has no relatives living near him, and the victim is his only real contact with the community.

5) Defendant has twice previously assaulted the victim.

6) Defendant has lived at three locations in the last two years.

7) The alleged assault in this case was committed in front of the five year old child. The child is very upset by the incident.

8) The victim is afraid of further violence.

How Would You Rule?

1. Would you grant an OR? If so, would you impose conditions on release?

    a. What factors did you consider in making your decision?

    b. What objective are you seeking to achieve by your decision?

2. Would you reduce or raise bail to a level different from the statutory amount? Would you impose conditions on release?

    a. What factors did you consider in making your decision?

    b. What objective are you seeking to achieve by your decision?

3. Would you issue any special orders?

    a. What factors did you consider in making your decision?

    b. What objective are you seeking to achieve by your decision?

ISSUE II

Defendant has been released on bail. The court has previously imposed a no-contact order which requires the defendant to have no contact with the victim.

You are informed by the prosecutor that defendant went to see the victim after the no-contact order was made. The prosecutor tells you that defendant was at the victim's home when she came home from work, that he said he wanted to "talk things over," and that after the two spoke, he left.

How Would You Rule?

1. Would you take any action? If so, what?

   a. What factors did you consider in making your decision?

   b. What objective(s) are you seeking to achieve by your decision?

2. What action would you take if the victim "invited defendant over" to see her?

   a. What factors did you consider in making your decision?

   b. What objective(s) are you seeking to achieve by your decision?

ISSUE III

> This issue is relevant in states where the criminal courts have jurisdiction over custody and visitation when issuing no-contact orders.

Nancy has requested sole custody of Danny as a condition of her no-contact order. Nancy and her counsel oppose granting visitation rights to Bill.

How Would You Rule?

1. Would you grant Nancy sole custody of Danny?
   a. What factors did you consider in making your decision?
   b. What objective(s) are you seeking to achieve by your decision?

2. Would you grant visitation rights to Bill?
   a. What factors did you consider in making your decision?
   b. What objective(s) are you seeking to achieve by your decision?

Additional Questions for Discussion:

1) Is the fact that there is a "familial" relationship between the victim and defendant a mitigating or an aggravating factor at this stage of the court process?

2) What role does the "presumption of innocence" play at the pre-trial stage?

3) How would the presence or absence of the victim in court affect your rulings?

Hypothetical Criminal Court Domestic Violence Case

GROUP 2

Considerations at Evidentiary Hearing and/or Trial

PEOPLE v. THOMAS

The case of People v. Thomas is set for an evidentiary hearing. Defendant is charged with: _____.

Defendant is out of custody. There is a no-contact order in effect.

ISSUE I

The prosecution calls the victim to testify. Contrary to the written statement she gave to police at the hospital, she now states that she fell and hurt her head. She states she was angry with Bill and that is why she lied to the police. She testifies that she loves Bill and does not want to get him in trouble. She indicates she is financially dependent on Bill.

The prosecutor makes the following offer of proof:

1) The victim previously told police that defendant struck her with a glass ash-tray, kicked her in the stomach numerous times, called her a bitch, and threatened to kill her. The prosecutor offers the police statement into evidence and offers to call the officer to establish a legal foundation for the statement.

2) The prosecutor offers police photographs of the parties' residence taken immediately after the incident . These photographs show blood patches on the floor of the residence which lead from the center of the living room to the front door.

3) The prosecutor offers photographs of the victim taken the day after the incident depicting her injuries.

4) The prosecution offers the taped emergency call from Nancy to the police in which she says "Help, Help! My husband is trying to kill me and my child!"

How Would You Rule?

1. Under what circumstances would you dismiss the case?

   a. What factors did you consider in making your decision?

   b. What objectives are you seeking to achieve by your decision?

2. Would you question the victim about her recantation? If so, what questions would you ask? Who would you have present?

3. Would you permit the prosecutor to prove any parts of the offer of proof?

4. Which items of evidence would you admit into evidence? For what purpose?

Questions for Discussion

1) What is the proper role for the judge when a victim is reluctant to testify, or recants her/his previous testimony? How does the position of the prosecutor or the prosecutor's office affect the judge's role when the victim is reluctant to testify?

2) Is the fact that there is a "familial" relationship between the victim and defendant a mitigating or an aggravating factor at this stage of the court process?

ISSUE II

The victim/witness has been served with a subpoena. She nonetheless fails to appear at the hearing. The defense asks for a dismissal and the prosecutor does not object.

How Would You Rule?

1. Would you dismiss the case?
   a. What factors did you consider in making your decision?
   b. What objective are you seeking to achieve by your decision?
2. Is there additional information you would want to have before you?

ISSUE III

The victim/witness has been served with a subpoena. She nonetheless fails to appear at the hearing. The prosecutor requests a warrant of arrest for the victim and requests a continuance.

How Would You Rule?

1. What action would you take?
   a. What factors did you consider in making your decision?
   b. What objective are you seeking to achieve by your decision?
2. Is there additional information you would want to have before you?

ISSUE IV

The victim has appeared and is now testifying under oath. She testifies that she was not assaulted, and that she made up the story she previously gave to police.

How Would You Rule?

1. What action would you take?
   a. What factors did you consider in making your decision?
   b. What objective(s) are you seeking to achieve by this action?
2. Is there additional information you would want to have before you?

ISSUE V

At the hearing, the victim testifies that she came home late after a hard day at work. She says she was short tempered and started a fight with Bill. She says she fell down and hit her head and chest, causing the injuries she sustained. She says that Bill never touched her, and that she made up the story about Bill beating her because she was angry with him. She admits making a statement to police at the hospital and is impeached with the earlier statement, the photographs of her injuries and home, and her call for help made to the police.

The prosecutor asks to call Dr. Alexis as an expert on battered women. In the offer of proof the prosecutor states that Dr. Alexis will testify that it is a common reaction of battered women to recant when confronted by the batterer in court.

The defense counsel objects to the calling of Dr. Alexis to testify.

How Would You Rule?

1. Would you permit Dr. Alexis to testify?
   a. What factors did you consider in making your decision?
   b. What objective(s) are you seeking to achieve by your decision?
2. If you permitted Dr. Alexis to testify, would you limit the testimony? To what areas?

Questions for Discussion

1) Under what circumstances is expert testimony on the battered woman's experience admissible when offered by the prosecution? When offered by the defense?

ISSUE VI

The victim has now testified in conformity with her original statement that defendant struck her in the head with an ash tray, kicked her in the stomach, threatened to kill her, and scared their son. Following the alleged abuse, Nancy spoke to a counselor at a battered women's program.

The defense seeks to subpoena the records of the shelter, and to call the counselor to testify at the trial. The defense alleges that Nancy told the counselor she had fallen and was not assaulted by Bill. The prosecutor objects, stating the records of the shelter and communications between the victim and the counselor are confidential.

How Would You Rule?

1. Would you allow the counselor to testify?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

2. Would you hold an in camera hearing?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

3. What kind of information might you find admissible from the shelter records?

Questions for Discussion

1) In a case where the victim has relocated to a residence unknown to the defendant, what factors does the court consider when deciding whether to release her current address to the defense?

ISSUE VII

The People call five year old Danny to testify. He is served with a subpoena.

How Would You Rule?

1. Would you allow Danny to testify?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

Questions for Discussion

1) Would it matter if Nancy Marshall had testified or was unwilling or unavailable to testify.

2) Would your ruling be different if Danny were called by the defense?

Hypothetical Criminal Court Domestic Violence Case

GROUP 3

Case Dispositions

PEOPLE v. THOMAS

ISSUE I

Defendant has been charged as follows:

He is currently released on his own recognizance (OR) with a no-contact order prohibiting him from contacting the victim Nancy, with whom he had been living at the time of the incident, or their five year old son, Danny. There has been no evidentiary hearing. The case is calendared for a Pre-Hearing Conference.

Both the defendant and the victim are present at the hearing. The victim has indicated to the prosecution that she wants the case dismissed.

Defense counsel requests that the defendant be granted pre-trial diversion in order that he be able to attend a domestic violence treatment program and makes the following offer of proof:

1) This is the first time that defendant has been charged with a domestic violence offense.

2) Defendant is charged with a misdemeanor.

3) He is only 23 and wants to enter into a treatment program to help himself.

4) Defendant is employed as a tire salesperson. His job is necessary to support his family.

5) Victim is reluctant to testify.

The prosecution opposes the granting of pre-trial diversion based on the following offer of proof:

1) Although the victim is reluctant to testify, she suffered a black eye, rib pain, and a cut which required ten stitches to close. She was held for observation at the hospital after complaining of dizziness.

2) Although not charged, defendant has a history of domestic violence. He has twice before threatened and physically injured this victim.

3) Defendant has been convicted of DUI and is currently on probation.

4) Victim was off work for four days.

5) Defendant used a weapon, a heavy glass ash tray, in the incident.

6) Defendant attacked the victim in front of their five year old child who is traumatized by the incident.

7) The prosecution is prepared to proceed with the case even if the victim is reluctant to testify.

How Would You Rule?

1. Would you grant or deny the request for pre-trial diversion?

   a. Are there other facts you would want to have before you in order to rule?

   b. What factors did you consider in making your decision?

   c. What objective are you seeking to achieve by your decision?

   d. If you mandated treatment for the defendant, would you impose any special conditions during the treatment period?

   e. What factors would you consider in determining the length of the treatment period?

   f. How would you ensure that the defendant's progress in treatment is monitored, and that the treatment program the defendant attends is an appropriate one?

2. Would you permit/insist that Nancy be called as a witness? If so, what issues would you want addressed?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

3) The court is informed that the victim does not want to proceed. What action should the court take? What, if anything, does the court say to the victim?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

Questions for Discussion

1. What significance does Nancy's reluctance play in deciding whether to grant or deny pre-trial diversion?

ISSUE II

The case of People v. Thomas proceeded to trial. The defendant was convicted of the following charges:

The pre-sentence or probation report provides the following information:

I. Personal Data

Defendant: Bill Thomas
23 years of age
5'10" 180 lbs.
Education: High School diploma
Employment: Three years in the army following graduation from high school. Honorably discharged two years ago. Employed for the last nine months as a tire salesperson for a large department store.

Victim/Witness: Nancy Marshall
23 years of age
5'6" 150 lbs.
Education: High School Diploma
Employment: Employed for the last year as a teacher's aide in a Child Care Center. Their five year old son attends the center.

Parties have known each other for six years, having been high school sweethearts. They have cohabited intermittently for the last two years, although they are not married. The parties are parents of a five year old child named Danny.

The parties lived at two other locations prior to their current location. At the prior addresses, there were two calls from Nancy to the police alleging Bill's physical abuse. In one matter, the police wrote a report which they titled "mutual combat"; in the other the police abated the matter and left.

II. Criminal Record

Defendant was arrested and convicted of drunk driving six months ago. He is currently on probation.

Two years ago, he was convicted of reckless driving.

Three years ago, he was arrested for, but not convicted of battery when he was involved in a traffic accident and assaulted the other motorist who had struck Bill's car from behind. Defendant struck the other motorist in the face causing the other driver to suffer a black eye. The case was dismissed after the injured motorist returned to his home in Scotland.

III. The Incident

Bill came home from work to find that Nancy had not yet returned from the child care center where she works and Danny attends. Bill got a beer from the refrigerator and waited for Nancy to return.

Nancy arrived home with Danny one hour later. Bill accused her of seeing another man. She denied his accusations and explained that one of her co-workers needed a ride home. Bill interrupted Nancy and accused her of lying. He said, "You have been fooling around for too long, bitch." Nancy tried to explain why she was late, but Bill continued to verbally abuse her.

Danny became scared and began crying. Danny grabbed onto Nancy's legs. Bill screamed, "Look what you've done to my child, you are a terrible mother." Bill accused Nancy of not loving him. He repeatedly threatened to kill her, called her a whore, and said he would not let her hurt his child.

As Nancy reached down to comfort Danny, Bill picked up a glass ash tray and threw it at her head. The ash tray hit Nancy in the temple causing a cut. Nancy fell to the floor. Bill kicked her in the stomach numerous times and screamed, "I'll kill you, you bitch!"

Nancy finally broke away from Bill, grabbed Danny and ran out of the apartment, down the street to a neighbor's house. She called the police and told the dispatcher: "Help! Help! My husband is trying to kill me and my child." She gave the dispatcher her name and address.

The police arrived five minutes later and found Nancy and Danny standing on the street in front of the neighbor's home. The police interviewed Nancy who was taken by ambulance to the hospital. Danny stayed with neighbors.

The police went to the apartment occupied by Bill and Nancy where they found him sitting on the couch. Bill told the police that his wife came home late from work acting crazy, and was yelling and screaming. He tried to calm her down, but she fell and cut her head. Bill was arrested.

Nancy was treated at County Hospital. The cut to her head required ten stitches to close. She was held for observation for several hours after complaining of dizziness.

Bill was taken to the county jail and booked. Bill remained in custody for 3 days until he was released on bail.

Nancy was unable to return to work for four days. Her head hurt and she had a black eye. Danny was upset and wanted to know when Daddy would come home and whether he would hurt them anymore.

How Would You Rule?

1. What sentence would you impose? What factors did you consider in imposing this sentence?

   a. What factors did you consider in making your decision?

   b. What objective are you seeking to achieve by your decision?

Questions for Discussion

1) What significance should the court assign at sentencing to the fact that a victim has been reluctant to proceed?

2) In what way does the court consider Danny in sentencing?

3) What is the victim's role at sentencing?

4) Is the fact that there is a "familial" relationship between the victim and defendant a mitigating or an aggravating factor at this stage of the court process

Chapter 4

Pre-Trial / Release Considerations

Learning Objectives:

1) To apply current case law, statutes, and an understanding of domestic violence, to the assessment of public safety in domestic violence cases.

2) To apply current case law, statutes, and an understanding of domestic violence, to decisions regarding bail, releasing defendant on own recognizance, or imposing conditions on pretrial release.

3) To apply current case law, statutes, and an understanding of domestic violence, to the issuance of criminal court no-contact orders in domestic violence cases.

Recommended Length: 1 hour

Faculty: A judge who has handled domestic violence cases at the pre-trial stage, and who facilitated the pre-trial/release small group deliberation.

The domestic violence expert who presented the morning session on the impact of domestic violence on the defendant and the victim in the courtroom.

Format:

1) Participants from the small groups reconvene into the main meeting room.

2) Faculty begins the plenary session by asking all of the participants to review the hypothetical domestic violence case deliberated on by the pre-trial/release small group.

3) The eight objectives that the small group's rulings were designed to accomplish are displayed at the front of the room (see chapter 3 for objectives).

4) Faculty asks judges who did not participate in the small group to discuss how they would rule on the issues contained in the hypothetical, and to comment on the factors taken into consideration in their ruling.

5) The rulings of the small group are displayed at the front of the room along with the list of problems identified by the small group facing the court at the pre-trial stage of domestic violence cases.

6) Faculty asks members of the small group to discuss the factors that were taken into consideration in the small group's rulings.

7) Faculty focuses discussion on the problems identified by the small group, and on solutions to these problems that accomplish the eight objectives.

8) Faculty directs questions regarding how participants' rulings may affect the defendant, the victim, and the children, to the domestic violence expert.

The topics outlined in this chapter are those that are most likely to arise during both the Pre-Trial/Release small group deliberation and the corresponding plenary session. In preparation for the program, faculty should review this chapter and become familiar with state statutes and case law relevant to each of the topics.

Subject Overview

The lethality of domestic violence is well documented. Each year, the F.B.I., reports that approximately thirty percent (30%) of female homicide victims are killed by their husbands or boyfriends. See, for example, *F.B.I. Uniform Crime Reports, 1986.* Studies of injuries sustained as a result of domestic violence have found that between twenty-two percent (22%) and thirty-five percent (35%) of medical emergency room visits made by women are the result of domestic violence. (*Journal of the American Medical Assoc.*, August 22/29, Vol. 264, No. 8, p. 943, 1990).

Studies also show that domestic violence tends to escalate in both frequency and severity over time. The Police Foundation reported that in eighty-five percent (85%) of domestic violence homicides occurring in Kansas City during a two year period, the police had been called to the residence at least once

in the two years prior to the death. In fifty percent (50%) of the homicides, they had responded to the address at least five times. (*Domestic Violence and the Police: Studies in Detroit and Kansas City, p.IV,* Washington, D.C.: Police Foundation, 1977).

National Crime Statistics show that once a woman is victimized by domestic violence, her risk of being victimized again is high. (Langan, Patrick A., Ph.D. and Innes, Christopher A., Ph.D., *Preventing Domestic Violence Against Women, p. 1,* Bureau of Justice Statistics Special Report, U.S. Department of Justice, Wash. D.C., 1986). Data also shows that during a six month period, approximately thirty-two percent (32%) of the women who were abused once were victimized again. (Bureau of Justice Statistics, *Report to the Nation on Crime and Justice: the Data,* Washington D.C.: Office of Justice Programs, U.S. Department of Justice, October, 1983).

Research also suggests that domestic violence tends to escalate when the victim leaves the relationship. Approximately seventy-five percent (75%) of spousal assaults reported in a national survey involved persons who were divorced or separated. (*U.S. Department of Justice,* Wash. D.C. 1984) See also *People v. Gutierrez* (Ca., 1985) 171 C.A. 3d 944, 949, 217 Cal.Rptr. 616 ... "the occasion of separation among spouses oftentimes heightens the potential for angry confrontation...".

The above research demonstrates that a history of domestic violence may be a reliable indicator that further violence will occur. In addition, the victim may be particularly vulnerable to reassault during attempts to leave, or to sever the relationship. A report by the National Institute of Justice (N.I.J.) concluded that the victim is especially vulnerable to retaliation or threats by the defendant during the pre-trial period. Goolkasian, G., *Confronting Domestic Violence: The Role of Criminal Court Judges,* National Institute of Justice: Research in Brief. U.S. Department of Justice, November, 1986).

In view of these findings, the most important pre-trial release considerations in domestic violence cases are the need to separate the parties, and to protect the victim and community. Failure to do so may predictably result in recurring violence. For these reasons, the court should consider no bail in cases where the victim has been severely injured, where a dangerous weapon was used, where there is an escalating history of domestic violence, or threats of retaliation by the defendant. In most others, the court should set bail, and reserve own recognizance release (OR) for exceptional cases only.

In all cases where the threat of continued violence or intimidation exists, it is recommended that the court consider issuing a no-contact order to protect the victim, irrespective of the defendant's custodial status. It is not uncommon for an incarcerated defendant to continue contacting the victim by mail, telephone, or through third parties.

To help protect the victim during the pre-trial period, some states mandate notice to victims of the defendant's arrest, arraignment, and pre-trial release, if the victim has requested this information and provided an address. (See, e.g., Conn. statute §51-286c). Even where not mandated legislatively, this procedure is recommended where possible.

Content Outline

I. Findings on Danger to Victim During Pre-Trial Period

A. The lethality of domestic violence is well documented.

1. The F.B.I. reports that thirty percent (30%) of female homicide victims are killed by their husbands or boyfriends. *(FBI Uniform Crime Reports, 1986).*

2. In half the states in this country, the homicide rates of women victims in partner homicide increased by 75% between 1976 and 1986. (Browne, A. & Williams, K. R. *"Gender-Specific Effects on Patterns of Homicide Perpetration."* Paper presented at the American Psychological Association, New York, August, 1987).

B. Research shows that domestic violence tends to increase in both frequency and severity over time.

1. The Police Foundation reported that in eighty-five percent (85%) of domestic violence homicides occurring in Kansas City during a two year period, the police had been called to the residence at least once in the two years prior to the death. In fifty percent (50%) of the homicides, they had responded to the address at least five times. (*Domestic Violence and the Police: Studies in Detroit and Kansas City,* p. iv, Washington, D.C.: Police Foundation, 1977).

2. Data from the National Crime Survey shows that once a woman is victimized by domestic violence, her risk of being victimized again is high. (Langan, Patrick A., Ph.D. and Innes, Christopher A., Ph.D., *Preventing Domestic Violence Against Women,* p. 1, Bureau of Justice Statistics Special Report, US Department of Justice, Wash., D.C., 1986).

3. During one six-month period, approximately thirty-two percent (32%) of women who were abused once were vic-

timized again. (*Report to the Nation on Crime and Justice: The Data*, Bureau of Justice Statistics, Washington, D.C.: Office of Justice Programs U.S. Dept. of Justice, October 1983).

C. Research indicates that violence often escalates when the victim attempts to leave, or to sever the relationship.

1. National Crime Statistics show that in almost seventy-five percent (75%) of spousal assaults reported on a national survey, the parties were divorced or separated. *U.S. Department of Justice*, Wash. D.C, 1984.

2. In a study of domestic homicides committed in Chicago and Philadelphia, researchers found that over 28% of the women killed by their male partners were attempting to end the relationship at the time of their murder. (Casanave, N., and Zahn, M. *"Women, Murder, and Male Domination: Police Reports of Domestic Homicide in Chicago and Philadelphia."* Paper presented at the Annual Meeting of the American Society of Criminology, Atlanta, October 31, 1986.)

   See also; Campbell, J., *"If I Can't Have You No One Can: Power and Control in Homicide of Female Partners,"* to be published in J. Radford & D. Russel, Eds., Femicide: The Politics of Women Killing. Boston, Twayne Publishers. Barnard, G., Vera, H., Vera M., Newman, G., *"To Death Do Us Part: A Study of Spouse Murder,"* Bulletin of the American Academy of Psychiatry and the Law, Vol. 10, pgs. 271-280, 1982.

3. The National Institute of Justice concluded that the victim is especially vulnerable to retaliation or threats by the defendant during the pre-trial period. (Goolkasian, G., *Confronting Domestic Violence: The Role of Criminal Court Judges*, National Institute of Justice: Research in Brief, U.S. Department of Justice, November, 1986).

4. See, e.g., *State v. Luster* (Mo., 1988) 750 S.W.2d 474 (defendant killed ex-wife, saying "If I can't have you, nobody else can"); *State v. Taylor* (Ks., 1983) 673 P.2d 1140 (defendant killed wife when she told him she wanted divorce); *Nasworthy v. State* (Ga., 1984) 314 S.E.2d. 446 (defendant shot at ex-wife and son); *Hafenstein v. Burr* (Az., 1962) 376 P.2d 782 (defendant charged with murdering ex-wife's boyfriend); *People v. Bryant* (Il., 1975) 322 N.E.2d 233 (defendant seriously injured fiance when

she told him she was leaving him); *State v. Fair* (Ct., 1985) 496 A.2d 461 (defendant shot lover when she said she and child were leaving).

D. The above findings demonstrate that a history of domestic violence may be a reliable indicator that further violence will occur, particularly during the pre-trial period. Therefore the most important pre-trial release consideration in domestic violence cases is to seperate the parties, and protect the victim by addressing:

1. The likelihood of retaliation by the defendant for the victim's call for assistance.
2. The likelihood of an escalation in the severity and frequency of the violence when the victim attempts to leave the relationship.
3. The defendant's access to the victim.

Pre-Trial Release Considerations

II. Pre-Trial Release Considerations

Statutes:

A. Relevant statutes and case law. See margin.

See, e.g., 18 Pa. C.S.A., §2711 (c) (1) (officers may not release domestic violence defendants from custody, but instead must take them to judge).

Case Law:

B. Subject to local restrictions or prohibitions, the court may also want to consider the following factors:

☐ Degree of injury to victim

Injury patterns of domestic violence are relatively specific, and generally involve contusions or lacerations to the face, head, neck, breast, or abdomen, distinguishable from injuries not deliberately inflicted, which usually involve the periphery of the body. (*Journal of the American Medical Association*, August 22/29, Vol. 264, No. 8, p. 943, 1990).

☐ History of domestic violence as documented by police reports, and/or convictions

Studies have shown that only a small percentage of domestic violence arrests result in convictions. In a study done in 1986 by the Police Foundation in Minneapolis, only 3 out of 136 suspects arrested for domestic violence ever received a formal sanction from a judge, while 80% of the 205 arrested and non-arrested suspects had a history of prior domestic violence.

"Furthermore, [when a protection order is violated] while this may be the first time the offender has violated the order, it is at least the second time he has committed assault & battery against the victim." (National Institute of Justice, *Civil Protection Orders*, p. 58, 1990).

See, e.g., Ohio statute §2919.251 (A) (1); *State v. Weller* (Vt., 1989) 563 A.2d 1318 (defendant repeatedly abused wife, placed on probation, violated probation by reassaulting her); *Ex parte Welch* (Tx., 1987) 729 S.W.2d 306 (defendant charged with soliciting wife's murder while on bond awaiting trial for assaulting her, high bail upheld).

☐ Whether the frequency and/or severity of violence appears to be escalating

☐ Threats of retaliation by the defendant, either directly towards the victim or indirectly towards the children

See, e.g., *Carbo v. U.S.* (1962) 82 S.Ct. 662, 7 L. Ed.2d 769; Ca. Pen C §422; 18 Pa. CSA §4954 et seq; *Thomas v. Commonwealth* (Ky., 1978) 574 S.W.2d 903; *Lanthrip v. State* (Ga., 1975) 218 S.E.2d 771; *Irene D. v. Anthony D.* (N.Y., 1982) 449 N.Y.S.2d 584; *Commonwealth v. Jordan* (Ma., 1986) 492 N.E.2d 349.

❒ Use or threatened use of a weapon

See, e.g., 18 USCA §922(p) (making it a federal felony to possess a sawed-off shotgun).

❒ Defendant's prior criminal history

In 1984, a study done by the Police Foundation in Minneapolis found that 59% of the suspects in misdemeanor domestic violence cases had prior criminal histories. Berk, S. & Sherman, L. *The Minneapolis Domestic Violence Experiment.* Police Foundation Reports, April, 1984. See also, Ohio Statute §2919.251(A)(3); *State v. Mecier* (Vt., 1978) 388 A.2d 435.

❒ Danger posed to public, including threats to victim's family or co-workers

See, e.g., *U.S. v. Frietas* (D.C. Cal. 1985) 602 F. Supp. 1283; *U.S. v. Salerno* (1987) 481 U.S. 739, 107 S.Ct. 2095, 95 L. Ed.2d; 18 Pa. CSA §2711(c)(2); Ohio stats. §2919.251(A)(4); *Hafenstein v. Burr* (Az., 1962) 376 P.2d 782.

❒ Defendant's alleged use or possession of alcohol or a controlled substance

A recent study by the San Francisco Medical Examiner - Coroner's Office Toxicology Department conducted on domestic violence homicide suspects disclosed that 70% has alcohol present, 45% had other drugs present (or also present). The most common drug found was cocaine. Slade, M., Lynton, J.D., Heisler, C., "*Application of Forensic Toxicology to the Problem of Domestic Violence,*" Journal of Forensic Sciences, JFSCA, Vol. 36, No. 3, pp 708-713, 1991. See also *Gelles, R.J., The Violent Home: A Study of Physical Aggression Between Husbands and Wives,* Beverly Hills: Sage Publications, 1984; *U.S. v. Campbell* (Tx., 1989) 713 F. Supp. 220 (OR properly revoked when defendant consumed alcohol); *People v. Riederer* (Ca., 1990) 217 CA.3d. 829.

❒ Defendant's access to the victim

The court may want to consider the following factors:

- Does the defendant intend to return to a residence shared with the victim?
- Do arrangements for child visitation take the victim's safety into consideration?

- Has the defendant ever gone to the victim's place of employment and threatened the victim or co-workers?

☐ Defendant's mental and physical health

Domestic violence perpetrators are not likely to suffer from severe mental disorders. (Saunders, D.G. & Browne, A., *"Domestic Homicide,"* Chapter to appear in Ammerman, R.T.and M. Herson, M. (Eds.), Case Studies in Family Violence, New York: Plenum Press. 1990). In rare cases, domestic violence may be caused by a disease such as Alzhiemers, Huntington's Chorea, or psychosis. It is relatively easy to distinguish illness-based violence from learning-based violence. (For a discussion of distinguishing factors, see Chapter 2.)

☐ Defendant's threats of suicide

Dr. Lenore Walker reports that the likelihood of the defendant committing suicide goes up when the victim leaves. Walker, L. *The Battered Woman* New York, Harper & Row, 1979; See also, Sonkin, D.J., Martin, D. & Walker, L., Eds., *The Male Batterer: A Treatment Approach, p. 74* Springer, N.Y., 1985; Campbell, J., *"If I Can't Have You No One Can: Power and Control in Homicide of Female Partners,"* to be published in Radford, J. & Russel, D., Eds., Femicide: The Politics of Women Killing. Boston, Twayne Publishers; See, e.g., Ohio: §§ 2919.251(A)(2), (5), 2919.271.

C. In addition to considering the above, the court may want to develop a checklist to assist in assessing the likelihood that the defendants will seriously injure or kill the victim.

A checklist developed by the Pennsylvania Coalition Against Domestic Violence to assist law enforcement in assessing a domestic violence perpetrator's potential for homicidal assault is included in the appendix.

Bail

WESTLAW:
49 k 42-44

State Constitution:

Statutes:

Case Law:

III. Pre-Trial Release Options

A. Bail

1. U.S. Const., Amends. 5, 6, 8, 14; Federal Rule of Criminal Procedure 46; *Carbo v. U.S.* (1962) 82 S. Ct. 662, 7 L.Ed. 2d 769.

2. State constitution. See margin.

3. Statutory authority. See margin.
See, e.g., Ohio: §2919.251; 18 Pa. CSA §4954 et. seq.; N.C. §50B-4(b).

4. Relevant case law. See margin.
See, e.g., *State v. O'Steen* (Tn., 1977) 559 S.W.2d 340 (bail excessive); *State v. Mecier* (Vt., 1979) 388 A.2d 435 (bail denial revised); *Harp v. Hinckley* (Fla., 1982) 410 So. 2d 619 (bail may not be used for preventive detention); *State v. Beyer* (Ia., 1977) 258 N.W.2d 353 (bail denial proper); *Ex parte McClellan* (Tx., 1977) 545 S.W.2d. 483 (bail excessive); *Ex parte Welch* (Tx., 1987) 729 S.W.2d 306 (bail not excessive); *State v. Pilgrim* (Ne., 1968) 156 N.W.2d 171 (bail denial proper where defendant charged with murdering wife); *Hafenstein v. Burr* (Az., 1962) 376 P.2d 782 (bail denial proper where defendant charged with murdering ex-wife's boyfriend); *Ex parte Roberts* (Tx., 1960) 334 S.W.2d 171 (ferocity of assault on body of deceased supported bail denial); *Ex parte Davis* (Tx., 1976) 542 S.W.2d 192 (defendant charged with two murders. Properly denied bail in one case and properly granted it in other); *State v. Engel* (N.J., 1985) 493 A.2d 1217 (bail denial upheld pending remand); *Ex parte Perez* (Tx., 1968) 428 S.W.2d 323 (bail denial improper); *Ex parte Clodfelter* (Tx., 1970) 455 S.W.2d 236 (bail denial proper); *Ex parte Hammond* (Tx., 1976) 540 S.W.2d 328 (bail denial improper); *People v. Bach* (N.Y., 1970) 306 N.Y.S.2d 365 (bail hearing ordered); *People v. Stevens* (N.Y., 1989) 563 A.2d 1318 (amount of bail proper); *State v. Cardinal* (Vt., 1986) 520 A.2d 984 (bail excessive, improper to forfeit bail for violation of other release conditions); *Strangerlin v. Kelly* (Fl., 1982) 419 So.2d 1154 (bail denial proper); *State v. Goodwin* (Wa., 1971) 484 P.2d 1155 (bail amount proper).

B. Release on own recognizance (OR)

OR Release

WESTLAW:
49 k 40

1. State constitution. See margin.

State Constitution:

2. Statutory authority. See margin.
See, e.g., Ohio Stat: §2919.271; 18 Pa CSA §4954 *et. seq.*

Statutes:

3. Relevant case law. See margin.
See, e.g., *Wade v. Tomlinson* (Ar., 1985) 682 S.W.2d 751 (defendant who refused to promise to appear not entitled to OR release); *State v. Merryman* (Or., 1984) 674 P.2d 1173 (OR denial improper); *U.S. v. Campbell* (Tx., 1989) 713 F. Supp. 220 or revocation proper where defendant consumed alcohol); *State v. Arbuckle* (Ia., 1968) 162 N.W.2d 279 (OR denial proper; existing order excluding defendant from family home formed part of lack of community ties); *State v. Mecier* (Vt., 1978) 388 A.2d 435 (domestic violence defendant's request that he be released to live with wife properly denied); *State v. Goodwin* (Wa., 1971) 484 P.2d 1155 (OR denial proper).

Case Law:

4. Due to the high likelihood of reassault in domestic violence cases, OR should only be considered after rejecting the options of no bail or setting bail.

5. The court should always consider issuing a no-contact order in conjunction with release on own recognizance (see section on no-contact orders).

6. Where a no-contact order is issued in a domestic violence case, the court may want to consider defendant's ties to the community through factors other than the length of time the defendant has spent sharing an address with the victim.

C. Imposing conditions on bail or own recognizance release

No-Contact Orders as Condition of Pre-Trial Release

1. Issuance of no-contact order as condition of release (See section IV, infra. for in-depth review of no-contact orders)

Statutes:

a. The U.S. Attorney General's Task Force on Family Violence recommended in its final report that judges impose conditions on bail or on the defendant's release on his/her own recognizance (OR) that restrict the

Case Law:

defendant's access to the victim, and thereafter strictly enforce the order.

"The conditions imposed should prohibit the defendant from making any contact, personal or otherwise, with the victim. If the parties were living together, the conditions should require the defendant, not the victim, to stay-away from the home. These conditions preserve the defendant's right to release but at the same time consider and provide for the victim's safety." (*Attorney General's Task Force on Family Violence, Final Report* Washington, D.C., U.S. Department of Justice, 1984, pp. 42-43).

b. The National Council of Juvenile and Family Court Judges (NCJFCJ) recommends that judges impose conditions of release on domestic violence defendants that protect victims and family members. *Family Violence: Improving Court Practice, Recommendations from the NCJFCJ.* Reno, NV., 1990.

c. *"In cases where there is an ongoing criminal prosecution, protection orders may help protect the integrity of the judicial process by helping to prevent the opportunity for retaliation, intimidation, or undue influence on the complaining witness. In contrast to stranger-to-stranger crimes, the criminal defendant in a family-based crime will often have both a strong sense of having been wronged and easier means to retaliate against the victim. In addition, longstanding emotional ties and socialization factors can play havoc with the criminal justice goals of punishing the offender and deterring future crime. These factors may influence a victim to downplay the level of violence she is experiencing or to withdraw as a prosecution witness. These dynamics also may come into play when the case involves abuse of a parent by an adult child. By enjoining any contact and evicting the batterer from the home, civil protection orders can often address these unique circumstances of criminal assault between intimates and thereby increase the likelihood that the criminal prosecution will proceed."* *Civil Protection Orders*, National Institute of Justice (NIJ), p. 3, 1990.

d. Statutory authority for issuing a no-contact order as a condition of pre-trial release. See margin.
See, e.g., N.Y.: McKinney's CPL §§ 530.11, 530.12 (1), (1)(a); N.D.: NDCC; §140-07.1-02(1); Alaska: §§12.30.020(6)(6), 12.30.025; Fla.: R.C.P. 3.130 (6)(4), 3.130 (h); Ill: Ch 38 ¶112 A-3 35 et. seq.; Az.: §§ 13-3601, 13-3602 L, 12-1890 K; Utah: §77-36-3(2); N.J.: 2C; 25-10; Oh. §2919.26; Wa.:

10.99.040(2), 10.99.045(3); R.I.: §12-29-4 (mandatory); N.C.: §15A-534.1; Ct.: §§ 466-38c (d), 17-257c (2); 18. Pa.C.S. §2711(c)(2); But see Mo.: §455.085(9) (good faith attempts to effect a reconciliation of a marriage shall not be deemed tampering with a witness or victim.)

e. Case law relevant to the issuance of no-contact orders as a condition of pre-trial release. See margin.

Case Law:

See, e.g., *People v. Derisi* (N.Y., 1981) 442 N.Y.S. 2d 908 (hearing ordered on ex parte order of protection); *Lucke v. Lucke* (N.D., 1980) 300 N.W.2d 231 (protection orders affirmed); *People v. Duignan* (N.Y., 1980) 432 N.Y.S.2d 291 (child abuse case; protective order upheld and superseded visitation order); *People v. Forman* (N.Y., 1989) 546 N.Y.S.2d 755 (standard for order was danger of intimidation or injury to complainant); *State v. Thompson* (Ak.,1989) 784 P.2d 249 (court had authority to release defendant with conditions); *Irene D. v. Anthony D.* (N.Y., 1982) 449 N.Y.S.2d 584 (protective order appropriate to protect children where domestic violence victim sought to drop charges); *State v. Cardinal* (Vt., 1986) 520 A.2d 984 (violation of release conditions not basis for bail forfeiture); *State v. Mecier* (Vt., 1978) 388 A.2d 435 (court should have imposed more restrictive conditions); *People v. Hayday* (N.Y., 1988) 534 N.Y.S.2d 521 (protective order upheld); *Hays v. Hinckley* (Fla., 1982) 410 So.2d 619 (court should have imposed conditions of good behavior rather than setting high bail); *People v. Stevens* (N.Y., 1986) 506 N.Y.S.2d 995 (defendant violated protective order; bail properly revoked).

f. Studies: *Standards Relating to Pre-Trial Release,* American Bar Association, Section on Criminal Justice, Standards for Criminal Justice of the ABA, Part V. §5.5, p. 176 (1973).

2. Additional conditions of release

Issuing Conditions Other Than No-Contact Order on Pre-Trial Release

a. Statutory authority for imposing conditions on OR release or bail. See margin.

Statutes:

b. Case law relevant to the imposition of conditions on bail or OR release. See margin.

c. Subject to local restrictions or prohibitions, the court may want to consider imposing any of the following conditions on pre-trial release.

Case Law:

- ❒ Surrendering weapons: See, e.g., Wa. §§ 10.99.040(2), 10.99.045(3).

- ❒ Entry into a treatment center for domestic violence or substance abuse: See, e.g., Az. §12-1809 K, 13-3602 L; Alaska §12.30.025(a)(4); Ct. §46b-38c(d)(3), (f).

- ❒ Refrain from using alcohol/drugs: See, e.g., Alaska §12.30.025(a)(5).

3. Judicial admonishment

a. The U.S. Attorney General's Task Force on Domestic Violence recommends in its final report:

"The judge should caution the abuser that release does not mean he is free to continue to harm or intimidate the victim. The judge should further inform the abuser that violations of the conditions will result in revocation of release. This judicial admonition sends a strong message to the abuser that he is accountable for his actions and that the victim has the support and protection of the criminal justice system."

b. The National Institute of Justice states:

"Several judges stressed that the court needs to use every contact it has with offenders and victims to make clear exactly what the order of protection enjoins and that a violation is a punishable offense. Deterrence, long recognized as a primary goal of criminal justice, is best enhanced when the potential offender clearly understands the likely consequences of further prohibited behavior." *Civil Protection Orders,* NIJ, pp. 52-53.

4. Victims of domestic violence should be notified of defendant's release from custody.

The court can take a leadership role in ensuring that law enforcement and other branches of the criminal justice system develop procedures for such notification.

IV. No-Contact Orders in Domestic Violence Cases

No-Contact Orders

Statutes:

Case Law:

> For the purposes of this section, the term "no-contact order" has been used to refer to an order of the criminal court prohibiting the defendant from contacting the victim for a specified period of time. When adapting this section to your state, the term most commonly used to refer to such an order should be substituted (i.e. protective order, stay-away order, restraining order, etc.) for the term "no-contact order."
>
> This section covers those orders which judges presiding in the criminal court have authority to issue. In some states, a criminal court judge can issue no-contact orders under both civil and criminal statutes. When adapting this section to your state, it is important to include both civil and criminal statutes and case law relevant to the issuance of orders by a criminal court judge.

Contents of Order

Statutes:

Case Law:

A. Statutory authority for the issuance of no-contact order by a judge in the criminal court. See margin.

See section III, C(1.d) above for examples of relevant statutes.

Duration of Order

Statutes:

B. Relevant case law. See margin.

See section III, C(1.e) above for examples of relevant case law.

Case Law:

C. Factors to consider when issuing a no-contact order

1. Content of the order. See margin for relevant statutes.

Mutual No-Contact Orders

Statutes:

2. Duration of the order. See margin for relevant statutes.

3. Mutual no-contact orders

Case Law:

a. The National Council of Juvenile and Family Court Judges (NCJFCJ) recommends that judges not issue mutual protective orders. *Family Violence: Improving Court Practice, Recommendations from the NCJFCJ.* Reno, NV., 1990. Instead, the respondent should be required to file for a separate order, and the allegations therein evaluated carefully. In some states, orders prohibiting both parties from contacting each other have been held unconstitutional in civil cases. (*Fitzgerald v. Fitzgerald* (Minn, 1987) 406 N.W.2d 52.) In addition, mutual no-contact orders are often difficult for law enforcement to enforce, and the court lacks jurisdiction over the victim who is not a party to the criminal action.

b. Statutes concerning mutual orders. See margin.
See, e.g., Il. Code of Crim. Proc. Ch 38 §112A-15; Az.: §13-3602 F.

c. Case law concerning mutual orders. See margin.
See, e.g., *Marquette v. Marquette* (Ok., 1984) 686 P.2d 990.

d. See, e.g., 15 Wm. Mitchell L. Rev 878 for article on mutual orders; Golden, *"Mutual Orders of Protection in New York State Family Offense Proceedings: A Denial of 'Liberty' Without Due Process of Law,"* 18 Columbia Human Rights Law Review, No. 2 (1987), pp. 309-331.

No Contact Orders Covering Children

4. No-contact orders covering the children of victim and defendant

Statutes:

Case Law:

a. Between 50% and 70% of men who batter their wives or partners also abuse their children. (Walker et al, 1982. *"Beyond the Juror's Ken: Battered Women,"* 7 Vermont L. Rev. 1.)

b. Statutory authority for issuing no-contact orders covering the children. See margin.
See, e.g., N.C. §15A-534.1 (pre-existing visitation orders may be addressed in criminal no-contact order); Oh. §2919.26(C), (D); N.J. §2C:25-10 (victim's family or household members can be included in no-contact order.)

c. Case law relevant to the issuance of no-contact orders protecting children. See margin.

See, e.g., *Irene D. v. Anthony D.* (N.Y., 1982) 449 N.Y.S.2d 584 (victim's request to drop charges denied due to potential harm to children); *People v. Duignan* (N.Y., 1980) 432 N.Y.S.2d 291 (defendant charged with child abuse prohibited from visiting son/victim in spite of prior civil court order granting him visitation); *People v. Hazelwonder* (Il., 1985) 485 N.E.2d 1211 (stay away order from child issued when probationer violated stay-away order from wife); *State v. Manfredi* (Ct., 1990) 569 A.2d 506 (defendant charged with murdering wife barred from contact with children pending review of situation).

No-Contact Orders Covering Third Parties

Statutes:

Case Law:

d. Statutory authority for issuing order protecting third parties (i.e. other witnesses). See margin. See, e.g., Calif. Pen C §136.2.

Differences Between Civil and Criminal Court No-Contact Orders

Complete chart under 5b

5. Issuance of a no-contact order by the criminal court when a civil court order is currently in effect.

a. *"Except in New York State, petitioning for a protection order does not preclude a victim from bringing criminal charges against the offender at the same time. Some judges recommend that the victims of serious domestic violence consider pursuing their cases both civilly and criminally, at least in cases where there has been aggravated assault and battery or other felonious behavior." Civil Protection Orders,* NIJ, p.3.

Issuing a criminal court order where there is a civil court order can serve to reinforce the criminal nature of the offense, and can give the criminal courts more leverage to protect the victim's safety. In addition, service of a criminal court order on the defendant may be easier than a civil order because the defendant is usually before the criminal court at the time of issuance.

b. Civil and criminal orders may differ in duration, persons covered, court's leverage over violations, etc.

> The following chart can be completed and used as a handout when presenting this section, or participants can be referred to it as a section in the Benchguide.

Civil No-Contact Orders See margin for statutes	Criminal No-Contact Orders See margin for statutes
Issued By:	Issued By:
Procedure for Issuance:	Procedure for Issuance:
Person's Covered:	Person's Covered:
Relief Available:	Relief Available:
Cost to Plaintiff:	Cost to Plaintiff:
Duration of Order:	Duration of Order:
Court's Leverage over Violations:	Court's Leverage over Violations:

Conflict Between Civil and Criminal Court Orders. Which One Controls?

c. Conflicts between conditions set forth in a civil order, and those specified in a criminal court order. Which one controls?

Statutes:

1. Statutes. See margin.
   See, e.g., N.C. §15A-534.1

Case Law:

2. Case Law. See margin.
   See, e.g., *People v. Duignan* (N.Y., 1980) 432 N.Y.S.2d 291; *In re William T.* (Ca., 1985) 172 CA 3d 790, 218 CR 420

D. Procedure for issuance of no-contact order

Procedure For Issuance of No-Contact Order

Statutes:

1. **Procedure set forth by statute. See margin.**
   See, e.g., Ct.: §4660-38c (d); Wa.: §§ 10.99.040, 10.99.045; Pa.: §18 Pa. CSA §§2711(c) (2), §4954; R.I.: §12-29-4; Oh.: §2919.26; N.J.: §2C: 25-10(b); Il.: Ch 38 ¶112A-2; Ut.: §§ 77-36-3, 77-36-4; N.Y.: CPL 530.12 (1), 510.20.

Case Law:

2. **Relevant case law. See margin.**
   See, e.g., *People v. Derisi* (N.Y., 1981) 442 N.Y.S. 2d 908 (hearing required after ex parte order issued); *People v. Forman* (N.Y., 1989) 546 N.Y.S.2d 755 (right to hearing); *People v. Hayday* (N.Y., 1988) 534 N.Y.S.2d 521 (no constitutional or statutory right to confront accuser prior to trial); *People v. Stevens* (N.Y., 1986) 506 N.Y.S.2d 995 (determining when an order is "issued").

Local Example of Procedure for Issuance of No-Contact Order

3. **Issuing no contact orders in writing is often the only way to ensure that law enforcement will be able to verify the order's validity should a violation occur.**
   The court may want to initiate the development of an appropriate form to ensure that all necessary parties are made aware of the order's terms and conditions.

4. **Copies of these orders should go to the defendant, the victim, defense counsel, the prosecutor, the court, and all law enforcement agencies with jurisdiction over areas in which violations may occur.**

5. **Example of procedure for issuance of orders, taken from a local jurisdiction. See margin.**

6. **The court could consider requesting a civil**

stand-by from law enforcement for the purpose of allowing the defendant to retrieve belongings, when issuing an order requiring a defendant to vacate the residence.

Notice Requirement

Statutes:

Case Law:

7. **The victim should be notified that an order has been issued, the terms of the order, when the order will expire, and of any modifications made to the order.**
Where no procedures for victim notification exist, the court should take a leadership role in ensuring that such procedures are developed.

Peace Bonds

WESTLAW:
62 k 15
62 k 22

E. Peace Bonds

Statutes:

1. **Peace bonds have been declared unconstitutional in several states.**
See e.g.; *Santos v. Nahiwa* (Ha., 1971) 487 P.2d 283; *Ex parte Hanes* (Al., 1974) 303 So.2d 133 (peace bond statute unconstitutional; not a domestic violence case)

For article on peace bonds, see 52 Va. L. Rev. 914 (1986).

Case Law:

2. **Statutes. See margin**
See, e.g., Vt.: 13VSA §75743; Az.: ARS §13-1224; Il.: Ch. 38 ¶¶2001-1 et. seq.; Hi.: HRS Ch. 709, Part 11, §§ 709-3 through 709-41; W.V.: Code 62-10-1 et. seq.; Al.: Title 15, §401 et. seq.

3. **Case law. See margin.**
See, e.g.; *State v. Weller* (Vt., 1989) 563 A.2d 1318 (peace bond issued without due process); *State v. Gray* (Az., 1978) 580 P.2d 765 (peace bond statute constitutional but in this instance, equal protection violation); *People v. Szudy* (Il. 1978) 371 N.E.2d 1222 (assault conviction overturned because based on erroneous belief that defendant had also violated peace bond).

F. Violations of no-contact orders

Violations of No-Contact Orders

1. Need for Swift and Certain Enforcements

Criminal Statutes:

"The common concern that defendants may view protection orders as a 'soft' approach to a serious crime has been adequately addressed in courts where enforcement of orders is swift and certain. Offenders who understand that they will likely be punished for violating an order will not view the approach as 'soft'" whether the setting is a criminal court or a civil one". N.I.J., *Civil Protection Orders*, p. 3, 1990.

Civil Code Sections: (Contempt)

2. Relevant statutes regarding violations: See margin.

See, e.g., Pa.: 18 Pa. CSA §§2711(c)(2), 4955; Oh.: §2919.26 (G), (H); Il.: Ch. 40 ¶2312-23; N.J.: 2C:25-15.1; Ca.: Pen C §§136.2, 166(4).

Victim-Initiated Contact Resulting in a Violation

3. Victim initiated contact with defendant.

a. In some cases, the victim allegedly initiates contact with the defendant during the pendency of a no-contact order. In many states, the victim is not in violation of the order as the victim is not a party to the action or subject to the court's jurisdiction and order. If this is the case, the court may want to advise the defendant of this fact upon issuance of the order in order to reinforce the defendant's accountability for his behavior.

Statutes:

Case Law:

b. The U.S. Attorney General's Task Force Final Report on Domestic Violence recommended that the court admonish the defendant that any contact with the victim, even if initiated by the victim, may constitute a violation of the no-contact order (p.43).

c. Statutes and case law relevant to victim initiated contact.
See, e.g., Calif. Pen. C § 13710 (b); *People v. Townsend* (Il., 1989) 538 N.E.2d 1297 (alleged invitation by victim to violate order did not free contemnor from conviction for willful misconduct); Mn. stats: §§ 518b.01(6)(d), 518 B.01(14)(e).

Notice of Violations

Statutes:

4. The judge can encourage victims to report

Case Law:

violations of no-contact orders by informing them of the procedure for notifying appropriate court personnel.

Contempt

WESTLAW:
93 k 3, 93 k 4, 93 k 40, 62 k 16, 62 k 20

Statutes:

Case Law:

G. Contempt

1. Need for Formal Court Policy

"....[A] formal court policy with regard to enforcement is... important [if] there appears to be a conflict between the compliance purposes of the civil protection order and the punitive approach authorized in the statute when the offense constitutes criminal contempt or a misdemeanor. Certainly, in those states in which a violation is statutorily defined as only civil contempt, or when the court chooses to treat the violation as civil contempt (when both civil and criminal contempt are available charges under the statute), it appears that only a compliance hearing may be held. Adding to this uncertainty, many statutes leave it to the court's discretion whether to hold the violator in civil contempt or criminal contempt. There is also ambiguity regarding the due process protections defendants are entitled to receive at a civil contempt hearing and a criminal contempt hearing, a matter that case law has not definitively resolved." N.I.J., *Civil Protective Orders,* p. 49.

"....[C]ourts can develop formal court guidelines specifying (1) what procedures law enforcement officers are statutorily required and authorized to follow and (2) what procedures judges themselves will follow in holding violation hearings. By developing and publicizing these guidelines in advance, judges would be able to achieve more uniformity of judicial response, would encourage compliance and respect for the judiciary among defendants (and their attorneys), and might avoid unnecessary and protracted appeals". N.I.J., *Civil Protective Orders,* p. 49.

2. Due Process Rights of Defendant

"In states in which a protection order violation constitutes only civil or criminal contempt of court,... due process requirements may be less well-defined. Some state courts which have dealt with the issue of due process in protection order contempt proceedings have not extended the full range of criminal due process rights to the contempt hearing. The Oregon Supreme Court ruled in Hart v. Hathaway, 300 Or. 231, 708 P.2d 1137, (Or. Sup. Ct. 1984), that a crimi-

nal contempt proceeding under the Oregon Abuse Prevention Act does not constitute criminal action - criminal contempt is the violation of the court's order, not the nature of the act that violated the order. Criminal sanctions in the Act were provided to give "teeth" to the enforcement of restraining orders, not to replace normal criminal prosecutions and their accompanying entitlements. As such, the court ruled, the defendant in a criminal contempt proceeding for violating an order has no statutory or constitutional entitlement to a jury trial." N.I.J., *Civil Protection Orders*, p. 57. But see, *Hicks v. Feiock* (1988) 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 ; *Cipolla v. Cipolla* (1979) 264 Pa. Super. 53, 398 A.2d 1053.

3. Statutes and case law on civil and criminal contempt. See margin.

Civil Contempt

Statutes:

Case law:

Criminal Contempt

Statutes:

Case Law:

See, e.g., Pa.: 18 Pa.CSA §4955 (2); Il.: 40 §§2312-23, 112A-23; N.J.: §2C: 25-15.1; Ut.: §§77-36-3; *Lee v. State* (Tx., 1988) 742 S.W.2d 80 (court order reciting parties' agreement, without commanding parties to do or not do anything, was insufficient to support contempt conviction); *Eichenlaub v. Eichenlaub* (Pa., 1985) 490 A.2d 918 (no right to jury trial for indirect criminal contempt of protection order); *Cipolla v. Cipolla* (Pa., 1979) 398 A.2d 1053 (appeal cannot lie from adjudication of not guilty of criminal contempt for violating restraining order); *Bongiori v. La Beet* (N.Y., 1989) 547 N.Y.S.2d 992 (10 days incarceration proper for violation of protective order, notice sufficient); *Ex parte Shields* (Tx., 1989) 779 S.W.2d 99 (requiring contemnor to pay spouse's attorney fees as condition for suspending contempt upheld); *People v. Townsend* (Il, 1989) 538 N.E.2d 1297 (defendant held in contempt for violating protective order even though he claimed victim invited him to violate it); *Mohamed v. Mohamed* (N.J., 1989) 557 A.2d 696 (defendant not in contempt for violating protective order; order voided by parties' reconciliation of 15 months); *Figueroa v. Figueroa* (N.Y., 1990) 553 N.Y.S.2d 753 (in contempt proceeding for violating restraining order, court improperly denied contemnor opportunity to present alibi defense); *People v. Forman* (N.Y., 1989) 546 N.Y.S.2d 755 (criminal contempt not found where terms of order were vague and indefinite, requiring defendant to "abstain from offensive conduct against" his wife); *People v. Stevens* (N.Y., 1986) 506 N.Y.S.2d 995 (criminal contempt upheld for criminal protective order violation, bail revocation upheld); *State v. Cardinal* (Vt., 1986) 520 A.2d 984 (bail revocation not appropriate for violation of criminal no-contact order).

4. If there are multiple criminal statutes on contempt, the specific prevails over the general statute.

See, e.g., *Estate of Kramme* (1978) 20 Cal.3d 567, 573 P.2d 1369; *People v. Jenkins* (1980) 28 Cal.3d 494, 620 P.2d 587; *People v. Ruster* (1976)16 Cal 3d 690, 548 P.2d 353.

5. Multiple contempts on a single date: multiple contempts for a single course of conduct

Can be separately punished when separate events and basis for statute is not a course of conduct.

See, e.g., *McCahn v. Municipal Court of Los Angeles*, (Ca., 1990) 221 Cal.App.3d 527, 270 Cal.Rpt. 640 (multiple contempts for separate, unconnected contemptuous statements to a trial judge on a single day proper); *Mitchell v. Superior Court* (Ca., 1989) 49 Cal.3d 1230, 783 P.2d 731(multiple lewd acts on a single day a single contempt under the nuisance-Red Light Abatement Statute).

Double Jeopardy and Contempt:

WESTLAW
110 k 196
110 k 163

Statutes:

Case Law:

6. Double Jeopardy and Punishment: Successive Prosecutions for Similar Conduct Prohibited

See, e.g., *North Carolina v. Pearce* (1969)395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (double jeopardy clause bars second prosecution after conviction or acquittal and multiple punishment for the same offense); *Brown v. Ohio* (1977) 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (if offenses have identical statutory elements or one is a lesser and included offense of the other, a second prosecution is barred); *Blockberger v. U.S.*(1932) 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (successive prosecutions for the same act or transaction are prohibited); *Grady v. Corbin* (1990) 497 U.S. __, 110 S.Ct. 2084, 107 L.Ed. 2d 349; *Illinois v. Vitale* (1980) 447 U.S. 410, 100 S. Ct. 2260, 65 L.Ed.2d 228(a prosecution not barred by *Blockberger* may still be barred if an essential element of the second prosecution is the same conduct for which defendant was previously prosecuted); *People v. Gartner* (Il., 1986) 491 N.E. 2d 927 (dismissal appropriate where battery prosecution arose out of same facts as restraining order violation previously prosecuted).

Chapter 5

Evidentiary Hearing / Trial Considerations

Learning Objectives:

1. To rule on the existence of a proper foundation for admitting evidence in domestic violence cases.

2. To manage and evaluate victim/witness testimony in cases where a domestic violence victim is reluctant to testify or refuses to testify.

Recommended Length: 1 hour

Faculty: A judge who has handled domestic violence cases at the evidentiary hearing stage, and who facilitated the evidentiary hearing/trial small group deliberation.

The domestic violence expert who presented the morning session on the impact of domestic violence on the defendant and the victim in the courtroom.

Format: 1) Faculty begins the plenary session by asking all of the participants to review the hypothetical domestic violence case deliberated on by the Evidentiary Hearing/Trial small group.

2) The eight objectives which the small group's rulings were designed to accomplish are displayed at the front of the room (see Chapter 3 for objectives).

3) Faculty asks judges who did not participate in the small group to discuss how they would rule on the issues contained in the hypothetical, and to comment on the factors taken into consideration in their ruling.

4) The rulings of the small group are displayed at the front of the room along with the list of problems identified by the small group facing the court at the evidentiary hearing/ trial stage of domestic violence cases.

5) Faculty asks members of the small group to discuss the factors that were taken into consideration in the small group's rulings.

6) Faculty focuses discussion on the problems identified by the small group, and on solutions to these problems that accomplish the eight objectives.

7) Faculty directs questions regarding how participants' rulings may effect the defendant, the victim, and the children, to the domestic violence expert.

The topics outlined in this chapter are those that are most likely to arise during both the Evidentiary Hearing/Trial small group deliberation and the corresponding plenary session. In preparation for the program, faculty should review this chapter and become familiar with state statutes and case law relevant to each of the topics.

Subject Overview

This chapter reviews evidentiary issues arising in domestic violence cases and suggests court practices designed to assist in the effective handling of victim/ witness testimony.

As outlined in Chapter 4, research overwhelmingly demonstrates that domestic violence victims are most vulnerable to reassault when they attempt to leave or sever the relationship with the defendant. Evidentiary issues arising in domesic violence cases are often complicated by the fact that the victim is particularly vulnerable at this stage, and thus may be reluctant or refuse to testify. The victim has learned that the perpetrator will follow through with threats of retaliation for the victim's efforts to leave or to seek help from the justice system. The victim may also believe based on prior experience that the intervention of the criminal justice system will not be effective in protecting the victim, the children, or the victim's family.

Victims of all types of violent crime may be reluctant to testify against the assailant due to a fear of retaliation by the defendant, an unwillingness to face the assailant again in the courtroom, a feeling of shame or guilt that perhaps

their behavior in some way caused the attack, and a desire to put the whole incident behind them. These reasons are often heightened for victims of domestic violence by the fact that the defendant may be living with the victim, be familiar with her/his daily routine, and have on-going access to the victim. In addition, the victim and defendant may have children together. Since domestic violence is often not considered by civil courts in determining child visitation and custody, the perpetrator may have continued access to the victim through arrangements for child visitation.

It is important for those working in the criminal justice system to distinguish between victims who are reluctant to testify, and those who refuse to testify. The majority of victims who are initially reluctant to testify will agree to do so if provided with adequate support during the criminal justice process. The court can decrease the victim's reluctance to testify by protecting the victim through appropriate court orders, providing the victim with support through victim advocacy services, providing accurate information regarding the criminal court process, and otherwise preventing the perpetrator from using further illegal means to continue the pattern of coercive control of the victim. What appears to be victim reluctance to testify is more often an indicator of the perpetrator's continuing use of coercive control over the victim than of the victim's inability to follow through with the case.

The problems associated with victim/witness reluctance in domestic violence cases can be ameliorated by improving the justice system's response to domestic violence. As recommended by the National Council of Juvenile and Family Court Judges (NCJFCJ), *"...judges must provide leadership in their courts and in their communities to ensure that family violence cases are effectively managed and that adequate resources are available."* (*Family Violence: Improving Court Practice. Recommendations from the NCJFCJ.* Reno, NV., 1990).

Content Outline

I. Discovery

Domestic Violence Victim/Counselor Privilege

WESTLAW: 410 k 185

Statutes:

Case Law:

A. Domestic violence victim/counselor privilege

1. Several states have enacted statutes which designate communications between domestic violence counselors and victims legally privileged and not subject to defense discovery or subpoena.

See *Response, Journal of the Center for Women's Policy Studies,* Vol. 9, No. 3, 1986, pp. 10-15 for discussion of privileged communication and example of a model statute. Also see 43 ALR 4th 395 (constitutionality of statutes making rape victim's statements to counselors confidential); Marks, Lynn A., *Protecting Confidentiality: A Legal Manual for Battered Women's Programs,* National Center on Women and Family Law, Inc., N. Y., N.Y., 1986; *In re Pittsburgh Action Against Rape* (PAAR) (Pa.,1981), 428 A. 2d 126, Dissent (policy argument in favor of privilege).

2. Relevant statutes and case law. See margin.

See, e.g., Calif. Evid. C §1037 et. seq.; Ct.: CGSA §52-146k; §46b- 38c (c); Fl.: §415.608; Il.: ch. 40 ¶2312-27; Ma.: 233 §20k; Mi.: §600.2157a; Ia.: §§ 236 A.1, 22.7; 23 Pa. C.S. 6100 et. seq.

See also *State v. Lizotte* (Ct., 1986) 517 A.2d 61 (statute not retroactive); *State v. Magnano* (Ct., 1987) 528 A.2d 760 (harmless error to admit confidential communication).

a. Scope of the privilege.

A victim's communications with domestic violence advocates/counselors are generally not subject to discovery or subpoena without the permission of the victim. See, e.g., 2 Jefferson, *California Evidence Benchbook,* §35.1, p. 1306; Calif. Evid C §912(b), and *Lovett v. Superior Court* (Ca., 1988) 203 Cal.App.3d 521, 250 Cal.Rptr. 25.

b. **Who may or must claim the privilege.**
See, e.g., Calif. Evid. C §§ 1037.3, 1037.5, 916, and 1040 (b).

c. **Disclosure**
See, e.g., 2 Jefferson *California Evidence Benchbook* §35.1, pp. 1305-1306; Calif. Evid. C §912.

d. **Holders of privilege.**
See, e.g., Calif. Evid. C §§ 1037.4, 912; 2 Jefferson *California Evidence Benchbook*, (§) 35.1, p.1306.

e. **Procedure**
See, e.g., Calif. Evid. C §§ 352, 915(a); *People v. Reber* (Ca., 1986) 177 Cal.App.3d 523, 223 Cal Rptr. 139; *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed. 2d 40.

f. **Waiver.**
See, e.g., 2 Jefferson *California Evidence Benchbook*, § 35.1, p.1305; Calif. Evid. C 912.

g. **Effect of victim's death on privilege.**
See, e.g., Calif. Evid. C § 1037.5 (c).

B. The address of a domestic violence victim.

Confidentiality of Victim's Address

Statutes:

1. Relevant statutes and case law. See margin.

Case Law:

2. In states where the address of a victim of domestic violence is not protected by statute, the court may still wish to keep the victim's address or phone number from the defendant, particularly in those cases where the victim has moved to a shelter or some other location unknown to the defendant.
See, e.g.: Pa.: 23 Pa.CSA §5309, 35 PS §10188.2; N.J.: 30: 14-13; Wa.: 10.99.040(1)(c); Ut.: §77-336-3(1)(c); Il.: Ch38 ¶112 A-5(b); Ca.: PC §273.7.

Admissibility of Defendant's Statements to Counselor or Probation Officer

Statutes:

Case Law:

II. Admissibility of Evidence

A. Statements made by a domestic violence defendant to a probation officer or counselor in connection with a court-ordered treatment program.

See, e.g., Calif. Pen. C §1000.11 (diversion report); *People v. Harrington* (Ca., 1970) 2 C.3d 991, 88 Cal.Rptr. 161; *Ramona R. v. Superior Court* (1985) 37 C.3d 802, 210 Cal.Rptr. 204; *Minnesota v. Murphy* (1984) 465 U.S. 420, 429 Fn. 5, 104 S. Ct. 1136; 79 L.Ed 2d. 409.

B. Defendant's statements made to a counselor in a program attended voluntarily by the defendant.

See, e.g., Calif. Evid. C §1010.5. But see *Tarasoff v. Regents of the University of California* (1976) 17 C. 3d 425, 551 P.2d 334; *Jablonski v. Loma Linda Veterans Administration* (9th Cir. 1983) 712 F.2d 391; *Hedlund v. Superior Court of Orange County* (1983) 34 C.3d 695, 669 P.2d 41; Calif. Welf. & Inst. C § 5328(s); Calif. Civ. C § 4392(b).

Admissibility of Prior Acts of Violence by Victim

WESTLAW: 410 k 268(8)

Statutes:

Case Law:

C. Prior acts of violence by a victim of domestic violence

1. After an assertion of a self-defense plea.

See, e.g., *Engstrom v. Superior Court* (Ca., 1971) 20 Cal.App.3d 240, 97 Cal.Rptr. 484; *People v. Worthy* (Ca., 1980) 109 Cal.App.3d 514, 167 Cal.Rptr. 402; *Rushin v. State* (Ga., 1986) 348 S.E.2d 910 (irrelevant where no defense of justification or self-defense); *Pitcock v. State* (Tx., 1967) 420 S.W.2d 719 (irrelevant where defendant knows of no violence by victim).

2. To impeach the victim or witness by showing the existence of pending cases.

See, e.g., *People v. Coyer* (Ca., 1983) 142 Cal.App.3d 839, 191 Cal.Rptr. 376; *People v. Riser* (Ca., 1956) 305 P. 2d.

D. Medical records relating to victims and defendants in domestic violence cases

See, e.g., Calif. Evid. C §998 (no physician/patient privilege in criminal proceedings); *People v. Hayday* (N.Y., 1988) 534 N.Y.S.2d 521 (domestic violence victim's medical records not admissible on issue of credibility); *Payne v. State* (In., 1987) 515 N.E.2d 1141 (domestic violence victim's medical records inadmissible to show cause of injury in probation revocation hearing.)

Admissibility of Medical Records

WESTLAW:
110 k 627.5(3)
410 k 219(4)

Statutes:

Case Law:

E. Records of psychotherapeutic examinations

1. Court-ordered psychiatric examinations of victims to evaluate credibility.

See, e.g., Calif. Pen. C §1112 (psych. exam of victim for credibility prohibited; *State v. Aucoin* (Tn., 1988) 756 S.W.2d 705 (homicide victim's mental health records showing violent propensities inadmissible in prosecution of allegedly battered wife); See also *"Psychiatric examinations of sexual assault victims: A reevaluation"*. (1982) 15 Univ. of Ca. Davis Law Rev. 973; *In re Dolly A.* (Ca. 1986) 177 C.A. 3d 195, 222 Cal. Rptr. 741.

Admissibility of Victim's Psychotherapeutic Records

WESTLAW:
110 k 444
110 k 1170(1)

Statutes:

Case Law:

2. Court-ordered psychiatric evaluation of defendants.

See, e.g., Calif. Evid. C §§ 1016, 1017, 730.

3. Defendant's statements to a psychiatrist to show the foundation for the psychiatrist's opinion.

See, e.g., *People v. Davis* (Ca., 1973) 31 Cal.App 3d 782, 786, 107 Cal. Rptr. 675.

Admissibility of Defendant's Psychotherapeutic Records

Statutes:

Case Law:

4. Psychiatric records of victim which disclose evidence relevant to victim's credibility.

See, e.g., *People v. Reber* (Ca., 1986) 177 Cal.App.3d 523, 223 Cal.Rptr. 139.

III. Jury Selection Issues

A. Inclusion of domestic violence victims and/or perpetrators on jury in a domestic violence case

1. Voir dire questioning should include questions to identify jurors who have themselves been victims or perpetrators of domestic violence or who have views about the subject which make it difficult for them to be impartial jurors.

See, e.g., *People v. Macioce* (Ca., 1987) 197 Cal.App. 3d 262, 242 Cal.Rptr. 771 (battered women not an identifiable group whose presence is essential to a fair jury trial.) *People v. Blackwell* (Ca., 1987) 191 Cal.App.3d 925, 236 Cal.Rptr. 803 (juror's deliberate concealment that she was a former battered woman denied defendant fair trial.)

Inclusion of Victims or Perpetrators on Jury

WESTLAW: 230 k 125, 230 k 131(18), 230 k 135

2. Relevant statutes and case law: See margin.

Statutes:

Case Law:

See, e.g., *State v. Clay* (Mo., 1989) 779 S.W.2d 673 (peremptory challenges of female jurors upheld in prosecution of allegedly battered woman); *State v. Burton* (La., 1986) 464 So.2d 421 (in prosecution of allegedly battered woman, refusal to permit defense attorney to voir dire jurors on battered woman's syndrome upheld); *Commonwealth v. Chretien* (Ma., 1981) 417 N.E.2d 1203 (court's failure to question jurors about affiliation with organizations involved in issues of sexual equality did not deprive marital rape defendant of right to impartial jury); *State v. Schackart* (Az., 1987) 737 P.2d 398 (jurors knowing domestic violence victim from school did not constitute bias); *Commonwealth v. Drew* (Pa., 1983) 459 A.2d 318 (refusal to allow defense attorney to voir dire jurors about domestic violence upheld in prosecution of allegedly battered woman, since questions related to attitudes rather than whether juror could be fair); *State v. White* (Mo., 1988) 750 S.W.2d 587 (in prosecution of alleged batterer for killing victim, court correctly refused to individually voir dire jurors about their experiences with domestic violence, while offering them private discussion at bench).

3. Gender-based exclusions are violative of equal protection, *U.S. v. De Gross* (9th Cir. 1990) 913 F.2d 1417.

B. Voir Dire Checklist

Statutes:

Case Law:

Potential jurors may hold traditional attitudes regarding domestic violence that render them unable to hear cases fairly and impartially. They may see criminal justice intervention as an invasion of the family's privacy, interference in the spousal relationship, and/or violative of the male's historical sense of "entitlement" to control the household and its members. Voir dire examination in domestic violence cases should identify these individuals whose beliefs may cause them to have difficulty weighing evidence impartially, and determining witness credibility in these cases.

It is advisable to instruct prospective jurors that portions of the voir dire examination can be conducted in chambers, so that jurors feel free to reveal potentially embarrassing information. The defendant, his or her counsel, and the prosecutor should be present during the in camera proceeding.

The following sample questions may assist the court in evaluating the ability of potential jurors to try domestic violence cases fairly.

1. Questions About Violence in General

- ❒ Have you ever been involved in a physical altercation as a participant, victim, or witness?
- ❒ Have you had occasion to call the police for your own protection from physical violence? Do you know anyone who has had to do this?
- ❒ Do you believe that a verbal argument justifies the use of physical violence?
- ❒ Do you have strong feelings about the use of violence?

2. Specific Questions About Domestic Violence

- ❒ Do you feel a husband has a right to use physical force upon his wife?
- ❒ Do you believe that domestic violence cases do not belong in our criminal courts?
- ❒ Do you think that violence that occurs in the home

should be treated differently from violence that occurs between strangers?

- ❒ Have you ever known a victim of spousal abuse? An offender?
- ❒ Have you ever seen any movies or TV shows on domestic violence?
- ❒ Do you believe a woman should stay married to a man who is physically violent to her since he is her husband? Do you think a victim has an obligation to leave a violent relationship?
- ❒ Would you hold it against the witness that she will be testifying against her spouse?

IV. Victim/Witness Testimony

A. Reasons underlying victim reluctance or refusal to testify.

> The following reasons should be outlined at the beginning of this section, thus serving to highlight the main points regarding victim reluctance or refusal to testify presented in the earlier session on the effect of domestic violence on the victim and defendant in the courtroom. Participants can be asked to recall these reasons, while faculty lists them on an overhead transparency or butcher paper as they are identified.

1. Not all victims of domestic violence are reluctant to testify.

Those of us working in the criminal justice system tend to remember the victims who were reluctant to testify or who resist testifying more clearly than we remember the victims who agreed to testify.

2. Victims of domestic violence are often reluctant to testify for many of the same reasons that victims of all types of violent crime are reluctant. These include:

a. A fear of retaliation by the defendant.
A study of victims of violent crime (including but not limited to domestic violence) found that 57% feared reprisal from the defendant. Violent crime victims who were threatened by the defendant were twice as likely not to follow through with the prosecution than victims who were not threatened. Davis, R., Smith, B., Henley, S., *Victim/Witness Intimidation in the Bronx Courts.* Victim Services Agency, N.Y. 1990.

b. An unwillingness to face the assailant again in the courtroom

c. A feeling of shame or guilt that perhaps their behavior in some way caused the attack

d. Desire to put the whole incident behind them and try to forget that it occurred

e. Denial, ambivalence, withdrawal, and emotional swings which are a result of being a victim of severe trauma

3. The above reasons are often heightened for victims of domestic violence by the following realities:

a. The defendant may be living with the victim, be familiar with her/his daily routine, and have on-going access to the victim.

b. The victim's past efforts to leave the perpetrator, or to seek protection from the justice system may have resulted in further violence. The victim has learned that the perpetrator will follow through with threats of retaliation for the victim's efforts to leave or to seek help from the justice system.

c. The perpetrator may be maintaining coercive control over the victim through alternating displays of affection and threats or acts of violence if the victim testifies. (See chapter 2 for further discussion).

d. The victim and defendant may have children together. Since domestic violence is often not considered by civil courts in determining child visitation and custody, the perpetrator may have continuing access to the victim through arrangements for child visitation.

e. The victim and/or children may be dependent on the defendant for economic support. Thus, the victim may have conflicting feelings about the possibility that criminal justice intervention may result in incarceration of the defendant and the loss of support.

f. The defendant may be dependant on the victim for economic support, thus increasing the likelihood of further acts of intimidation by the defendant.

g. The victim's community and family supports who have provided protection in the past from the abuse, may be threatening to withdraw their support and protection if the victim testifies.

h. The victim may believe that the intervention of the criminal justice system will not be effective in stopping the violence, or in protecting the victim and children. This belief may be a result of past experience where the system did indeed fail to prevent the violence, and/or it may be based on the perpetrator's ability to convince the victim that "nothing will stop him."

4. It is important to distinguish between victims who are reluctant to testify, and those who refuse to testify.

The majority of victims who are initially reluctant to testify will do so if provided with adequate support during the criminal justice process. The court can decrease the victim's reluctance to testify by providing the victim with support through victim advocacy services, providing accurate information regarding the criminal court process, protecting the victim through appropriate court orders, and preventing the perpetrator from using further illegal means to continue the coercive control of the victim. What appears to be victim reluctance to testify is more often an indicator of the perpetrator's continuing use of coercive control over the victim than of the victim's inability to follow through with the case. In only a very small percentage of cases will a domestic violence victim refuse to testify after being provided with the above support and information.

B. Victim reluctance or refusal to testify: Recommended practices.

Ordering Victim/Witness to Court

Statutes:

Case Law:

1. Require a victim's presence in court by issuing a subpoena or ordering a victim already in court to return on another date. Relevant statutes and case law: See margin.

Most victims will testify once ordered to do so by the court. Many feel considerable relief at being able to tell the defendant that the decision to testify is out of their hands, as they have been ordered to do so by the court. Even victims who are willing to testify should be ordered by the court to do so. This reinforces to the defendant that the court, not the victim, controls the proceedings, and that any attempt to manipulate or intimidate the victim in an effort to avoid criminal prosecution will be unavailing.

Court Questioning of Victim

Statutes:

2. If the victim appears reluctant to testify, the reasons underlying the reluctance should be assessed in order to determine the best course of action.

Case Law:

a. The following checklist is intended to assist the court in discovering the reasons a victim is reluctant or refuses to testify, and in ascertaining whether a victim has been coerced or intimidated into asking that the charges against the defendant be dropped. Generally these questions should be asked by the prosecutor in the course of examining the victim. Where there is no prosecutor, the court should establish procedures for obtaining this information.

> This checklist should be included in participant packets, and should be referred to at this point.

- ☐ Why do you feel reluctant to (or refuse to) testify?
- ☐ When did you become reluctant (or decide to refuse) to testify?

- ❒ Were you living with the defendant when the incident happened?
- ❒ Are you now living with the defendant?
- ❒ (If not) Does the defendant know where you are staying?
- ❒ Are you financially dependent on the defendant?
- ❒ Do you and the defendant have children together?
- ❒ Have you discussed the case with the defendant?
- ❒ Has the defendant made any promises to do something for you if you do not testify?
- ❒ Is that promise to do something the reason you do not wish to proceed/or testify?
- ❒ Has the defendant or anyone else threatened you, your children or your family and told you not to testify?
- ❒ Is there some other reason you are afraid of the defendant?
- ❒ Are you aware that this court can issue an order telling the defendant to stay away from you and have no contact with you or your family?
- ❒ Are you aware that if the case is prosecuted that defendant can be required to get counseling, pay for your damages, and stay away from you and your family?
- ❒ (If injuries alleged or visible) How did you receive the injuries (allude to police reports, medical reports, photos, injuries still visible in court, etc.)?
- ❒ Have you talked about your desire not to testify with the prosecutor, victim/witness staff, or staff of the local domestic violence agency?
- ❒ If not, would you be willing to talk with them now?
- ❒ Are you aware that the People of this State are bringing these charges, and that the decision to prosecute the defendant is up to the prosecutor rather than up to you?

- ❒ (If victim was subpoenaed) Are you aware that the fact that you have been subpoenaed means that the prosecutor decided to call you as a witness, that you must testify, and that you may be held in contempt if you do not do so?

- ❒ Would you like to have a court officer to escort you from the building when you leave today?

b. Relevant statutes and case law: See margin.
See, e.g., R.I.: §12-29-4 (B) (4) (court's duty to clarify to defendant and victim that prosecutor, not victim, controls prosecution); Pa.: 18 Pa.CSA §4957 (victim/witness protection of employment); Ct.: §54-858 (same); Ct.: §51-286c (notice to victim of judicial proceedings). See also; *Thomas v. Commonwealth* (Ky., 1978) 574 S.W.2d 903 (terrorist threats); *Lanthrip v. State* (Ga., 1975) 218 S.E.2d 771 (terrorist threats); *Irene D. v. Anthony D.* (N.Y., 1982) 449 N.Y.S.2d 584 (court refused to dismiss charges in spite of victim's request); *Wade v. Tomlinson* (Ar., 1985) 682 S.W.2d 751 (terrorist threats, wife/victim recanted); *Stevens v. Commonwealth* (Va., 1966) 150 S.E.2d 229 (victim testified against her will); *Stubbs v. State* (Ms., 1983) 441 So.2d 1386 (victim testified against own will); *State v. Frost* (N.J., 1990) 242 N. J. Super. 601, 577 A.2d 1282 (victim continued to visit alleged batterer in jail and profess her love for him).

3. If the victim remains reluctant to testify, the court may want to consider continuing the case for a period of hours to permit the victim to obtain information and options counseling from the victim/witness program or local domestic violence program.

Referral of Victim to Victim Advocacy Unit

Statutes:

Case Law:

a. Victim advocates can give accurate information regarding the court process, and can assist the victim in setting up a safety plan. This will often remedy reluctance which stems from fear of the defendant, belief that there is no alternative but to return home, or inaccurate information regarding possible outcomes of the criminal court process.

b. Referring reluctant victim/witnesses to a victim advocate plays a critical role in reducing victim reluctance, and thus reduces the perpetrator's ability to control the victim. Jurisdictions that provide victim advocacy services to domes-

tic violence victims report a dramatic decrease in victim reluctance to testify. In San Francisco, 70% of domestic violence victims who were initially reluctant to proceed with a criminal complaint subsequently became willing to testify after they had spoken with a victim advocate. (Family Violence Project, 1982).

"In several courts, judges report that battered women are more willing to cooperate and testify when they receive information, emotional support, community referrals, and trial preparation from victim advocates..." (See Goolkasian, G.A., *"Confronting Domestic Violence: The Role of Criminal Court Judges"* National Institute of Justice: Research in Brief U.S., Department of Justice, 1986).

c. Some states have statutes mandating victim advocacy units for domestic violence cases.
See, e.g., CT: § 466-38C; RI: § 12-29-7

d. Relevant statutes and case law. See margin.

4. **If the victim is still unwilling to testify, previous statements or testimony may be admissible as exceptions to the hearsay rule.**
See section VIII, infra, for applicable authority.

5. **The problems associated with victim/witness reluctance in domestic violence cases can be ameliorated by improving the justice system's response to domestic violence.**
As recommended by the National Council of Juvenile and Family Court Judges (NCJFCJ), *"....judges must provide leadership in their courts and in their communities to ensure that family violence cases are effectively managed and that adequate resources are available."* (*Family Violence: Improving Court Practice. Recommendations from the NCJFCJ.* Reno, NV., 1990).

Compelling A Witness to Testify

6. **Most victims will appear when ordered by the court. In rare instances however, it may be necessary for the court to require law enforcement to bring the witness before the court to testify.**

Statutes:

Case Law:

a. Relevant statutes and case law: See margin.

b. The court should require that the victim be personally served with the subpoena before requiring law enforcement to bring the witness to court. The victim may not have received the subpoena, either because of being in hiding or because the defendant intercepted the subpoena.

c. In domestic violence cases, requiring law enforcement to bring a victim/witness before the court may serve only to re-victimize the victim, and should only be considered after the victim has been given ample opportunity to speak with domestic violence victim advocates. For this reason, every effort should be made to avoid scheduling domestic violence cases on the last day possible in order to allow the court time to ensure that the victim speaks with a victim advocate.

d. In cases where the victim was personally served with the subpoena, and is brought before the court, the witness should be brought directly before the court without having to spend time in jail waiting for the court to reconvene.

7. Use of the court's civil contempt power to insure compliance with its orders.

Use of Civil Contempt Power

Statute:

Case Law:

a. A small percentage of victims may refuse to testify even after the above-listed steps have been taken. In some of these cases, the victim has accurately concluded based on past experience that testifying against the defendant is more dangerous to the victim, the victim's children, and the victim's family than seeking protection from the criminal justice system. If the court concludes that there is a reasonable likelihood that the perpetrator may inflict lethal violence on the victim in retaliation for testimony, the court should not coerce victim testimony unless the victim is provided with a victim/witness protection program, such as is provided for witnesses in drug and organized crime cases.

Stays of Execution for Civil Contempt

b. Statutes and case law regarding civil contempt. See margin.

Statutes:

c. In several states, a stay of execution is provided for victims of sexual assault who are found in contempt for failing to testify against the alleged assailant so that the victim can file a petition for extraordinary relief testing the lawfulness of the court's order. See, e.g., Calif Code of Civil Procedure §§ 1219(b), 128(d).

Case Law:

Sanctions for Civil Contempt

Statutes:

Case Law:

d. See margin for statutes regarding stays of execution for contempt findings.

e. The court may want to consider granting a similiar stay of execution to victims of domestic violence charged with contempt for failing to testify against the alleged assailant. Although the above statutes may not explicitly apply to victims of domestic violence, the two groups are similiar enough that the same exceptions could be made for domestic violence victims. This will allow the victim time to speak with a victim advocate who can assist her/him in setting up a safety plan, and in realistically assessing the consequences of testifying in light of that plan.

f. Incarceration of a domestic violence victim to compel testimony generally should not be ordered, since such an action may serve only to re-victimize the victim. Instead, the court could consider ordering a victim/witness who is found to be in civil contempt, to attend or to do community service with a group that serves victims, such as with the local domestic violence program.

g. Relevant statutes and case law regarding sanctions for civil contempt. See margin.

Presence of Victim Support Persons in Court

Statutes:

Case Law:

8. Presence of Victim Support Persons in Court

a. Several states have programs within the courts which provide victim advocacy for domestic violence victims. In these cases, an advocate may accompany a victim to court. In states where no formal victim advocacy program exists, the victim may choose to have other support persons present, including family members. Statutes establishing the right of the victim to have support persons present and seated during the examination may also spell out exceptions to this right. These may include cases in which the presence of such persons would pose a substantial risk of influencing or affecting the content of any testimony, or where the exclusion of the support person or family member is necessary to protect the defendant's right to a fair and impartial trial. See, e.g., Ca Pen C §§ 868 and 1102.6.

b. Statutes and case law regarding presence of victim support persons in court. See margin.

9. **In some jurisdictions, prosecutors are not present at the evidentiary hearing. The burden is on the victim and/or the arresting officer to establish probable cause. To facilitate the court's fact finding, the following procedures may be helpful:**

   a. The court may want to establish procedures for apprising the victim prior to the hearing of the elements of the crimes charged so that the victim can specifically address those elements.

   b. When the victim does not provide a clear chronological rendition of the events that occurred, asking questions in a manner that gives the victim the time and latitude needed to describe the incidents constituting the alleged crime may assist the court in fact finding.

C. Testimonial privileges

Testimonial Privilege

WESTLAW: 410 k 61 (1)

Statutes:

Case Law:

1. Generally, marital privileges are inapplicable to situations where the defendant/spouse has allegedly committed a crime against the victim/spouse.

2. Marital privilege and exceptions

Marital Communications Privilege and Exceptions

WESTLAW: 410 k 188 (1)

Statutes:

Case Law:

   a. Current spouse: Statutes and case law. See margin. See, e.g., *Stubbs v. State* (Ms., 1983) 441 So.2d 1386 (victim forced to testify against own wishes); *State v. Robinson* (N.C., 1972) 190 S.E.2d 270 (victim testified over defendant's objections); *State v. Watson* (N.C., 1974) 204 S.E.2d 537 (same); *State v. Martin* (N.C., 1973) 194 S.E.2d 60 (same); *People v. Thompson* (Mi., 1981) 314 N.W.2d 606 (same; *State v. Antil* (Oh., 1964) 197 N.E.2d 548 (same); *Butter v. State* (Tx., 1983) 645 S.W.2d 820 (same); *State v. Whitaker* (Az., 1975) 544 P.2d 219 (same, wife was "potential victim"); *Royston v. State* (Tn., 1969) 450 S.W.2d 39 (same); Conn. G.S. §54-84a.

   b. Former spouse: Statutes and case law. See margin. See, e.g., *State v. Richards* (W.V., 1990) 391 S.E.2d 354 (ex-wife's testimony regarding violence and

threats toward self and current wife upheld in murder prosecution of husband where victim was current wife's boyfriend); *State v. Goodwin* (Wa., 1971) 484 P.2d 1155 (ex-wife's testimony regarding violence and arson towards her admissible in arson prosecution of husband); *State v. Day* (Wa., 1988) 754 P.2d 1021 (appropriate to continue date for murder trial of first wife so that second wife could divorce defendant, allowing her to testify against him).

3. Marital communications privilege and exceptions

See, e.g., *State v. Richards* (W.V., 1990) 391 S.E.2d 354 (loud threats not barred by confidential marital communication statute). Conn. G.S. §54-84a; *State v. Littlejohn* (Conn., 1986) 508 A.2d 1376 (statements by murder defendant to his wife admitting he had killed victim not confidential and therefore not privileged).

D. Children's testimony in domestic violence cases

1. Assessing whether to allow children's testimony in a domestic violence case

The decision whether to allow children's testimony in domestic violence cases raises several issues. On the one hand, they are often present during the violence, so their testimony may have great probative value. On the other, the child may suffer serious emotional trauma from testifying. They may be under great pressure from one or both parents to testify or not to testify. They may fear physical retribution by the violent parent if they testify, as well as fear abandonment from the parent who is the victim if they do not testify. They may feel a sense of loyalty to both parents, and not want to be forced to "take sides."

The decision to present children's testimony in these cases should be made with great care and only after the court has conducted an assessment of the danger to the child if he/she testifies. The court should ensure that appropriate protections are provided for children that testify, and that

services are available to help them cope with the potential emotional trauma.

Determining A Child's Competency

2. Determining a child's competency

Statutes:

a. Relevant statutes and case law: See margin.

b. See, e.g., Calif. Evid. C § 701 (a); 2 Witkin, *California Evidence*, Witnesses, § 1053 (cases cited therein); *Lewis v. State* (Ind., 1976) 346 N.E. 2d 859 (eight year old competent to testify against father for killing mother).

Case Law:

3. Court orders to protect child from influence

Court Orders Protecting Child From Influence

a. Statutory authority and case law: See margin.

Statutes:

b. See, e.g., Calif Pen. C § 136.2; Calif. Code of Civil Proc §§ 128(a)(5), 187 (general court authority to control proceedings).

Case Law:

4. Alternative methods of evidence taking

a. In recent years, with the increasing number of trials involving child sexual abuse, courts and legislatures have become increasingly concerned with the danger of re-traumatizing children while taking their testimony. Consequently, many states have adopted alternative methods of evidence taking in such cases. These include:

Alternative Methods of Evidence Taking

WESTLAW:
110 k 662.1
110 k 667(1)

- ☐ use of videotaped testimony in lieu of live testimony
- ☐ use of one-way, or two-way screens or mirrors

Statutes:

- ☐ use of one-way or two-way closed curcuit television
- ☐ exclusion of the defendant from the courtroom or from an in camera hearing

Case Law:

See generally, Myers and Perry, *Child Witness Laws and Practice*, pp. 390 et seq., Wiley, 1978. (discussion

of factors to evaluate in ordering alternative methods of taking testimony, the impact of such methods on the right of confrontation.)

b. The U.S. Supreme Court addressed this issue in *Coy v. Iowa* (1988) 487 U.S. 1012, 108 S.Ct. 2798, 101 L.Ed.2d 857. In that case, an Iowa statute was held unconstitutionally violative of defendant's Sixth Amendment right of confrontation where it authorized alternative methods of taking testimony, i.e. closed circuit television or a one-way screen, in all child sexual abuse cases. A large screen had been placed between the witnesses and the defendant, enabling defendant to dimly see them, but making him not visible to them at all. The concurring opinion cited to California Pen C § 1347 with approval, pointing out that it, unlike the Iowa statute, requires particularized findings that this witness would be traumatized by a face-to-face confrontation. Id. 101 L.Ed.2d at 869. The court also stated that the Confrontation Clause reflects a preference for face-to-face confrontation at trial which should give way if a different procedure is necessary to further an important public policy. Id. It states further that "[t]he protection of child witnesses is...just such a policy." Id. *Maryland v. Craig* (1990) 497 U.S. ____, 110 S. Ct. 3157, 111 L. Ed.2d 666 (Confrontation clause does not categorically prohibit child witness in child abuse case from testifying against defendant by one-way closed circuit TV, as long as court makes case-specific finding of necessity); *Idaho v. Wright* (1990) 497 U.S. ____, 110 S. Ct. 3139 , 111 L. Ed. 2d 638 (Confrontation clause does not allow examining physician of allegedly abused child to testify as to statement.)

Post-*Coy* decisions have generally upheld alternative procedures in cases where allegedly sexually abused minors are testifying. *Commonwealth v. Fanelli* (Pa., 1988) 548 A.2d 1237 (allowing a witness to look away from defendant); *State v. Davis* (N.J., 1988) 550 A.2d 1241 (TV); *Gibson v. State* (Fl., 1988) 533 So.2d 338 (one-way mirror); *Ortiz v. State* (Ga., 1988) 374 S.E.2d 92 (allowing witness to look away from defendant); *People v. Logan* (N.Y.S., 1988) 141 Misc. 2d 790, 535 N.Y.S.2d 322 (TV); *Cook v. State* (Fl., 1988) 531 So.2d 1369 (hearsay in lieu of victim testimony, based on state statute authorizing this in some cases). In most of these cases, there were specific findings that face-to-face testimony would be too traumatic for the particular witness. It is noteworthy that in two of these cases, there was no state statute

authorizing the alternative method. (*Gibson v. State, supra; Ortiz v. State, supra.*) It is also noteworthy that in one of these cases, there was no specific mention of a sexual assault charge. (*Gibson v. State*, supra.) Three post-*Coy* decisions have disallowed such procedures. In each there was no statute allowing for the procedure which was employed. *State v. Eastham* (Oh. 1988) 530 N.E.2d 409 (no statute at the time, child could not see defendant due to one-way video, no particularized finding regarding this witness); *State v. Roberts* (La., 1988) 533 So.2d 1071 (no statute authorizing alternative procedure); *Lowery v. State of Texas* (Texas, 1988) 757 S.W.2d 358 (no statute authorizing video in lieu of live testimony).

See also the following cases which the U.S. Supreme Court declined to consider and returned to the lower courts to be examined in light of *Coy: State v. Tafoya* (N.M., 1986) 729 P.2d 1371 (child videotaped, defendant present but out of child's view); *Conley v. Wisconsin* (Wis., 1987) 416 N.W.2d 69 (blackboard blocked defendant from child witness, no finding of necessity); *U.S. v. Iron Moccasin* (8th Circ, 1989) 878 F.2d 226 (easel used, but court held it had not been used to shield witness from defendant's gaze); *State v. Chisolm* (Ks., 1989) 777 P.2d 753 (closed-circuit TV); See also *People v. Rafajlovski* (N.Y., 1986) 499 N.Y.S. 2d 597 (hospitalized battered woman allowed to testify via videotape to grand jury).

5. Other discretionary judicial acts that may contribute to the comfort, support, and protection of child witnesses.

Special Procedures for Child Witness

Statutes:

Case Law:

a. Statutory authority and case law: See margin. See, e.g., *State v. Paolella* (Ct., 1989) 561 A.2d 111 (mother/domestic violence victim testified, then allowed to remain in courtroom while 6- and 8-year old children testified regarding mother's kidnapping by father/defendant); See also, Calif. Pen C §868.8.

b. Grant frequent recesses.

c. Remove the judicial robe if it appears to intimidate the child.

d. Rearrange the courtroom configuration.

e. Take testimony during normal school hours.

f. Avoid unnecessary continuances.

Appointing a Representative For A Child Witness

6. Appointing a representative for a child witness in a domestic violence case.

Statutes:

a. Statutes and case law: See margin.

Case Law:

b. In making such an appointment, the court may choose to follow the guidelines delineating duties and qualifications of a child representative in child abuse and molestation cases as described by statute.

See, e.g., Whitcomb, D. *Guardians Ad Litem in Criminal Courts,* National Institute of Justice, U.S. Dept. of Justice, February, 1988; 42 U.S.C.A. §5103 (b) (2) (G); Fl.: §415.503, 415.508; Pa., S.B. 176; Ia.: 910 A15; 15; N.H.: Court Rule 93-A; *State v. Walsh* (N.H., 1985) 495 A.2d 1256; *State v. Freeman* (N.J., 1985) 496 A. 2d 11.

E. Assessing the credibility of victim's and/or children's testimony

Determining Credibility of Victim/Children's Testimony

1. Statutes and case law pertaining to determining the credibility of victim and/or children's testimony.

Statutes:

See, e.g., Calif. Pen C §1127(f); Calif. Evid. C §§ 700-701, 765 (b).

2. Eyewitness studies indicate that child witnesses as young as five years are reliable as adults.

Case Law:

See Fote, D., *Child Witnesses in Sexual Abuse Criminal Proceedings.* 13 Pepperdine L. Rev. 157 (1985). Generally, while children tend to recall less than adults do, what they do recall is usually quite accurate. Children's errors tend to be those of omission rather than comission. (Goodman, G.S., and Rosenberg, M.S.., *"The Child Witness to Family Violence: Clinical and Legal Considerations"* Chapter 7 , Domestic Violence on Trial, Springer, New York, 1986, at 106.)

V. Expert Testimony on the Experience of Battered Women

A. Trial attorneys may sometimes offer testimony concerning the experience of battered women for the purpose of establishing one of the following:

1. the specific effects of abuse on battered women

2. whether or not a particular victim is indeed a battered woman, or

3. whether or not a particular victim suffers from the collection of specific effects of abuse on battered women collectively known as the "battered women's syndrome" (see section C below).

B. While such testimony may focus on the victim's behavior, e.g. recanting testimony, minimizing and denying, etc., it is also important for the court and trier of fact to understand the context in which the violence has occurred.

The court should examine the perpetrator's patterns of violence and control of the victim, the perpetrator's belief systems that support the violence, the impact of the violence and abuse on the victim, how the victim has attempted to protect herself and the children from the violence in the past, the reasons the victim stayed in the relationship or returned to it, and the reasonableness of the victim's belief or apprehension that the perpetrator is going to inflict serious bodily injury or death. It is important that the court view the victim's behavior within the context of the impact of the violence on the victim.

C. The collection of specific characteristics and effects of abuse on battered women are collectively known as "Battered Woman Syndrome."

1. For further discussion see Douglas, M.A.. *"The Battered Woman Syndrome,"* In Sonkin, D., Ed., Domestic Violence On Trial, Springer, New York, 1986; See also 18 ALR 4th 1153 *"Admissibility of Expert or Opinion Testimony on Battered Wife or Battered Woman Syndrome."*

2. The Attorney General's Task Force on Family Violence recommends that the courts permit expert testimony on the battered woman's syndrome in order to provide the judge and jury with a clear understanding of the dynamics and complexities of family violence.

3. A victim may in fact have been battered but not have the collection of characteristics known as the "battered women's syndrome."

   This is no different from veterans who fought in Vietnam; while all experienced war, not all developed post-traumatic stress syndrome (PTSS). The fact that many did not develop PTSS does not establish that they did not fight in Vietnam. Similarly, the fact that a battered woman may not evidence all of the characteristics of the "battered women's syndrome" does not either diminish the victim's experience of being battered nor prove that the victim was not battered.

Admissibility of Expert Testimony on the Battered Women's Syndrome

WESTLAW: 110 k 472

D. Admissibility of expert testimony on the "battered women's syndrome" in cases where the alleged battered woman is the victim.

See generally, Annot., 18 ALR 4th 1153, *"Admissibility of Expert Opinion & Testimony on Battered Wife or Battered Woman Syndrome."*

1. When offered by the prosecution

When Offered By the Prosecution

Statutes:

Case Law:

a. Relevant statutes and case law. See margin
The Washington Supreme Court held that expert testimony regarding the Battered Woman's Syndrome (BWS) was admissible to explain to a jury the behavior and mental state of a victim of repeated beatings and sexual assaults. *State v. Ciskie* (Wa., 1988), 751 P.2d 1165. This was the first time a court admitted such evidence when the battered woman was the victim/witness, rather than the defendant. The Court held that the evidence was admissible to explain why the victim did not leave the relationship or call the police immediately, and at times engaged in consensual sex with the defendant. *Id.* at 1173. The expert was not allowed to opine that the complaining witness was a rape victim. While the expert did testify that the victim suffered from post-traumatic stress disorder, no testimony was allowed as to the cause of the stress. *Id.* at 1173-1174. It was left to the jury to decide whether the cause of the stress were the allegations of rape, other aspects of the relationship, or another event in the victim's life. *Id* at 1174. *State v. Everhards* (N.C., 1989) 384 S.E.2d 562, reached a similar holding, though BWS was not specifically mentioned. More recently, the Appellate Division of the Superior Court of New Jersey upheld the use of BWS expert testimony in *State v. Frost* (N.J., 1990) 242 N.J. Super. 601, 577 A. 2d 1282 (testimony was admitted in the prosecution's case in chief to bolster the victim's credibility in an assault case, where the prosecutor sought to use a series of prior assaults on the victim and reconciliations over a period of time).

See also La. C.E., art. 404; *Pruitt v. State* (Ga., 1982) 296 S.E.2d 795 (admitting BWS testimony harmless error in bench trial for battery where no evidence that victim was battered woman); *State v. Walker* (N.J., 1985) 489 A.2d 728 (BWS not basis for introducing wife/victim's excited utterances regarding defendant, where utterances not in close enough proximity to alleged beatings); *Commonwealth v. Jordan* (Ma., 1986) 492 N.E.2d 349 (fact that prosecutor offered evidence of prior beatings of same victim in domestic violence case, representing that there would be expert

testimony on BWS, but did not introduce expert testimony, did not make evidence inadmissible).

When Offered By the Defense

2. When offered by the defense

Statutes:

Relevant statutes and case law: See margin.

Case Law:

See, e.g., *People v. Stoll* (Ca., 1989) 49 C.3d 1136, 783 P.2d 698, (child abuse defendant offered expert testimony to prove defendant not a deviant; error to exclude testimony.); *People v. Ruiz* (Ca., 1990) 222 Cal.App.3d 1241 (expert testimony that defendant not a pedophile properly admitted in child abuse case).

3. When offered by the defense in a homicide case where the defendant is an alleged victim of domestic violence

This manual does not address cases where an alleged victim of domestic violence is charged with the homicide of the alleged batterer. A listing of resource materials on this issue is available from the National Clearinghouse for the Defense of Battered Women, 125 S. 9th St., Ste. 302, Philadelphia, PA.

Time For Offering

E. Time for offering

1. When offered by the prosecution

Statutes:

a. Relevant case law. See margin.

Case Law:

b. See, e.g., *People v. Luna* (Ca., 1988) 204 Cal.App.3d 726, 250 Cal.Rptr. 878; *Seering v. Department of Social Services* (Ca., 1987) 194 Cal.App.3d 298, 239 Cal.Rptr. 422; *People v. Gray* (Ca., 1986) 187 Cal.App.3d 213, 231 Cal.Rptr. 658. Rebuttal: *People v. Roscoe* (Ca., 1985) 168 Cal.App. 1093, 215 Cal.Rptr. 45; *People v. Jeff* (Ca., 1988), 204 Cal.App.3d 309, 251 Cal.Rptr. 135.

2. When offered by the defense

a. Relevant case law: See margin.

b. See, e.g., *People v. Aris* (Ca., 1989) 215 Cal.App.3d 1178, 264 Cal.Rptr. 176.

VI. Expert Testimony on Domestic Violence Offenders

A. Admissibility of expert testimony on domestic violence offenders

1. When offered by the prosecution

a. Statutes and case law: See margin.

b. Rebuttal to Insanity Defense
A New Hampshire court upheld the admission of expert testimony on a domestic violence offender in *State v. Baker* (N.H., 1980) 424 A.2d 171. In that case, the defendant was convicted of the attempted first degree murder of his wife. He had pled not guilty by reason of insanity, waiving his right to a bifurcated trial on the insanity issue. The defense called two psychiatrists to testify that the defendant was, in their opinion, legally insane at the time of trial. The victim and the couple's daughter testified to many incidents of beatings by the defendant. The prosecution called an expert in domestic violence who testified that current research does not indicate that mental illness is an important cause of wife beating, and in his opinion, a marriage such as the defendant's would probably fall within the contours of the "battered wife syndrome." On cross examination, one of the defense psychiatrists agreed. *Id. at 172.* The appellate court upheld the use of expert testimony to rebut the defendant's evidence on the issue of insanity by providing an alternative explanation for the assault. *Id. at 173.*

c. Rebuttal to character defense.
See, e.g., *People v. Walkey* (Ca., 1986) 177 Cal.App.3d 268, 223 Cal.Rptr. 132. (battering parent; testimony that defendant has characteristics of a batterer inadmissible character evidence when offered by prosecution.) See also 43 ALR 4th 1203, *"Admissibility in Criminal Prosecution by Expert Testimony on Battering Parent Syndrome."*

2. When offered by the defense.

a. Statutes and case law: See margin.

Expert Testimony on Domestic Violence Offenders: When Offered By Prosecution

Statutes:

Case Law:

When Offered By the Defense

Statutes:

Case Law:

b. See, e.g., Mich. R.E. 70. et. seq; *People v. Stoll* (Ca., 1989) 783 P.2d 698.; *People v. Watkins* (Mich., 1989) 440 N.W. 2d 36.

Admissibility of Expert Testimony of Medical Personnel, and Pathologists.

VII. Admissibility of Expert Testimony of Pathologists, Medical Personnel, and Mental Health Experts

Statutes:

A. Relevant statutes and case law. See margin.

Case Law:

B. Receipt of testimony of expert witnesses who are pathologists and medical personnel has been upheld in cases involving rape, child sexual abuse, and child battering.

See, e.g., *People v. Rance* (Ca., 1980) 106 Cal.App.3d 245, 164 Cal.Rptr. 822 (emergency room nurse testified victim's bruises caused by physical violence against victim) *People v. Mendibles* (Ca., 1988) 199 Cal.App.3d 1277, 245 Cal.Rptr.553 (expert medical opinion on cause of an injury outside *Frye* rule and an expert can give an opinion on the causes of injuries); *People v. Bowker* (Ca., 1988) 203 Cal.App.3d 385, 219 Cal.Rptr. 886 (examining physicians stated child sexual abuse victim's injuries consistent with multiple episodes of penetration with a foreign object and occurred over period of time); *People v. Jackson* (Ca., 1971) 18 Cal.App.3d 504, 95 Cal.Rptr. 919 (injuries not the result of accident but symptomatic of the battered child syndrome), *U.S. v. Boise* (9th Circ., 1990) 916 F.2d 497 (battered child syndrome evidence admissible to prove intent and absence of accident); *State v. Dumlao* (Conn., 1985) (expert testimony of battered child syndrome admissible against parents to show risk of injury to the child); *People v. Ware* (Mich., 1983) 393 N.W.2d 565; *People v. Bonnard*, (Mich., 1979) 286 N.W. 2d 870 (battered child syndrome); Conn. G.S. §54-86.

C. Receipt of testimony from mental health experts has been upheld in rape,

child sexual assault, and child battering cases.
See, e.g., *People v. Gray* (Calif., 1986) 187 Cal.App.3d 213, 231 Cal.Rptr. 658 (psychologist testified to characteristics of victims of child molestation as a class); *People v. Bowker* (Calif., 1988) 203 Cal.App.3d 385, 249 Cal. Rptr. 886 (testimony of child abuse accommodation syndrome limited to victim reactions as a class); *People v. Skinner* (Mich., 1986) 396 N.W. 2d 548 (rape trauma syndrome evidence); Conn. G.S. §84-86i; Mich., R.E. §§702-705.

Admissibility of Expert Testimony of Mental Health Experts

Statutes:

Case Law:

VIII. Admissibility of Character and Conduct Evidence

A. Prior or subsequent bad acts by defendant: Admissibility of evidence

Admissibility of Prior and/or Subsequent Bad Acts by Defendant

WESTLAW:
110 k 380,
110 k 345,
203 k 157 (2),
230 k 166 (3),
37 k 84; 37k 88,
110 k 371 (12)

Statutes:

Case Law:

1. Generally, existence of similar acts of conduct are admissible to show intent, identity, lack of accident, motive, knowledge, plan or preparation, or good faith belief in consent.
See, e.g., Federal Rule of Evidence 404; Calif. Evid. C §1101(b); Mich., MCLA 768.27, MSA 28.1050, MRG 404(b); 2 Jefferson, *California Evidence Benchbook,* §33.6, 2d Ed.

2. Court must weigh probative value versus danger of undue prejudice in deciding admissibility.
See, e.g., Federal Rule of Evidence 404(3); Calif. Evid. C §352; *People v. Golochowicz* (Mich., 1982) 319 N.W. 2d 518; *State v. Morowitz* (Conn., 1986) 512 A.2d 175.

3. Prior or subsequent bad acts toward the same victim.

a. Mental element or intent
See, e.g., *Commonwealth v. Jordan* (Ma., 1983) 666 P.2d 684; *Allen v. State* (Ga., 1976) 223 S.E.2d 495; *People v. Cartier* (Ca., 1960) 353 P.2d 53; *People v. Toth* (Ca., 1960) 182 Cal.App.2d 819, 6 Cal.Rptr. 372; *People v. Lopez* (Ca., 1969) 1 Cal.App.3d 78, 81 Cal.Rptr. 386; *People v. Jacobowitz* (Conn., 1984) 480 A.2d 557.

b. Motive, to rebut accident or self defense
See, e.g., *People v. Zack* (Ca., 1986) 184 Cal.App.409, 229 Cal.Rptr. 317; *Commonwealth v. Hardone* (Ma., 1989) 546 N.E.2d 359 (fact victim stayed at battered woman's shelter relevant to show motive); *People v. Thompson* (Mi., 1981) 314 N.W.2d 606; *State v. Kendig* (Ks., 1983) 666 P.2d 684; *Rushing v. State* (Ok., 1984) 672 P.2d 842; *State v. Nguyen* (Conn., 1989) 552 A.2d 823; *Allen v. State* (Ga., 1976) 223 S.E.2d 495.

c. Lewd disposition and lack of consent
See, e.g, *State v. Schackart* (Az., 1987) 737 P.2d 398 (consent in marital rape case); *People v. Barney* (Calif., 1984) 143 Cal.App.3d 490; *People v. Dunahoo* (Calif., 1984) 152 Cal.App.3d 561, 99 Cal.Rptr. 796.

d. To establish identity
See, e.g, *People v. Zack* (Calif., 1986) 184 Cal.App.3d 409, 229 Cal.Rptr. 317; *People v. Daniels* (Calif., 1971) 16 Cal.App. 3d 36, 93 Cal.Rptr. 628; *State v. Pollitt* (Conn., 1987) 530 A.2d 155; *State v. Vessichio* (Conn., 1985) 500 A.2d 1311.

e. Continuous course of conduct and relationship of the parties
See, e.g,. *State v. Green* (Ks., 1982) 652 P.2d 697; *People v. Thompson* (Calif., 1984) 160 Cal.App.3d 220, 206 Cal.Rptr. 516.

f. Malice
See, e.g, *State v. Goodwin* (Wash., 1971) 484 P.2d 1155 (arson).

g. To support or attack the credibility of a witness
See, e.g,. Federal Rule of Evidence 608; Mich. MRE 404, 405; *People v. Winchell* (Mich., 1988) 430 N.W. 2d 812; Calif. Evid. C §788; Uniform Rules of Evidence 608; Texas Rule of Evidence 608; *People v. Hani* (Ca., 1989) 767 P.2d 619; *People v. Lankford* (Ca., 1989) 210 Cal.App.3d 227, 258 Cal.Rptr. 322. But see, *People v. Rose* (Il., 1990) 555 N.E. 2d 414

domestic violence inadmissible in aggravated battery case); *State v. Doll* (Mo., 1985) 692 P.2d 473 (defendant prejudiced in wife-murder prosecution by evidence of assault on first wife eight years earlier).

4. Prior or subsequent bad acts toward different victim

a. Motive; to rebut accident or heat of passion defense.
See, e.g., *People v. Bufarole* (Ca., 1961) 193 Cal.App.2d 551, 14 Cal.Rptr. 381.

b. Act element; behavior pattern to show identity.
See, e.g., *People v. Archerd* (Ca., 1970) 477 P.2d 421.

c. To support or attack the credibility of a witness.
See, e.g., Calif. Evid. C §780; 2 Jefferson, *California Evidence Benchguide* at 1213; Federal Rules of Evidence 608.

d. To establish intent
See, e.g., *State v. Falby* (Conn., 1982) 444 A.2d 213.

B. Introduction of character evidence: Time for offering

See, e.g., *People v. Todd* (Ca., 1969) 1 Cal.App.3d 547, 552, 81 Cal.Rptr. 866; *People v. Perkins* (Ca., 1984) 159 Cal.App. 3d 646, 651, 205 Cal.Rptr. 625.

Time for Offering: Character Evidence

Statutes:

Case Law:

C. Admissibility of prior conduct by victim

1. Statutes and case law. See margin.

See, e.g., Federal Rules of Evidence 404(a); Calif. Evid. C §1103(a); *People v. Harris* (Ca., 1989) 767 P.2d 619; *Rushin v. State* (Ga., 1986) 348 S.E.2d 910 (irrelevant where no justification or self-defense issue); *Pitcock v. State* (Tx., 1967) 420 S.W.2d 719 (irrelevant where defendant did not know of any prior violence by victim).

Admissibility of Prior Conduct By Victim

Statutes:

2. When self-defense is in issue

See, e.g., Federal Rules of Evidence 404(2); *People v. Shoemaker* (Ca., 1982) 135 Cal.App.3d 442, 185 Cal.Rptr.

Case Law:

When Self Defense in Issue

Statutes:

Case Law:

370 (admissible); *People v. Wright* (Ca., 1985) 703 P.2d 1106; L.A.C.E. art 404 (prior violence by victim admissible if defendant pleads self-defense and there is history of domestic violence; *State v. Miranda* (Conn., 1978) 405 A. 2d 622 (admissible to show victim the aggressor).

3. When credibility of witness is in issue

See Federal Rules of Evidence 608, 404(a); See, e.g., Calif. Evid. C §§ 786, 787, 780.

When Credibility in Issue

Statutes:

Case Law:

D. Admissibility of evidence of prior abuse to victim from previous partners

See, e.g., *People v. Cameron* (Ca., 1975) 53 Cal.App.3d 786, 126 Cal.Rptr. 44 (defendant asserted on appeal that evidence of his wife's nose being broken by her previous husband was improperly excluded. Court upheld evidence as irrelevant unless it shows victim was aggressor).

Admissibility of Prior Abuse Evidence

Statutes:

Case Law:

IX. The Hearsay Rule, Exceptions, and Related Issues

Admissibility of Hearsay:

WESTLAW: 203 k 187

A. Admissibility of hearsay in domestic violence cases

1. State of mind

State of Mind

Statutes:

a. The State must establish that the statement bears sufficient "indicia of reliability", in order not to violate the defendant's Sixth Amendment Right of Confrontation. See, e.g., *Ohio v. Roberts* (1980) 448 U.S. 56, 65 L.Ed 2d 597, 608, 100 S.Ct. 2531.

Case Law:

b. U.S. Supreme Court test for reliability in deciding if a

hearsay statement violates the defendant's right to confrontation is whether:

1) The statement contains no express assertion about past facts;

2) The declarant's personal knowledge of the contents of the statement is abundantly established;

3) The possibility that the declarant's statement was founded on faulty recollection was remote in the extreme;

4) The circumstances under which the declarant made the statement are such as to give reason to suppose the declarant did not misrepresent defendant's involvement in the crime. See *Dutton v. Evans* (1970) 400 U.S. 74, 88-89, 91 S.Ct. 210; 27 L.Ed 2d 213, 226-227.

c. Relevant statutes and case law. See margin.

d. When victim's state of mind is in issue: Statutes and case law. See margin.
See, e.g., Calif. Evid. C §1250; *In re Cheryl H.* (Ca., 1984) 153 Cal.App.3d 1098, 1132 fn. 38, 200 Cal.Rptr. 798; *State v. Luster* (Mo., 1988) 750 S.W.2d 474 (victim's attempts to obtain restraining order were relevant to her state of mind where defense was self-defense).

e. To rebut self-defense claim: Statutes and case law.
See, e.g. *People v. Atchley* (Ca., 1959) 346 P.2d 764; *People v. Spencer* (Ca., 1969) 458 P.2d 43.

f. When victim's state of mind is not in issue:
See, e.g., *People v. Ireland* (Ca., 1969) 450 P.2d 580 (generally inadmissible).

g. To establish defendant's state of mind

1. Introduced by defense
See, e.g., *People v. Aris* (Ca., 1989) 215 Cal.App.3d 1178, 264 Cal.Rptr. 167.

2. Introduced by prosecution:

Victim's State of Mind in Issue

WESTLAW:
203 k 187

Statutes:

Case Law:

Victim's State of Mind Not In Issue

Statutes:

Case Law:

Defendant's State of Mind In Issue

WESTLAW:
203 k 165

Statutes:

Case Law:

Threats of Violence by Defendant Offered to Establish Identity

Statutes:

Case Law:

See, e.g., *People v. Zack* (Ca., 1986) 184 Cal.App.3d 409, 229 Cal.Rptr. 317; *State v. Green* (Ks., 1982) 652 P.2d 697 (relevant as to intent in murder prosecution); *State v. Taylor* (Ks., 1983) 673 P.2d 1140 (victim's letters relevant as to motive and intent in murder prosecution); *State v. Day* (Wa., 1988) 754 P.2d 1021 (victim's statements of fear and plans to leave relevant in murder prosecution).

B. Threat or violence by defendant offered to establish defendant's identity

See, e.g., *People v. Zack* (Ca., 1986) 184 Cal.App.3d 409, 229 Cal.Rptr. 317; *State v. Kendig* (Ks., 1983) 666 P.2d 684 (prior assaults admissible in murder prosecution).

Hearsay Offered to Establish Prior History of Abuse

Statutes:

Case Law:

C. Hearsay offered to establish prior history of abuse

See, e.g., *People v. Zack* (Ca., 1986) 184 Cal.App.3d 409, 229 Cal.Rptr. 317 (restraining order).

Victim's Excited Utterances, Spontaneous Statements

WESTLAW:
110 k 364 (6)
110 k 1158 (1)

Statutes:

Case Law:

D. Victim's excited utterances, spontaneous statements

1. General grounds for admissibility:

See, e.g., Calif. Evid. C §1240; *People v. Hughey* (Ca., 1987) 194 Cal.App.3d 1383, 240 Cal.Rptr. 269; *Pruitt v. State* (Ga., 1982) 296 S.E.2d 795 (part of res gestae though 30 minutes later); *Nasworthy v. State* (Ga., 1984) 314 S.E.2d 446 (part of res gestae); But see, *State v. Walker* (N.J., 1985) 489 A.2d 728 (not part of res gestae where too remote in time, no proper foundation).

Physical Pain

Statutes:

Case Law:

2. Physical pain of declarant

See, e.g., *People v. Farmer* (Ca., 1989) 765 P.2d 940.

3. Time between event and statement

See, e.g., *People v. Fain* (Ca., 1959) 345 P.2d 305; *People v. Washington* (Ca., 1969) 459 P.2d 259. See cases in D.1. above.

4. Made in response to questioning

See, e.g., Calif. Evid. C §1240; *People v. Farmer* (Ca., 1989) 765 P.2d 940.

Questioning

Statutes:

Case Law:

5. Tape recordings of telephone calls to police

See, e.g., *People v. Farmer* (Ca., 1989) 765 P.2d 940; *People v. Jurczak* (Il., 1986) 497 N.E.2d 1332 (admissible); *Hall v. State* (Ga., 1989) 383 S.E.2d 128 (admissible).

Taped Calls to Police

WESTLAW: 110 k 438.1

Statutes:

Case Law:

6. Spontaneous statements when witness is available

See, e.g., *People v. Hughey* (Ca., 1987) 194 Cal.App.3d 1383, 240 Cal.Rptr. 269; *U.S. v. Inadi* (1986) 475 U.S. 387, 106 S.Ct. 1121, 89 L.Ed.2d 390.

E. Fresh complaint

See, e.g., *People v. Panky* (Ca., 1978) 82 Cal.App.3d 772, 147 Cal.Rptr. 341; *People v. Orduno* (Ca., 1978) 80 Cal.App.3d 738, 145 Cal.Rptr. 806.

Fresh Complaint

Statutes:

Case Law:

F. Witness unavailable, use of prior testimony

1. Right of confrontation

See, e.g., *Barber v. Page* (1968) 390 U.S. 719, 722, 88 S. Ct. 1318, 20 L.Ed.2d 255; Calif. Evid. C §§ 1291(a)(2), 1293.

2. Victim deceased

See, e.g., *People v. Ogen* (Ca., 1985) 168 Cal.App.3d 611, 215 Cal.Rptr. 16.

Witness Availability

WESTLAW:
110 k 1167 (1)
110 k 598 (2)

Statutes:

Case Law:

3. Victim unavailable due to fear or evasion

See, e.g., *People v. Francis* (Ca., 1988) 200 Cal.App.3d 579, 245 Cal.Rptr. 923; *People v. Rojas* (Ca., 1975) 542 P.2d 229; *People v. Green* (Ca., 1971) 479 P.2d 998; *People v. Rafajlovski* (N.Y., 1986) 499 N.Y.S.2d 597 (witness videotaped in hospital for grand jury indictment); *Rushing v. State* (Ok., 1984) 676 P.2d 842 (witness unavailable; used preliminary examination testimony); *Pruitt v. State* (Ga., 1982) 296 S.E.2d 795 (victim/witness missing, case tried anyway); *Pitcock v. State* (Tx., 1967) 420 S.W.2d 719 (due diligence not shown, so proper for court to deny motion for continuance); *People v. Wright* (Ca., 1990) 272 Cal.Rptr. 219 (use of preliminary examination testimony of victim upheld where domestic violence victims unavailable at trial); Calif.Evid. C §240; Ca.Pen C §§ 1335-1345 (conditional examination).

Prior Testimony

Statutes:

Case Law:

G. Prior inconsistent statements

See, e.g., Calif. Evid. C §1235; *California v. Green* (1970) 399 U.S. 149, 90 S. Ct., 1930, 26, L. Ed. 2d, 492; *People v. Green* (Ca., 1971) 479 P.2d 998; *People v. Lucky* (Ca., 1988) 753 P.2d 1052.

Prior Inconsistent Statements

Statutes:

Case Law:

Chapter 6
Case Dispositions

Learning Objectives:

1) To identify behaviors and belief systems of the offender which are useful in assessing the impact of specific dispositions on recidivism.

2) To identify factors to consider when determining a domestic violence offender's eligibility and amenability for court-ordered treatment.

3) To develop court procedures for the effective monitoring of the defendant's progress in a court-ordered treatment program.

Recommended Length: 45 minutes

Faculty: A judge with experience in sentencing domestic violence offenders.

The domestic violence expert who presented the morning session on the impact of domestic violence on the defendant and the victim in the courtroom.

Format:

1) Faculty begins the plenary session by asking all of the participants to review the hypothetical domestic violence case deliberated on by the Sentencing small group.

2) The eight objectives that the small group's rulings were designed to accomplish, are displayed at the front of the room (see Chapter 3 for objectives).

3) Faculty asks judges who did not participate in the small group to discuss how they would rule on the issues contained in the hypothetical, and to comment on the factors taken into consideration in their ruling.

4) The rulings of the small group are then displayed at the front of the room along with the list of problems identified by the small group facing the court at the sentencing stage of domestic violence cases.

5) Faculty asks members of the small group to discuss the factors that were taken into consideration in the small group's rulings.

6) Faculty focuses discussion on the problems identified by the small group, and on solutions to these problems that accomplish the eight objectives.

7) Faculty directs questions regarding how participants' rulings may affect the defendant, the victim, and the children, to the domestic violence expert.

The topics outlined in this chapter are those that are most likely to arise during both the Sentencing small group deliberation and the corresponding plenary session. In preparation for the program, faculty should review this chapter and become familiar with state statutes and case law relevant to each of the topics.

Subject Overview

By Anne L. Ganley, Ph.D.

Violence against wives or female intimates has long been tolerated and even condoned by our social norms and institutions. This violence has been viewed as a private family matter which, if left alone, will be resolved without intervention. It is notable that defendants who victimize their spouses routinely receive lighter sentences than persons committing similar offenses against strangers. For example, in 1987, felons convicted of spousal rape and spousal battery in California received significantly shorter sentences than persons convicted of rape and felonious assault against strangers, respectively. (California Board of Prison Terms, 1987)

Domestic violence is embedded in the customs of people and social institutions and stopping it requires changing both behaviors and belief systems.

Such change does not occur quickly. Perpetrators are more likely to change when they have multiple experiences of being held accountable. It is not arrest alone, or prosecution alone, or conviction alone, or counseling alone that brings about change. It is a combination of these experiences. Domestic violence is learned through multiple experiences and stopping it requires multiple experiences.

Experts in treating domestic violence offenders have found that domestic violence is the result of the defendant's strong need to exercise power and control over the victim. See Ganley, Anne, *"Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client."* In Sonkin, D., Ed., Domestic Violence On Trial: Psychological and Legal Dimensions of Family Violence, Springer, 1986. Violence provides a very effective, short-term method of maintaining this control. Domestic violence perpetrators have learned that violence coupled with the threat of violence is an effective way of getting the victim to engage in those behaviors deemed essential by the perpetrator, and thus is an effective way of maintaining power and control over the victim.

Many domestic violence offenders have learned in their family of origin that violent behavior affords the violent individual the ultimate power within the family. This message is reinforced by society, and by the failure of our institutions to intervene or to condemn this violence. The court can counteract the belief that violence is an acceptable means of maintaining power and control by imposing negative consequences in the form of legal sanctions upon the behavior.

Perpetrators of domestic violence have a cluster of behaviors and belief systems that impede their ability to change their behavior. They tend to minimize or deny the seriousness of their violence, to rationalize their violence by blaming others (especially their victims) for their behavior, and to be externally motivated. This is seen in statements such as, "I couldn't help it, she pushed my buttons," "I had an argument with my boss."; "I was drunk." Society often colludes with the offender's minimization, externalization, and rationalization by denying the seriousness of the violence, or by focusing blame on the victim with questions such as "What did she do to make him so angry?"

Any intervention by the court directed at offenders must confront their minimization, rationalization, and denial of responsibility for the behavior, must provide external motivators for change through clear consequences, must confront the belief that violence is an acceptable means of maintaining power and control, and must be consistent over time.

Traditionally the community has looked to the victim to be the consistent motivator that the perpetrator needs to change. Too often we tell victims just to leave the situation or to stand up for themselves, to protect the children from the batterer, or to go to marriage counseling, etc. We give this advice in the hope that somehow these actions will provide the consistent motivator the perpetrator needs to make changes. Expecting the victim to provide this consistent motivation for change not only puts her/him in further danger, but it ignores the reality that victims of this type of crime are in severe crisis and may be unable to be consistent. Instead of expecting the victim to be the

consistent motivator for the perpetrator, the community, through the criminal justice system, must play that role.

The criminal justice system plays a critical role in addressing the offender's minimization and externalization of the violence.

> *"When individuals deny or minimize their behavior or attribute it to others, they are unlikely to change that behavior. Both the criminal justice process and mandated counseling can cut through some of the minimization, denial, and externalization by holding the individual responsible for his battering behavior, and for changing that behavior so that future violence will not occur."* Ganley , Anne, *Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client."* In Sonkin, D.J., Ed. Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence. p. 157, Springer, N.Y., 1986.

The criminal justice system can provide the offender with external motivation for stopping the violence by imposing a variety of sanctions which:

- hold the perpetrator and not the victim accountable for the domestic violence,
- hold the perpetrator accountable for making the necessary changes to stop all types of battering,
- provide clear and consistent consequences for failing to follow through with court mandates, or for continuing the abusive behavior.

To maximize their effectiveness, dispositions should provide multiple ways to convey the message that domestic violence is never justified and that it is always the responsibility of the perpetrator to change that behavior. This may be done through a combination of jail time, restitution, community service, fines, restriction on access to the victim, and court-ordered counseling. It is the consistency and repetition of the message in multiple ways with clear sanctions that changes perpetrators of domestic violence.

Objectives of a Disposition

WESTLAW:
110 k 1205
110 k 1208.1
110 k 1213.8
37 k 100
92 k 270

The objectives of a disposition in a domestic violence case should be to:

1. Stop the violence.
2. Protect the victim.
3. Protect the children, and other family members.
4. Protect the public.

5. Uphold the legislative intent that domestic violence be treated as a serious crime, and to communicate that intent to the offender and to the victim.

6. Hold the offender accountable for the violent behavior and for stopping that behavior.

7. Rehabilitate the offender.

8. Provide restitution for the victim.

See, e.g., *People v. Bryant* (Il., 1975) 322 N.E.2d 233 (purposes of disposition include rehabilitation, protection of society, punishment, deterrence).

The U.S. Attorney General's Task Force On Family Violence Final Report concluded that:

> *"The imposition of a just sentence is the desired culmination of any criminal proceeding. The sanction rendered is not only punishment for the offender but also an indication of the seriousness of the criminal conduct and a method of providing protection and support to the victim. Too often, in family violence cases, the sentence fails on all three counts... Judges and the sentences they impose can strongly re-enforce the message that violence is a serious criminal matter for which the abuser will be held accountable. Judges should not underestimate their ability to influence the defendant's behavior."*

In sum, whether a domestic violence case results in conviction and sentencing, diversion, or even dismissal, the court's handling of the case plays a critical role in addressing the conditions which allow domestic violence to continue and to escalate.

Content Outline

I. Belief Systems and Behaviors of the Offender to Consider when Determining Case Dispositions:

A. Domestic violence offenders have a cluster of behaviors and belief systems which may impede their ability to change.

1. Minimization and/or denial of the violence.
2. Externalization of the blame for the violence.
3. Rationalization (justifying the violence to the point that they conclude the violence was not harmful or immoral conduct).
4. Externally motivated (respond to external, rather than internal reasons for changing their behavior).

B. Effective interventions with domestic violence offenders must:

1. Confront their minimization, denial and rationalization of the violence.
2. Confront their unwillingness to take responsibility for changing their behavior.
3. Provide an external motivator for change.
4. Provide a consistent external motivator over time.
5. Confront their belief that violence is an acceptable means of maintaining power and control.
6. Provide multiple experiences that accomplish the above.

C. Traditionally the community has looked to the victim to provide these interventions.

Too often, victims are told to just leave the situation or to stand up for themselves, to protect the children from the batterer, or to go to marriage counseling, etc. This advice is given in the hope that somehow these actions will provide the consistent motivator the batterer needs to make changes. Expecting the victim to take this role not only puts her/him in further danger, but also ignores the reality that domestic violence victims are in severe crisis and may be unable to be consistent. Instead of expecting the victim to be the consistent motivator for the perpetrator, the community, through the criminal justice system, must play that role.

D. The criminal justice system can provide effective intervention with domestic violence offenders by:

1. Holding the offender, not the victim, accountable for the violence.

2. Holding the offender accountable for changing his/her behavior.

3. Providing clear and consistent consequences for failure to follow through with court mandates, or for continuing the abusive behavior.

4. Providing multiple experiences that hold the offender accountable (e.g., jail time, restitution, community service, fines, restricted access to victim(s), counseling, etc.)

5. Providing the above on a consistent basis.

Statutory Considerations

WESTLAW:
203 k 343;
203 k 354;
203 k 356;
203 k 357;
110 k 986;
110 k 1210

Statutes:

Case Law:

Non-Mitigating Factors in Sentencing

Statutes:

Case Law:

Mitigating Factors in Sentencing

Statutes:

Case Law:

II. Statutory Considerations in Sentencing a Domestic Violence Offender

A. Some courts have found the following to be non-mitigating factors in sentencing domestic violence cases:

1. Marital Problems

See, e.g., *People v. Whitehouse* (Ca., 1980) 112 Cal.App.3d 479, 169 Cal.Rptr. 199.

2. Fact that crimes were committed "only against wife"

See, e.g., *People v. Hunt* (Ca., 1985) 174 Cal.App.3d 95, 219 Rptr. 731.

3. Victim contact with offender following the assault.

See, e.g., *State v. Frost* (N.J., 1990) 242 N.J. Super. 601, 577 A. 2d 1282 (fact that domestic violence victim visited offender in jail and still proclaimed her love for him not a mitigating factor).

B. The following factors have been found by some courts to justify enhanced sentences for domestic violence offenders:

1. Prior criminal convictions

See, e.g., *People v. Arviso* (Ca., 1988) 201 Cal.App.3d 1055, 247 Cal.Rptr. 559; *People v. Littrel* (Ca., 1986) 185 Cal.App.3d 699, 230 Cal.Rptr. 83.

2. Prior treatment for domestic violence

See, e.g., Calif. Rules of Court, Rule 408(a).

3. Prior history of domestic violence

See, e.g.; Il.: Ch 38 ¶112A-23(e)(3), Ch 40 ¶2312-23 (e)(3); Ca.: Pen C §273.6(b), (d); Mo.: §455.085(7), (8); *State v. Frost* (N.J., 1990) 242 N.J. Super., 577 A. 2d 1282; *Allen v. State* (Ga., 1976) 223 S.E.2d 495; *State v. Richard* (Ks., 1984) 681 P.2d 612.

4. Substance abuse

Studies show that alcohol and drug use is associated with increased injury to the victim/spouse, and that up to 50 percent of abusive men use or are addicted to alcohol and/or other drugs. See Gelles, R.J., *The Violent Home: A Study of Physical Aggression Between Husbands and Wives,* Beverly Hills: Sage Publications, 1984; and Gayford, *Battered Wives,* 15 Med. Sci. Law 237-245 (1975); *People v. Riederer* (Ca., 1990) 217 Cal.App.3rd 829.

5. History of threats to others

See, e.g., *People v. Betterton* (Ca., 1979) 93 Cal.App.3d 406, 155 Cal.Rptr. 537; Calif. Rules of Court 431(a)(6).

6. Great bodily injury or threats of great bodily injury

See, e.g., *People v. Littrel* (Ca., 1986) 185 Cal.App.3d 699, 230 Cal.Rptr. 83; *People v. Betterton,* supra. *State v. Frost,* supra.

7. Viciousness and callousness

See, e.g., *People v. Neville* (Ca., 1985) 167 Cal.App.3d 198, 212 Cal.Rptr. 898; *Hall v. State* (Ga., 1989) 383 S.E.2d 128; *People v. Hunt* (Ca., 1985) 174 Cal.App.3d 95, 219 Cal.Rptr. 731.

8. Use of weapon

See, e.g., *People v. Nevill,* supra; *People v. Arviso,* supra; *People v. Betterton,* supra. *State v. Richard,* supra; *People v. Riederer,* supra.

9. Victim particularly vulnerable

See, e.g., *People v. Arviso,* supra; *People v. Nevill,* supra.

10. Multiple victims

See, e.g., *People v. Arviso*, supra; *Commonwealth v. Banks* (Pa., 1987) 521 A.2d 1; *Hightower v. State* (Ga., 1989) 386 S.E.2d 509.

11. Planning or sophistication indicating premeditation

See, e.g., *People v. Kozel* (Ca., 1982) 133 Cal.App.3d 507, 184 Cal.Rptr. 208; *People v. Roehler* (Ca., 1985) 167 Cal.App.3d 353, 213 Cal.Rptr. 353.

12. Tying, binding, or confining

See, e.g., Calif. Pen Code §1170.84

13. Other relevant factors

See, e.g., *People v Kozel*, supra (dangerous animosity); *Hall v. State*, supra (committed in course of burglary); *State v. Frost*, supra (victim held hostage an entire day, risk that offender would commit another crime, need for deterrence).

Statutes:

Case Law:

III. Incarceration

A. The U.S. Attorney General's Task Force on Family Violence concluded in their final report that:

"In all cases when the victim has suffered serious injury, the convicted abuser should be sentenced to a term of incarceration. In cases involving a history of repeated abusive behavior or when there is a significant threat of continued harm, incarceration is also the preferred disposition. In serious incidents of violence, incarceration is the punishment necessary to hold the abuser accountable for his crime. It also clearly signals the seriousness with which the offense is viewed by the community and provides secure protection to the victim." at p. 34.

B. Jail overcrowding as a sentencing consideration

"Especially in jurisdictions where jail crowding is a problem, judges must make sentencing determinations with several concerns in mind. Some judges decide whom to jail by weighing the greater need for jailing violent offenders (whether the violence is against a family member or a stranger) as compared with non-violent offenders ..." (*Civil Protection Orders,* National Institute of Justice, p. 58, 1990).

C. Statutes and case law relevant to the incarceration of a domestic violence offender. See margin.

See, e.g.; Il: Ch38 ¶112A-23(3), Ch 40 ¶2312-23(e)(3); Ca.: Pen C §273.6(b); Hi.: §709-906(5); Nv.: §33.100; *Pruitt v. State* (Ga., 1982) 296 S.E.2d 795 (45 days county jail upheld-misdemeanor assault); *State v. Beyer* (Ia., 1977) 258 N.W.2d 353 (8 years prison upheld-manslaughter); *Allen v. State* (Ga., 1976) 223 S.E.2d 495 (3 years prison upheld-aggravated assault with gun); *People v. Whitfield* (Il., 1986) 498 N.E.2d 262 (2 days upheld-restraining order violation); But see *People v. Bryant* (Il., 1975) 322 N.E.2d 233 (45 day sentence for battery reversed where offender genuinely sorry, paid restitution and had only one minor prior offense); *State v. Sirny* (Az., 1989) 772 P.2d 1145 (jail reversed because not authorized in diversion statute).

D. Work release, weekend incarceration. Statutes and case law. See margin.

In some cases, work release, or weekend incarceration programs may be more feasible than extended incarceration and may, for the non-career criminal, offer an experience that serves as a profound deterrent against future violence. These programs may meet the need for adverse consequences while incorporating concern for the family's continued economic support. However, an offender should never be placed in such a program without a thorough assessment of the threat posed to the victim and children by the offender, (see appendix for a sample lethality assessment checklist developed for police officers responding to domestic violence) and the development of a safety plan for the victim and the children.

Work Release

WESTLAW:
37 k 100
110 k 982 5 (1)

Statutes

Case Law:

Probation

WESTLAW:
110 k 1147;
110 k 982.3(3)

Statutes:

Case Law:

Terms of Probation

WESTLAW:
110 k 982.5
110 k 982.9
92 k 270(5)

Statutes:

Case Law:

Court-Mandated Treatment as Term of Probation:

WESTLAW:
110 k 982.5(2)

Statutes:

Case Law:

Stat. Authority for No-Contact Orders:

Case Law:

IV. Probation

A. Appropriateness

See, e.g.; *State v. Beyer* (Ia., 1977) 258 N.W.2d 353 (probation denial upheld in manslaughter conviction where evidence of prior violence toward wife and child).

B. In domestic violence cases where probation is granted, the court should consider the conditions listed in the following checklist:

❒ **Supervised probation whereby the court receives regular progress reports from a probation officer**

(Refer to Section IX, G, infra on monitoring offender's progress in court-mandated treatment.)

❒ **Court ordered domestic violence treatment program**

(Refer to Section IX, infra for discussion on court ordered treatment for batterers.)
See, e.g., Ut.: §77-36-5; Wy.: §7-20-103; Az.: §13-3601 (G); RI: §12-29-5; *State v. White* (Ct., 1975) 363 A.2d 143 (records of drug treatment center pertaining to probation held not confidential where there was a term of probation; not a domestic violence case); *State v. Marti* (Mn., 1985) 372 N.W.2d 755 (convicted rapist ordered to undergo treatment as part of probation); *State v. Hemmings* (Mn., 1985) 360 N.W.2d 672 (convicted incest perpetrator ordered to undergo treatment as part of probation); But see: *State v. Cameron* (Mn., 1985) 369 N.W.2d 20 (counseling as term of probation held unsuitable for convicted child molester).

❒ **No-contact orders**

(Refer to section IV of Chapter 4 for discussion.)
See, e.g., *Willis v. U.S.* (D.C., 1969) 250 A.2d 569 (stay-away order from victim's mother-in-law upheld in assault case); *People v. Hazelwonder* (Il., 1985) 485 N.E.2d 1211 (stay-away order from child added when probationer

violated stay-away order from ex-wife); But see *State v. Ferre* (Or., 1987) 734 P.2d 888 (order to stay out of county where victim resided too broad).

Stat. Authority for Alternative Interventions

Case Law:

☐ **Alternative interventions through community service**
See, e.g., Nv.: §33.100(a)

Stat. Authority for No-Weapons Order

☐ **No-weapons orders**

Case Law:

☐ **Restitution to the victim**
(See section VII, infra)

Stat. Authority for Restitution

☐ **Probation with county jail time**
See, e.g., Az.: §13-3601(G); *People v. Whitfield* (Il., 1986) 498 N.E.2d 262 (two days jail as term of probation upheld); *Pruitt v. State* (Ga., 1982) 296 S.E.2d 795 (jail as term of probation upheld); But see *People v. Bryant* (Il., 1975) 322 N.E.2d 233 (45 days jail as term of probation reversed); *State v. Sirny* (Az., 1989) 772 P.2d 1145 (jail term reversed because not authorized by diversion statute).

Case Law:

Stat. Authority for County Jail Time

Case Law:

C. Revocation of probation.

Revocation of Probation Upon Re-offense

1. The court should revoke a domestic violence offender's probation if he/she commits any subsequent offenses against the same victim or another victim.
Domestic violence tends to escalate in severity over time, and can result in homicide. (See Walker, L., *The Battered Woman*, New York: Harper Row, 1979).

WESTLAW:
110 k 982-6;
110 k 982-9;
92 k 270

Statutes:

Case Law:

2. Statutes and case law. See margin.
See, e.g., Il.: Ch 38 ¶112A-23(e), Ch 40 ¶2312-23(e); Az.: §13-3601(G); R.I.: §12-29-5(A); *People v. Whitfield* (Il., 1986) 498 N.E.2d 262 (revoked due to further harassment/domestic violence); *State v. Sirny* (Az., 1989)

Court Mandated Treatment as a Condition of Diversion
WESTLAW:
110 k 632;
110 k 632.5

Statutes:

Case Law:

772 P.2d 1145 (same); *State v. Hunt* (Az., 1970) 475 P.2d 752 (same); *Nasworthy v.State* (Ga., 1984) 314 S.E.2d 446 (same).

V. Pre-Trial Diversion

A. The National Council of Juvenile and Family Court Judges recommends in it's publication *"Family Violence: Improving Court Practice,"* that judges should not accept civil compromises, deferred prosecutions, reduced charges or dismissals where justice is not served by these devices. They state:

> *"Alternative dispositions and diversion in family violence cases are frequently inappropriate, and send a message to both the victim and the offender that the crime is less serious than comparable crimes against non-family members. When these alternatives are proposed, judges should ascertain that they are in the interest of justice and not simply devices for docket management or unsuitable use of diversion."* pg. 18.

B. In cases where diversion is deemed appropriate, the court should ensure that conditions of the diversion addre the victim's safety, as well as the rehabilitation of the offender.

C. If an offender is ordered to attend treatment aimed at preventing a recurrence of domestic violence as a condition of diversion, the court should ensure that the offender's progress in the treatment program is effectively

monitored, and that any reoffense results in a reinstatement of criminal charges.
(For a full discussion on ordering domestic violence offenders to attend treatment, see section IX, infra).

D. Some states have statutorily defined mechanisms for ordering offenders to attend treatment for domestic violence as a condition of a pre-trial diversion program. See margin.
See, e.g., N.Y.: Crim Pro §170.55(4); Wy.: 7-20-103; Az.: 13-3601 et.seq.; Ca.: Pen C § 1000.6 et. seq.; Ut.: 77-36-5; Ct.:46(b)-38c; Il.: Ch 38 § 112A-14(6)(4); Tx.: Crim.Pro. Art 42.141 §5(6); Mi.: §400.1502.

E. "Informal" diversion arrangements in which the judge agrees to dismiss charges if the offender does not re-offend within a specified period of time have been disallowed in several states.
See, e.g., *People v. Tapia* (Ca., 1982) 129 Cal.App. 3d S. 1,4-5, 181 Cal.Rptr.382. But see N.Y.: Crim. Pro. §170.55, (authorizing judges to grant an adjournment in contemplation of dismissal for up to six months, a condition of which may be family violence counseling).

F. Articles relevant to pre-trial diversion generally:
15 Columbia JL and Soc. Probs. 1(1979); 4 ALR 4th 14.

VI. No-Contact Orders

(Refer to Section IV of Chapter 4 for full discussion.)

A. The court should consider issuing a no-contact order even in those cases where the offender's sentence includes a period of incarceration. This can prevent the offender from calling the victim from jail, or contacting her/him by mail during the period of incarceration.

See, e.g., Il.: Ch 38 §1005-6-3(b)(11), §1005-6-3.1(c)(11); Ut.: §77-36-5.

B. In some states a no-contact order can be issued as a term of sentence, and does not have to be a condition of probation.

See, e.g., N.J.: §2C: 25-11; Wa.: §10.99.050.

C. In several states, no-contact orders can be issued as a term of probation.

(See Section IV, B., infra for relevant statutes and case law).

Victim Restitution
WESTLAW:
110 k 986.1;
110 k 1184 (4)
110 k 1208.4 (2)
110 k 982.5 (2)

Statutes:

Case Law:

VII. Victim Restitution

A. The Attorney General's Task Force on Family Violence concluded that:

"Making abusers accountable for their conduct includes financial responsibilities. In addition to contributing to the cost of their own treatment, abusers should also, when appropriate, provide restitution to the victim for all expenses resulting form the crime. These should include lost wages, medical, counseling and other treatment fees, and replacement value of any property destroyed by the abuser. In the event that a judge does not issue such an order, he should specifically state his reasoning for not doing so in the record," At 35.

B. The court may want to consider ordering restitution to the victim for the following losses:

- ❒ lost wages
- ❒ medical bills
- ❒ damaged property
- ❒ costs of counseling for victim and traumatized children
- ❒ replacement of locks
- ❒ transportation expenses to escape the violence
- ❒ motel or hotel lodging
- ❒ relocation and moving expenses
- ❒ costs of staying at a battered women's shelter
- ❒ costs of obtaining a civil restraining order.

C. Statutes and case law regarding restitution. See margin.

See, e.g., Calif. Const. Art. 1, §28(b); Pen C §§ 1191.1, 1203, 1203.1(d); Il.: Ch 38¶ 112A-23(e), Ch 40 ¶2312-12 (e)(1); Ct.: §54-91a(c); Ut.: §77-36-5; Az.: §13-3601(G); Ak: §12.61.015; Id.: §72-1016(3); Nv.: §33.100. *Melissa J. v. Superior Court* (Ca., 1986) 190 Cal.App.3d 476, 237 Cal.Rptr. 5; *Payne v. State* (In., 1987) 515 N.E.2d 1141 (restitution ordered in domestic violence case); *U.S. v. Keith* (Az., 1985) 754 F.2d 1388 (restitution ordered in rape case).

VIII. Victim Participation in Sentencing Domestic Violence Offenders

A. The President's Task Force on Victims of Crime stated in its 1982 Report that:

Victim Impact Statements
WESTLAW:
110 k 1147;
110 k 982.3(3)

Statutes:

"Judges should allow for, and give appropriate weight to, input at sentencing for victims of violent crime... (E)very victim must be allowed to speak at the time of sentencing The victim, no less that the offender, comes to court seeking justice... Defendants speak and are spoken for often at great length before sentence is imposed. It is outrageous that the system should contend it is too busy to hear from the victim."

B. Victim impact statements: Case law and statute. See margin.

Case Law:

See, e.g., Calif. Const. Art. I, §28(a); Ca. Pen C §§ 1191.1, 1170.1(b), 1191.15; *People v. Birmingham* (Ca., 1990) 217 Cal.App.3d 180, 265 Cal.Rptr. 780; Ct.: §46b-38c, 54-91a, 54-126; Ak.: §12.61.015;

C. The following is meant to be a guide to assist the court in responding to concerns which are often raised by victims of domestic violence at the time of the offender's sentencing.

1. Victim safety

a. Incarceration of the offender may be the most effective way to protect the victim. In cases where this is inappropriate and the victim fears further violence, the court should consider issuing a no-contact order, as discussed in section IV of Chapter 4. Even in cases where the offender is incarcerated, the court should consider issuing a no-contact order to prevent the offender from calling or writing the victim, or from enlisting others to do so.

b. The court should establish procedures to ensure that

victims are notified of the offender's release from custody, and any conditions of release and/or probation, etc.

2. Children's Safety

a. Children may suffer emotional trauma as a result of witnessing the violence, and may benefit from counseling (In Goodman, G.S. & Rosenberg, M.S., *The Child Witness to Family Violence: Clinical and Legal Considerations,* in Sonkin, D.J. Ed., Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence. Springer, New York. 1986).

b. The U.S. Attorney General's Task Force on Family Violence concluded in their final report that:

"In many cases, members of the family, other than the direct victim, are affected by the abuse. This is particularly applicable to children who have witnessed spouse abuse ... Their treatment fees also should be paid by the abuser," at 35-36.

c. See, e.g., *People v. Hazelwonder* (Il., 1985) 485 N.E. 2d 1211 (one year stay-away order from child upheld when probationer violated protective order as to wife/victim; court found that visitation would seriously injure mental health of child because of likelihood of ongoing domestic violence); *Irene D v. Anthony D* (NY, 1982) 449 N.Y.S. 2d 584 (dismissal inappropriate even where victim requested it due to risk of harm to children).

d. If the court grants supervised visitation to the offender, the costs of these visits should be the offender's responsibility.

3. Family's Economic Support

a. Restitution can be ordered in cases where the family has suffered economic hardship as a result of the abuse. (See previous section for discussion of restitution).

b. In cases where imprisonment in a state facility is not appropriate, and the victim is concerned that incarceration of the offender would deprive the family of support, the court may want to consider a commitment to

a work furlough or public work program, as specified by statute. In these cases it is important for the court to assess whether the victim's concern for the family's economic support outweighs the court's concern for her safety, and the court's role in holding the perpetrator accountable.

Notification to Victim of Court Proceedings
WESTLAW:
110 k 1147;
110 k 982.3(3)

Statutes:

Case Law:

4. Notification to victim of proceedings

a. Statutes and case law. See margin.
See, e.g., S.D.: §24-15-8.2; Ct.: §§18-81e, 51-286c, d, 54-a1c.

b. It is recommended that the court take a leadership role in developing mechanisms for notifying domestic violence victims of court proceedings. Without any contact from the criminal justice system, the victim's only source of information regarding the courts response to the violence is often the offender. It is important that victims be notified of the terms of probation, court orders, any court-ordered treatment, and date of offender's release from custody.

IX. Court Mandated Treatment for Domestic Violence Offenders

This section pertains to cases where the offender is ordered by the court to attend treatment aimed at preventing a recurrence of domestic violence. Most of the issues raised here will apply to these cases regardless of whether the offender is ordered to treatment as a condition of diversion or probation.

A. Court ordered treatment for domestic violence offenders can be a valuable tool in some cases. On the other hand,

significant concerns exist regarding the effectiveness of court mandated treatment. These include that it:

1. is sometimes used as a substitute for court actions designed to protect the safety of the victim and/or children;

2. is a calendar management tool used to relieve overcrowded calendars;

3. often has inadequate guidelines regarding the number and content of sessions the offender must attend;

4. is inadequately monitored by counselors, probation departments, and courts;

5. communicates the message that domestic violence is less serious than crimes against strangers; and

6. does not take into account that many offenders who appear to be first-time offenders have often committed unreported domestic violence assaults.

B. In light of these concerns, it is important for the court to take a leadership role in the following areas before ordering domestic violence offenders to attend treatment:

1. Ensuring that the victim's safety is addressed through development of a safety plan, including issuance of court protective orders in cases where the offender is ordered to attend treatment.

2. Assessment of offender's suitability for court ordered treatment in order to ensure that only those offenders likely to benefit from treatment are referred.

3. Determination whether an appropriate domestic violence treatment program exists in the community, i.e. one which will specifically address the violent behavior in the context of its root causes (i.e. behavior learned in a familial and social context used to maintain power and control over the victim).

4. Assurance of adequate monitoring of offender's progress during the treatment period by the probation department or the court.

5. Assurance that criminal proceedings are promptly reinstated if the court determines that a new offense has been committed or that the offender is not progressing satisfactorily in the treatment program.

Assessing Offender's Suitability and/or Eligibility for Court-ordered Treatment

C. Assessing offender's suitability for court ordered treatment

Statutes:

1. Relevant statutes and case law.

See, e.g., Co.: §18-6-801; Ct.: 466-38c; Ca.: Pen C §1000.8; *State v. Hemmings* (Mn., 1985) 360 N.W.2d 672 (incest).

Case Law:

2. The following checklist is provided to assist the court in determining a domestic violence offender's suitability for court ordered treatment.

- ☐ Does the offender meet the statutory requirements for court-mandated treatment?
- ☐ Is there any danger posed to the victim by ordering the offender to attend a treatment program?
- ☐ Does the victim fear reassaults by the offender?
- ☐ Has the offender previously disregarded court orders?
- ☐ Has the offender previously been terminated for unsuccessful completion of a treatment program addressing the violent behavior?

3. Ordering an offender to attend treatment is inappropriate and a waste of the limited available treatment resources if the offender is unable or unwilling to benefit from such a program.

a. The court's assessment of the offender's suitability for treatment based on the above factors should be followed by an assessment from the treatment program regarding the offender's ability and willingness to benefit from the program.

b. Dr. Anne Ganley states in her article, *"Perpetrators of Domestic Violence: An Overview of Counseling the Court-Mandated Client":*

"The criminal justice system may determine that a particular client is appropriate for rehabilitative programs according to its assessment of the offender and the criteria established for sentencing. Such a criminal justice system determination does not guarantee that there are rehabilitative programs available in the community that can provide counseling for all such clients. The counselor must retain control over who is admitted to the treatment phase of the program, since only the staff knows the program well enough to know what will be effective with which kind of client." (In Sonkin, Daniel J, (Ed). Domestic Violence on Trial. Psychological and Legal Dimensions of Family Violence. Springer Publishing, New York, 1987).

c. If the offender is not accepted into the program, it is important that the court be made aware of this rejection, assess the reasons given by the treatment program for not accepting the offender, and then seriously consider these reasons in evaluating whether the offender is indeed suitable for court ordered treatment.

D. Length of treatment period

Length of Treatment Period

1. Relevant statutes. See margin.
See, e.g., Ct.: §466-38c; Ca.: Pen C §1000.8.

Statutes:

2. It is recommended that the maximum period allowed be ordered for treatment since it is difficult to predict how long the rehabilitation process will take with a particular offender. This approach leads to

Case Law:

the lowest rate of recidivism.
(Sonkin, D.J., *"The Assessment of Court-Mandated Male Batterers."* In Sonkin, D.J. (Ed.) Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence, New York: Springer, 1986, at 191).

There is growing consensus among domestic violence experts that a minimum of one year is required for treatment to be effective. If the offender successfully completes treatment sooner, an offender can seek early termination of the probation or diversion period. Experts in treating domestic violence offenders opine that battering represents a complex, long-term behavior pattern that is not easily changed. (Klein, A.R., *Probation/Parole Supervision Protocol for Spousal Abusers*, Las Vegas, Nevada, March 30, 1989, p. 86.).

Placing Conditions on Court-Mandated Treatment

E. Special conditions to consider when mandating treatment for a domestic violence offender

Statutes:

Case Law:

1. Relevant statutes and case law

See, e.g., N.Y.: Crim. Pro. §170.55; Az.: §13-3601, et. seq.; Ct.: 466-38c; Wy.: §7-20-103; Ca.: Pen C §1000.7; N.J.: 2C: 25-11; *State v. Aschan* (Ia., 1985) 366 N.W.2d 912 (child sexual abuse); *State v. Hemmings* (Mn., 1985) 360 N.W.2d 672 (incest).

2. The court's order for a domestic violence offender to attend treatment should mandate that the offender attend a treatment program which specifically focuses on the violent behavior and not on concurrent problems, such as substance abuse, relationship problems, etc.

3. The court should consider issuing a criminal court no-contact order in cases where the victim appears to be in danger

of intimidation or assault from the offender.
(See Section IV of Chapter 4 for discussion of no-contact orders.)

4. Where the offender appears to have a substance abuse problem, the court should consider ordering concurrent treatment for substance abuse.

Domestic violence and substance abuse are separate problems that require separate solutions (Kaufman, *"The Drunken Bum Theory of Wife Beating,"* 34 (3) Social Problems, at 224).

Victim Participation in Offender's Court Mandated Treatment Program

Statutes:

Case Law:

5. Victims should not be required to participate in court-mandated treatment programs intended for offenders.

a. Offenders must take responsibility for their violent behavior in order for treatment to be successful. Requiring victim participation in the same program as the offender serves only to remove the focus of the treatment from the offender, thereby reinforcing the batterer's tendency to externalize the cause of the violence onto others. In most cases, the victim is not a party to the criminal action so the court lacks jurisdiction to make such an order.

Standards for Domestic Violence Treatment Programs

b. Relevant statutes and case law.
See margin.See, e.g., Tx. Crim. Pro. Art. 42.141, §5 which states that batterers' treatment programs shall not require the victim to participate in the counseling or treatment.

Statutes:

Case Law:

6. Any court-ordered treatment should be accompanied by an admonition that failure to follow through may result in revocation of probation or diversion, and reinstatement of criminal charges.

F. Programs for court-ordered domestic violence offenders: Standards for referral

1. **In some states, program standards for court-ordered treatment programs for domestic violence offenders are specified by statute. See margin.**
   See, e.g., Tx. Crim Pro Art. 42.141; Co. §18-6-802.

2. **The court should play a leadership role in ensuring that offenders are referred only to programs with demonstated success in the rehabilitation of domestic violence offenders.**

3. **Experts in treating domestic violence offenders have identified the following standards for batterer's treatment programs.**
   (This list was adapted from the County of Los Angeles Domestic Violence Council's publication, *"Batterer's Treatment Program Guidelines,"* June, 1988).

   a. **The program's philosophy should:**

      - Clearly define domestic violence as a crime, rather than as a pathology or mental disorder.
      - Define domestic violence as a learned and socially sanctioned set of behaviors, which can be changed by the offender.
      - Hold the offender accountable for the violence in a manner that does not not collude with the offender in blaming the victim's behavior for the violence, or the batterer's use of alcohol or drugs as the cause.
      - Make stopping the violence the primary goal of the program, taking priority over keeping the couple together or resolving other relationship issues.

- Define violence as part of a pattern of coercive control that includes physical, emotional, sexual and economic abuse.

b. The program components should include:

- Initial and on-going assessments of the danger posed to the victim by the offender, and procedures for alerting both the victim and appropriate authorities should the victim's safety become a concern.

- Adequate initial assessment of significant factors that may influence the offender's ability to benefit from treatment (i.e. psychosis, organic impairment).

- A minimum of one year of weekly sessions, with additional sessions available within the program or through referrals when indicated.

- The use of group counselling as the treatment of choice. This approach decreases the batterer's isolation and dependency on the partner and ensures the offender is accountable to the group.

- Procedures for conducting an ongoing assessment of the offender's violent propensities throughout the course of treatment, such as informing the offender at the beginning of the program that the victim and others will be contacted periodically to assess whether the violence has stopped.

- Demonstrated ability to submit progress reports to the probation department once a month.

- Require offenders with substance abuse problems to attend group substance-free, and to seek concurrent treatment for substance abuse.

- Procedures for reporting any new offense committed by a court-mandated client during treatment to appropriate court authorities.

- Language capabilities sufficient to treat a monolingual non-English speaking offender.

- A "limited confidentiality" policy whereby the victim is entitled to information from the program re-

Procedure for Court Monitoring Offender's Progress in Treatment

Statutes:

Case Law:

Court-Ordered Progress Reports for Offenders in Treatment

Statutes:

Case Law:

garding the acceptance or rejection of the offender into the program, whether the offender is attending the program, termination, cause for termination, and warnings about anticipated violence.

G. Monitoring offender's progress in court-mandated treatment programs

Probation Department's Role in Monitoring Offender's Progress

1. In most states, monitoring of the offender's progress is a shared responsibility between the probation department, the treatment program, and the court. The most successful treatment in domestic violence cases occurs when the counselor and probation officer work collaberatively. (*Ganley, infra*).

Statutes:

2. Relevant statutes and case law. See margin.

Case Law:

See e.g. Hi.: § 709-906; N.J. § 2C:25-11.

3. The importance of effective monitoring of a domestic violence offender's progress in court-mandated treatment cannot be overstated.

a. If the court orders the offender to attend treatment for the violence, and then fails to ensure that the conditions of the order are met, the victim often finds him/herself in an even more dangerous situation than before the criminal court's intervention. If the court does not have a process for holding the offender accountable for the violence, then his/her belief that he/she is above the law, and that he/she has a right to use violence within the family is reinforced.

b. Failure by the court to monitor the offender's progress in treatment also reinforces the victim's belief that the batterer is more powerful than the legal system, and may result in some victims becoming reluctant to call the police when they are reassaulted. Without adequate monitoring of the offender's attendance and

progress in the treatment program, both the court and the victim have to rely solely on the offender's self-report regarding his/her follow-through with the treatment program's mandates. This may lead the victim to make false assessments regarding the offender's willingness to take responsibility for the violence and to change the behavior. In addition, the court is asked to make a decision regarding case disposition without adequate information.

4. The probation department's role in monitoring offender's progress

a. Relevant statutes and case law regarding the probation department's role in monitoring progress. See margin.

b. The probation officer should only refer offenders to programs meeting the standards outlined in the previous section.

c. Periodic progress report hearings from the probation department to the court on the offender's attendance and participation in court-mandated treatment programs are statutorily required in several states. In states where these hearings are not mandated, the court should consider requiring such hearings every six months during the first year of the treatment period.

d. The probation officer should clarify with the treatment program which conduct of the offender must be reported. All offenses and violations of the court's conditions, whether or not they constitute criminal behavior, should be reported.

e. The probation officer should inform the offender and the treatment program how monitoring will be conducted, e.g, regular meetings with offender, calling victim and employer, etc.

f. The probation officer should make sure that the treatment program is aware of the nature of the criminal offense which resulted in the offender being ordered to attend treatment by the court. Copies of the police report and any other relevant documentation should be given to the program. In addition, the program should be made aware of any previous offenses by the offender which resulted in conviction.

Treatment Program's Role in Monitoring Offender's Progress

Statutes:

Case Law:

5. The treatment program's role in monitoring

a Relevant statutes and case law regarding the treatment program's role in monitoring progress. See margin.

b. The treatment program should assess whether the offender is willing and able to benefit from the program. If the offender is not accepted, the treatment program should communicate the reasons for the rejection to the appropriate court authorities.

c. It is important for the counseling program to provide monthly written reports to the probation department, and for the probation department to inform the court if the offender is failing to meet program requirements.

The Court's Role in Monitoring Offender's Progress

Statutes:

Case Law:

6. The court's role in monitoring

The judge can preserve the integrity of the monitoring process by requiring that the court be given specific information concerning the offender 's progress.

The following checklist is designed to assist the court in requesting information necessary to adequately assess a domestic violence offender 's progress in court ordered treatment.

- ☐ Has the offender attended treatment at a program with which the court is familiar, and that meets the criteria set forth above?

- ☐ Has the offender attended the number of sessions required by the treatment program? (Programs should require attendance at a minimum of one session per week for a minimum of one year).

- ☐ Has the offender been violent or threatening to the previous victim or a new victim since the last court hearing?

- ☐ If the victim and offender are still together, has the victim been contacted by the counseling program or the probation department to confirm that the offender has not been violent? (This should only be done after informing the offender of this procedure at the beginning of treatment, and after discussing with the victim any potential consequences of this to her/his safety).

H. Non-compliance with terms of court mandated treatment

Non-compliance with Terms of Court-Mandated Treatment for Defendant on Diversion

1. Statutes and case law pertaining to non-compliance with terms of court-mandated treatment. See margin.

Statutes:

See, e.g., N.J.: 2C 25-11; Wy.: §7-20-103; Ct.: §46b-38c; Ca.: Pen C §1000.9; *State v. Green* (Fl., 1988) 527 So.2d 941 (domestic violence offender failed to complete pre-trial diversion program, prosecutor filed charges; offender then completed diversion program, and court dismissed charges. Reversed as inappropriate use of dismissal power). *State v. Martin* (Mn., 1985) 372 N.W.2d 755 (probation properly revoked where sexual assault offender failed to complete treatment program in secure setting); *State v. Marino* (Wa., 1984) 674 P.2d 171 (offender charged with child abuse failed pre-trial diversion program because of repeated missed appointments, and was subsequently convicted); *State v. Aschan* (Ia., 1985) 366 N.W.2d 912 (offender charged with child sexual abuse failed pretrial diversion program and was subsequently convicted).

Cases:

2. To preserve the integrity of court mandated treatment, the court should vigorously enforce any conditions imposed on the offender during the treatment period.

If the court finds that the offender is not performing satisfactorily in the assigned program, or that he/she has re-offended, the court should reinstate criminal proceedings. Giving the offender "another chance" conveys the same message as when the victim "gives him another chance." It reinforces the offender 's belief that by manipulating both the victim and the criminal justice system, the consequences of the violent behavior can be avoided.

Non-Compliance with Terms of Court-Mandated Treatment for Defendant on Probation

3. If the offender fails to comply with the conditions of the treatment program, the court should not re-refer the offender to the same or a different treatment program.

Statutes:

Re-referral may well reinforce the offender's belief that he/she can manipulate and control the court's response to the violence.

Case Law:

4. The court can take a leading role in ensuring that procedures for handling non-compliance with court-mandated treatment are coordinated between the treatment program, the probation officer, and the court.

5. If the court terminates the offender from court-ordered treatment due to unsuccessful completion of the program, or non compliance with court orders, the judge should ensure that this information is added to the offender's criminal history.

X. Dismissals

A. As with other forms of disposition, the manner in which the court handles the termination of an action plays a critical role in addressing the conditions which allow domestic violence to continue and escalate.

In cases where dismissal is appropriate, and the victim requests dismissal, it is important to convey that the case is being dismissed based on the evidence, not on the victim's requests. Both the offender and the victim should be told that the court determines the case outcome, not the victim. If dismissals are automatically granted whenever the victim requests it, the message to the defendant and the victim is that the victim, not the court, controls the case. This provides the perpetrator with less incentive to stop the violent behavior, since it becomes clear that criminal court action can be avoided through intimidation and control of the victim.

Grounds for Dismissal

WESTLAW: 110 k 303

Statutes:

B. Statutes and case law governing proper grounds for dismissal. See margin.

Case Law:

See, e.g., Az.: §13-3601 (completion of probation/diversion); Hi.: §709-906 (same); N.Y.: Crim. Pro. §170.55 (same); Wy.: §7-20-103 (same); *People v. Doe* (N.Y., 1964) 255 N.Y.S.2d 489 (dismissal upheld under statute allowing discharge on the offender's own recognizance, where complainant could not be located); *People v. Gartner* (Il., 1986) 491 N.E.2d 927 (double jeopardy where already prosecuted for restraining order violation, same facts); *Commonwealth v. Horick* (Pa., 1975) 335 A.2d 389 (deminimis violation where offender called complainant names over the phone); *State v. Marzilli* (R.I., 1973) 303 A.2d 367 (offender died); *People v. Daniel T.* (N.Y., 1978) 408 N.Y.S.2d 214 (mother had charged minor son with assault with sole objective of obtaining help rather than conviction or punishment; dismissed without prejudice to any remedy available in family court); *People v. Sullivan* (Mi., 1979) 284 N.W.2d 337 (charges should have been consolidated where involved same transaction).

C. Case law governing improper grounds for dismissal. See margin.

Improper Grounds for Dismissal

Statutes:

1. In some states, the following have been found to be improper grounds for dismissal:

Case Law:

a. To effectuate rehabilitation of offender
See, e.g., *People v. McAlonan* (Ca., 1972) 22 Cal.App.3d 982, 99 Cal.Rptr. 733.

b. Congested court calendar
See, e.g., *People v. Mack* (Ca., 1975) 52 Cal.App.3d 680, 125 Cal.Rptr. 188.

c. Victim reluctance
See, e.g., Ut.: §77-36-3(1)(c) (dismissal at victim's request inappropriate unless court has reasonable cause to assume this would benefit victim); R.I.: §12-29-4 (B)(4) (court shall make clear to offender and victim that prosecution is determined by prosecutor, not by victim); *State ex rel Peach v. Gaertner* (Mo., 1981) 617 S.W.2d 101 (dismissal based on defense motion alleging victim would refuse to testify improperly granted); *Irene D. v. Anthony D.* (N.Y., 1982) 449 N.Y.S.2d 584 (dismissal based on victim request denied, due to risk to children).

d. **Availability of a civil remedy**
See, e.g., *People v. Curtiss* (Ca., 1970) 4 Cal.App.3d 123, 127, 84 Cal.Rptr. 106; Ut.: §77-36-3 (concurrent divorce or other civil proceedings inappropriate grounds for dismissal); Wa.: §10.99.040 (same); Tx.: Crim. Pro. Art. 5.06 (same, plus lack of civil proceedings inappropriate grounds for dismissal); N.J.: 2C.25-9 (availability of civil proceedings or fact that victim has left residence inappropriate grounds for dismissal).

e. **Informal diversion programs**
See, e.g., *People v. Tapia* (Ca., 1982) 129 Cal.App.3d 1, 181 Cal.Rptr.382.

f. **Quashing subpoena for prosecution witness**
See, e.g., *People v. Superior Court* (Long) (Ca., 1976) 56 Cal.App.3d 374, 378, 126 Cal.Rptr. 465.

g. **Civil compromise**
The judge plays a critical role in communicating to the offender and to the victim that domestic violence is criminal behavior, and is no longer viewed as private in nature. Allowing civil compromises in any domestic violence case can negate this message. See, e.g., *State v. Larson* (Az., 1988) 764 P.2d 749 (dismissal inappropriate where statute mandated prosecutor's recommendation before domestic violence cases can be compromised).

h. **Community or quasi community property**
See, e.g., *Ex parte Davis* (Tx., 1976) 542 S.W.2d 192 (offender guilty of burglary of marital residence due to restraining order giving wife exclusive possession; *Grant v. McLeod* (Ca., 1987) 196 CA3d 461 (vandalism of community property car is criminal offense); *People v. Davenport* (Ca., 1990) 219 C.A 3d 885 (conviction for burglary of cabin occupied by estranged wife upheld).

i. **Other improper grounds for dismissal**
See, e.g., *Mallette v. State* (Ms., 1977) 349 So.2d 546 (refusal to dismiss because of two previous mistrials upheld); *State v. Farmer* (Or., 1983) 671 P.2d 757 (dismissal while state appealed pretrial suppression order reversed); *State v. Green* (Fl., 1988) 527 So.2d 941 (dismissal after offender failed diversion, was charged, then completed diversion, reversed).

Chapter 7

Judicial Action Planning: Wrap-Up and Evaluation

Learning Objectives:

1) To identify effective methods to manage court calendars while achieving the goals of judicial intervention in domestic violence cases.

2) To develop action plans designed to improve the court's handling of domestic violence cases.

Recommended Length: 30 minutes

Faculty: This session should be facilitated by the judge who moderated the program.

Format: 1) Faculty begins this session by briefly summarizing some of the main points that arose in each of the plenary sessions.

2) Each participant is given a blank copy of the action planning guide included here in the appendix.

3) Participants are given approximately five minutes to complete the action planning guide.

4) Faculty asks each judge to tell the group one way in which he/she intends to handle domestic violence cases differently as a result of attending the program. (See list of sample responses in this chapter).

5) Action plans are collected. Participants are told that all participants' responses to the question as to how participants intend to handle

domestic violence cases differently will be compiled and sent to them three months following the program.

6) Participants are asked to complete a course evaluation (see appendix for sample).

7) Faculty concludes by summarizing the program in a manner that reinforces the crucial role of the judge in domestic violence criminal court cases.

I. Action Plans

The purpose of the action planning session is to provide participants an opportunity to apply what has been learned during the program to actual courtroom practice. Discussion of the action plans also enables participants to benefit from the ideas of their colleagues.

Below is a sample of ideas that were included in the action plans of the judges in the pilot programs.

- ❒ Emphasize during the proceedings that the court has control over the case, not the defendant or the victim.
- ❒ Keep the focus of the proceedings on whether a crime has been committed, not on what the victim did to make the defendant angry.
- ❒ Send a subpoena to the victim, and make sure that the subpoena is personally served.
- ❒ Ensure that victims of domestic violence have talked to a victim/witness advocate who has received specialized training on domestic violence.
- ❒ Restrict the defendant's access to the victim during the pre-trial period, and make sure the victim has a plan for safety.
- ❒ Ensure that victim/witnesses have a safe waiting area within the courthouse.
- ❒ Schedule domestic violence cases early on the calendar.
- ❒ Require more information regarding the past pattern of abuse.
- ❒ Let the defendant and the victim know the terms of all protective orders.

- ❒ Initiate hearings for apparent protective order violations.
- ❒ Do not issue mutual protective orders.
- ❒ Ensure that court orders are consistent with orders from other courts on the same case.
- ❒ View the perpetrator as being in control of his actions, and not view him as a "sick" person who has lost control.
- ❒ Communicate from the bench to the victim and defendant that domestic violence is serious criminal conduct
- ❒ Order all relevant court files when hearing a case that is also under the jurisdiction of another court.
- ❒ Hold the offender accountable for the violence, and do not reinforce any externalization of the blame onto the victim.
- ❒ Consider alcohol/drug abuse as separate issues from domestic violence when ordering treatment for offenders.
- ❒ Contact community resources for domestic violence offenders and victims, become more familiar with their services, and refer individuals to them.
- ❒ Order defendant into domestic violence counseling programs that meet the program standards listed in this publication.
- ❒ Obtain pre-sentence reports on domestic violence cases, and make sure sentences in these cases are commensurate with violent crimes committed by strangers.
- ❒ Become more active on the local domestic violence board.
- ❒ Improve coordination of the court's actions in these cases with other branches of the system.
- ❒ Work with other local courts to develop procedures for increasing communication on cases that are in more than one court.
- ❒ Encourage other judges to attend this program.
- ❒ Develop a training program for the local bench and courtroom personell, and provide the coordination to ensure that the training occurs.

II. Program Evaluation Procedure

Chapter 1 includes a recommended program evaluation process. During the wrap-up session, this process should be explained to participants. They should be told that they will receive a copy of their individual action plan along with a copy of the compiled responses of all participants three months following the program. At that time they will be asked to complete a short questionnaire (see appendix for sample) regarding whether they have been able to make the changes identified on their action plan, and whether attending the program was of assistance to them in implementing those changes. In addition, they will be asked to rate the effectiveness of the Benchguide.

Participants should also be asked to complete a program evaluation at the end of the program. (See appendix for sample program evaluation forms).

III. Wrap-Up Summary: The Crucial Role of the Judge in Criminal Court Domestic Violence Cases

The purpose of this session is to briefly summarize the program in a manner that reinforces the crucial role of the judge in domestic violence cases.

Listed below are some ideas that were presented during the pilot programs.

- ☐ Address the judge's role as a fair and impartial fact-finder and decision-maker, and reiterate the importance of examining judicial beliefs and attitudes which may affect the handling of these cases.

- ☐ Address misconceptions regarding domestic violence that influence the court's response to these cases, and illustrate them with examples of actual court cases.

- ☐ Identify local community resources available to judges that can assist the courts with domestic violence cases. (Please see appendix for a list of domestic violence state coalitions).

- ❒ Emphasize the importance of working with other courts and branches of the justice system to develop a coordinated response to these cases.

- ❒ Recognize the crucial role played by the judge in preventing the recurring and escalating nature of domestic violence.

Appendices

Handouts for Use During the Program

Goals of Judicial Intervention in Domestic Violence Cases

1. To stop the violence.

2. To protect the victim.

3. To protect the children and other family members.

4. To protect the general public.

5. To uphold the legislative intent that domestic violence be treated as a serious crime, and to communicate that intent to the defendant and to the victim.

6. To hold the offender accountable for the violent behavior, and for stopping that behavior.

7. To rehabilitate the offender.

8. To provide restitution for the victim.

Relationships Provided For By Domestic Violence Statutes

Victim's Relationship to Defendant	Law Enforc. Response Statute:	Charging Sections Statute:	Court Mandated Treatment Prgms Statute:	Civil Court Restrain. Orders Statute:	Victim/ Counselor Privilege Statute:	Marital or Cohabitant Sexual Assault Statute:	Restraining Order Issued by Criminal Court Statute:
Spouse							
Former spouse							
Living together (cohabitants)							
Former cohabitants							
Dating relationships							
Co-parents							
Child							
Parents & other people related by consanguinity (aunts, uncles, grandparents, etc.)							
Household members							

Behavioral and Legal Definitions of Domestic Violence

Type of Domestic Violence	Behavioral (Includes both criminal and non-criminal acts)	Crimes	Relevant State Statutes
Physical Battery	slapping, punching, kicking, choking, hitting, burning, assault with a weapon, shoving or pushing, etc.	simple assault, aggravated assault, attempted homicide, homicide, etc.	
Sexual Battery	forced sex, attacks against genitals, forcing sex in front of children, pressured sex, unwanted sexual touching, etc.	assault and sexual assault laws, child abuse laws, etc.	
Psychological Battery	threats of violence, suicide, child snatching, reckless driving to intimidate victim, isolating, interrogating, controlling, or degrading victim, etc.	harassment, menacing, custodial interference, threats, stalking vehicle offenses, etc.	
Battery on Property/Pets	attacks against property to control victim, hitting walls, destroying objects, giving away property, setting fire to property, tormenting pets, etc.	theft, property destruction, arson, vandalism, trespass, cruelty to animals, etc.	
Battery on Children	Children witnessing violence, kidnapping, child concealment, threats of violence, injury to child during assault on victim, etc.	child endangerment, child concealment, kidnapping, child abuse, etc.	

Pre-Trial Release Considerations

Subject to local restrictions or prohibitions, the court may want to consider the following factors when determining whether to release a domestic violence defendant from custody.

- ☐ History of domestic violence as documented by police reports, and/or convictions
- ☐ Whether the frequency and/or severity of violence appears to be escalating
- ☐ Threats of retaliation by the defendant, either directly towards the victim or indirectly towards the children
- ☐ Use or threatened use of a weapon
- ☐ Defendant's prior criminal history
- ☐ Danger posed to public, including threats to victim's family or co-workers
- ☐ Defendant's alleged use or possession of alcohol or a controlled substance
- ☐ Defendant's access to the victim
  - Does the defendant intend to return to a residence shared with the victim?
  - Do arrangements for child visitation take the victim's safety into consideration?
  - Has the defendant ever gone to the victim's place of employment and threatened the victim or co-workers?
- ☐ Defendant's mental and physical health
- ☐ Defendant's threats of suicide

Differences Between Civil and Criminal Court No-Contact Orders

Civil No-Contact Orders	Criminal No-Contact Orders
Issued By:	Issued By:
Procedure for Issuance:	Procedure for Issuance:
Persons Covered:	Persons Covered:
Relief Available:	Relief Available:
Cost to Plaintiff:	Cost to Plaintiff:
Duration of Order:	Duration of Order:
Court's Leverage over Violations:	Court's Leverage over Violations:

Jury Selection in Domestic Violence Cases

The following sample questions may assist the court in evaluating the ability of potential jurors to try domestic violence cases fairly.

1. Questions About Violence in General

- ❒ Have you ever been involved in a physical altercation as a participant, victim, or witness?
- ❒ Have you had occasion to call the police for your own protection from physical violence? Do you know anyone who has had to do this?
- ❒ Do you believe that a verbal argument justifies the use of physical violence?
- ❒ Do you have strong feelings about the use of violence?

2. Specific Questions About Domestic Violence

- ❒ Do you feel a husband has a right to use physical force upon his wife?
- ❒ Do you believe that domestic violence cases do not belong in our criminal courts?
- ❒ Do you think that violence that occurs in the home should be treated differently from violence that occurs between strangers?
- ❒ Have you ever known a victim of spousal abuse? An offender?
- ❒ Have you ever seen any movies or TV shows on domestic violence?
- ❒ Do you believe a woman should stay married to a man who is physically violent to her since he is her husband? Do you think a victim has an obligation to leave a violent relationship?
- ❒ Would you hold it against a witness if she/he testified against her/his spouse?

Victim/Witness Testimony in Domestic Violence Cases

The following checklist is intended to assist the court in discovering the reasons a victim is reluctant or refuses to testify, and in ascertaining whether a victim has been coerced or intimidated into asking that the charges against the defendant be dropped. Generally these questions should be asked by the prosecutor in the course of examining the victim. Where there is no prosecutor, the court should establish procedures for obtaining this information.

- ☐ Why do you feel reluctant to (or refuse to) testify?
- ☐ When did you become reluctant (or decide to refuse) to testify?
- ☐ Were you living with the defendant when the incident happened?
- ☐ Are you now living with the defendant?
- ☐ (If not) Does the defendant know where you are staying?
- ☐ Are you financially dependent on the defendant?
- ☐ Do you and the defendant have children together?
- ☐ Have you discussed the case with the defendant?
- ☐ Has the defendant made any promises to do something for you if you do not testify?
- ☐ Is that promise to do something the reason you do not wish to proceed/or testify?
- ☐ Has the defendant or anyone else threatened you, your children or your family and told you not to testify?
- ☐ Is there some other reason you are afraid of the defendant?
- ☐ Are you aware that this court can issue an order telling the defendant to stay away from you and have no contact with you or your family?
- ☐ Are you aware that if the case is prosecuted, that the defendant can be required to get counseling, pay for your damages, and stay away from you and your family?

- ❒ (If injuries alleged or visible) How did you receive the injuries (allude to police reports, medical reports, photos, injuries still visible in court, etc.)?

- ❒ Have you talked about your desire not to testify with the prosecutor, victim/ witness staff, or staff of the local domestic violence agency?

- ❒ If not, would you be willing to talk with them now?

- ❒ Are you aware that the People of this State are bringing these charges, and that the decision to prosecute the defendant is up to the prosecutor rather than up to you?

- ❒ (If victim was subpoenaed) Are you aware that the fact that you have been subpoenaed means that the prosecutor decided to call you as a witness, that you must testify, and that you may be held in contempt if you do not do so?

- ❒ Would you like to have a court officer to escort you from the building when you leave today?

Assessment of Treatment Programs for Domestic Violence Offenders

(This list was adapted from the County of Los Angeles Domestic Violence Council's publication, *"Batterer's Treatment Program Guidelines,"* June, 1988).

Does the program's philosophy:

- ☐ Clearly define domestic violence as a crime, rather than as a pathology or mental disorder.
- ☐ Define domestic violence as a learned and socially sanctioned set of behaviors, which can be changed by the offender.
- ☐ Hold the offender accountable for the violence in a manner that does not not collude with the offender in blaming the victim's behavior for the violence, or the batterer's use of alcohol or drugs as the cause.
- ☐ Make stopping the violence the primary goal of the program, taking priority over keeping the couple together or resolving other relationship issues.
- ☐ Define violence as part of a pattern of coercive control that includes physical, emotional, sexual and economic abuse.

Do program components include:

- ☐ Initial and on-going assessments of the danger posed to the victim by the offender, and procedures for alerting both the victim and appropriate authorities should the victim's safety become a concern.
- ☐ Adequate initial assessment of significant factors that may influence the offender's ability to benefit from treatment (i.e. psychosis, organic impairment).
- ☐ A minimum of one year of weekly sessions, with additional sessions available within the program or through referrals when indicated.
- ☐ The use of group counselling as the treatment of choice. This approach decreases the batterer's isolation and dependency on the partner and ensures the offender is accountable to the group.
- ☐ Procedures for conducting an ongoing assessment of the offender's violent propensities throughout the course of treatment, such as informing the offender at the beginning of the program that the victim and others will be contacted periodically to assess whether the violence has stopped.

- ❒ Demonstrated ability to submit progress reports to the probation department once a month.

- ❒ Require offenders with substance abuse problems to attend group substance-free, and to seek concurrent treatment for substance abuse.

- ❒ Procedures for reporting any new offense committed by a court-mandated client during treatment to appropriate court authorities.

- ❒ Language capabilities sufficient to treat a monolingual non-English speaking offender.

- ❒ A "limited confidentiality" policy whereby the victim is entitled to information from the program regarding the acceptance or rejection of the offender into the program, whether the offender is attending the program, termination, cause for termination, and warnings about anticipated violence.

The court may want to consider ordering the offender to pay restitution to the victim for the following losses:

- ☐ lost wages
- ☐ medical bills
- ☐ damaged property
- ☐ costs of counseling for victim and traumatized children
- ☐ replacement of locks
- ☐ transportation expenses to escape the violence
- ☐ motel or hotel lodging
- ☐ relocation and moving expenses
- ☐ costs of staying at a battered women's shelter
- ☐ costs of obtaining a civil restraining order.

Assessing Whether Batterers Will Kill: A Checklist

Reprinted from "Confronting Domestic Violence: Effective Police Response, Pennsylvania Coalition Against Domestic Violence (PCADV), 1990. Available from PCADV for $30).

ASSESSING WHETHER BATTERERS WILL KILL

(The following is reprinted from Confronting Domestic Violence: Effective Police Response, Pennsylvania Coalition Against Domestic Violence (PCADV), 1990. The manual is available from PCADV for $30.00.)

Some batterers are life-endangering. While it is true that all batterers are dangerous, some are more likely to kill than others and some are more likely to kill at specific times. Regardless of whether there is a protection from abuse order in effect, officers should evaluate whether an assailant is likely to kill his* partner or other family members and/or police personnel and take appropriate action.

Assessment is tricky and never full-proof. It is important to conduct an assessment at every call, no matter how many times an officer has responded to the same household. The dispatcher and responding officer can utilize the indicators described below in making an assessment of the batterer's potential to kill. Considering these factors may or may not reveal actual potential for homicidal assault. But, the likelihood of a homicide is greater when these factors are present. The greater the number of indicators that the batterer demonstrates or the greater the intensity of indicators, the greater the likelihood of a life-threatening attack.

Use all of the information you have about the batterer, current as well as past incident information. A thorough investigation at the scene will provide much of the information necessary to make this assessment. However, law enforcement will not obtain reliable information from an interview conducted with the victim and perpetrator together or from the batterer alone.

☐ **1. Threats of homicide or suicide.**

The batterer who has threatened to kill himself, his partner, the children or her relatives must be considered extremely dangerous.

☐ **2. Fantasies of homicide or suicide.**

The more the batterer has developed a fantasy about who, how, when, and/or where to kill, the more dangerous he may be. The batterer who has previously acted out part of a homicide or suicide fantasy may be invested in killing as a viable "solution" to his problems. As in suicide assessment, the more detailed the plan and the more available the method, the greater the risk.

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* We have assumed that the victim is a woman and the abuser is a man. It may be that the victim is a man and the abuser a woman or that the abuser and the victim are of the same sex. Assessment is basically the same despite these gender differences. The only additional indicator to be assessed in a lesbian or gay relationship is whether the abuser has been firmly closeted and is now risking exposure as a lesbian or gay person in order to facilitate their severe, life-threatening attacks. When a person has been desperately closeted, losing the protection of invisibility in order to abuse potentially suggests great desperation and should be included in the assessment.

❑ 3. **Weapons.**

Where a batterer possesses weapons and has used them or has threatened to use them in the past in his assaults on the battered woman, the children or himself, his access to those weapons increases his potential for lethal assault. The use of guns is a strong predictor of homicide. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.

❑ 4. **"Ownership" of the battered partner.**

The batterer who says "Death before Divorce!" or "You belong to me and will never belong to another!" may be stating his fundamental belief that the woman has no right to life separate from him. A batterer who believes he is absolutely entitled to his female partner, her services, her obedience and her loyalty, no matter what, is likely to be life-endangering.

❑ 5. **Centrality of the partner.**

A man who idolizes his female partner, or who depends heavily on her to organize and sustain his life, or who has isolated himself from all other community, may retaliate against a partner who decides to end the relationship. He rationalizes that her "betrayal" justifies his lethal retaliation.

❑ 6. **Separation Violence.**

When a batterer believes that he is about to lose his partner, if he can't envision life without her or if the separation causes him great despair or rage, he may choose to kill.

❑ 7. **Depression.**

Where a batterer has been acutely depressed and sees little hope for moving beyond the depression, he may be a candidate for homicide and suicide. Research shows that many men who are hospitalized for depression have homicidal fantasies directed at family members.

❑ 8. **Access to the battered woman and/or to family members.**

If the batterer cannot find her, he cannot kill her. If he does not have access to the children, he cannot use them as a means of access to the battered woman. Careful safety planning and police assistance are required for those times when contact is required, e.g. court appearances and custody exchanges.

❑ 9. **Repeated outreach to law enforcement.**

Partner or spousal homicide almost always occurs in a context of historical violence. Prior calls to the police indicate elevated risk of life-threatening conduct. The more calls, the greater the potential danger.

☐ **10. Escalation of batterer risk.**

A less obvious indicator of increasing danger may be the sharp escalation of personal risk undertaken by a batterer; when a batterer begins to act without regard to the legal or social consequences that previously constrained his violence, chances of lethal assault increase significantly.

☐ **11. Hostage-taking.**

A hostage-taker is at high risk of inflicting homicide. Between 75% and 90% of all hostage takings in the US are related to domestic violence situations.

Sample Planning Committee Meeting Agenda

Planning Committee Meeting

Date: _ _ _ _ _ _

Time: _ _ _ _ _ _

Place: _ _ _ _ _ _

PROPOSED AGENDA

1. *Welcome.*

2. *Identify potential topics.* The first and most important step in planning the workshop is to identify all potential topics. The committee chairperson should ask the other planning committee members for suggestions, and the committee should discuss the topics and identify any related subtopics. Unless the decisions are obvious, the committee should not determine *at this point* what topics should be included in the program, when the topics should be presented, or who should be asked to serve as faculty. This important limitation on the initial discussion of ideas will greatly expedite the planning process.

   NOTE: As the committee members are suggesting their topics, the judicial education staff will list them on flip charts and post the lists on the walls of the meeting room, to facilitate the committee's later consideration.

3. *Assign priorities to the topics.* When all potential topics and subtopics have been identified, the planning committee should review them and assign priorities to them according to their relative importance. The committee should also discuss whether to combine several topics for presentation at the program.

   Before determining the priority of each topic the committee has identified in Step 2 above, the members may simply wish to identify certain topics definitely to include in the program (but *not* when or by whom at this time). The best method of determining the relative importance of the remaining topics is to assign a "value" between 1 and 10 to each potential topic (with number 1 being the least important and 10 being the *most* important). The numbers should be assigned by informal consensus among the committee members; no formal voting is needed. The most important topics can then be given a time within the program schedule pursuant to Step 4 below.

4. *Design the program.* After identifying the topics and determining their relative importance, the committee can then incorporate them into the program schedule (the pre-allotted time for the workshop), indicating (1) *when* each topic should be presented, (2) *how much time* should be allotted to it, and (3) the *best method* of presentation (lecture, panel discussion, role-playing, small-group discussion, etc.).

5. *Identify potential faculty.* The committee should next identify potential faculty members for each topic, including seminar discussion leaders if appropriate. Committee members are primary candidates for faculty service because of their expertise and direct involvement in designing the workshop. The final selections of speakers and seminar leaders are normally left to the program chairperson with assistance from staff. This flexibility is needed because some persons may not be available and later developments in the planning process may cause one faculty member to be preferred over another.

6. *Plan the program materials.* Decide what materials will be used in the program and how they will be produced. The speakers could be requested to produce outlines or furnish other written materials relating to the topics. The materials are collected by the judicial education staff and reproduced for the program participants.

   The planning committee should (1) consider what types of syllabus materials would best help the participants to follow the speakers and to take notes, (2) decide what "how to" materials (*e.g.*, checklists, spoken and written forms, scripts, etc.) should be provided for the participants' later use in their work, (3) decide what special topics, if any, should be covered in the program materials, and (4) suggest special authors and other sources for the various items.

7. *Plan social events.* The committee should make program decisions regarding such related matters as opening remarks, the number and scheduling of social hours, and group luncheons or dinners.

8. *Other business.* List additional items you want the committee to address:

   _____

   _____

NOTE: Following this meeting, the staff will prepare for the planning committee's review a draft of the entire program, incorporating the committee's curriculum decisions and also reminding its members of any follow-up tasks they may have agreed to perform. When approved, the program will be mailed to all potential participants with the announcement and registration materials.

c:\wpdata\dvagenda

(This Agenda was developed by the California Center for Judicial Education and Research - CJER.)

Tips for Judge–Teachers

TEN PRACTICAL TIPS FOR JUDGE-TEACHERS

by Paul M. Li

1. USE AN OVERHEAD PROJECTOR

The overhead projector has become the standard instructional tool in continuing professional education. Virtually all the best judge-teachers today use it. The reason is simple: using an overhead projector will increase the audience's attention and learning by several hundred percent!

A Socony-Mobil Oil Company survey shows that we learn 1 percent by taste, 1-1/2 percent by touch, 3-1/2 percent by smell, 11 percent by hearing, and *83 percent by sight*. We also retain (remember) about 10 percent of what we read, 20 percent of what we hear, 30 percent of what we see, and *50 percent of what we both see and hear.*

The message for judge-teachers is clear: if after spending hours preparing a presentation you would be satisfied with your audience learning 11 percent of what you had to teach and afterwards remembering 20 percent of what it had learned (for a 2.2 percent net retention of your presentation), then simply lecture the participants. On the other hand, if you want your audience to learn over 90 percent of what you have to teach and afterwards to retain 50 percent of what it learned, then use an overhead projector.

Another interesting study was made in 1981 by the Wharton School of Economics. In a six-month test involving 36 groups of MBA students, 67 percent of the audience agreed with the position taken by the person using an overhead projector, regardless of whether that person favored or opposed a product. The user was perceived as being significantly better prepared, more persuasive and credible, more interesting, and able to build a group consensus in 28 percent less time. When using the projector, the presenter also was able to reduce significantly what he or she had to say orally and yet cover the same amount of material (this finding should particularly comfort presenters who have too much information to convey within the time allotted). Using the projector also increased significantly the audience's retention.

It is tempting simply to tell the audience all you know about your topic. As judge-teachers, however, your concern should be not only *what* is to be taught but what is the most effective *way* to learn. And learning how to use an overhead projector will take less than 30 minutes.

AS A GENERAL RULE, YOU SHOULD PROJECT EVERYTHING YOU WILL REFER TO, AND HAND OUT IN WRITING EVERYTHING YOU WILL PROJECT. Your audience will then be able to maintain eye contact with you (see 8, below), rather than rush to copy what you have projected or said. Also, do not use a typewriter to make your transparencies. People in the back cannot see them. **Write out your transparencies by hand; use both upper and lower case letters; and use different colored pens for emphasis (43 percent more persuasive). Put lined paper under the transparency to guide your writing, and make your letters the same size as the space between two lines.** Limit yourself to just the keywords and cases. For audiences of up to 100 people, limit yourself to one idea per transparency, with a maximum of six lines and six words per line. For larger audiences, limit yourself to just 15 words per transparency and use a wide marker pen. *Don't project printed or typed materials unless the letters are at least three-eighths inch in size.* Finally, turn off the projector when you are changing transparencies and, more importantly, when you are not discussing the information on a transparency. The audience's attention will then focus on you rather than on the transparency.

A 30-minute practice session is all you will need to master sufficiently the use of the overhead projector. The biggest fear of adults, however, may be to print large letters by hand, which they have not done since grade school days.

2. USE A PROBLEM-SOLVING APPROACH

Judges encounter court problems in the context of particular sets of facts. So problem-solving is the best way to help judges understand what they have to learn. Facts are facts, but facts become knowledge if used in a practical example. Likewise, knowledge becomes skill if learners are given an opportunity to apply it. A common learning objective is to equip judges for handling the ten most common (or most important) problems they might encounter in a particular court proceeding.

A technology study comparing the effectiveness of presenting the same content by lecture, modeling, and simulation shows that both learning and retention are enhanced through use of simulation skills teaching methods:

	Learning and Retention	
Format	24 Hours	30 Days
Lecture (Listening)	40 %	15%
Modeling (Watching)	70 %	30 %
Simulation (Doing)	90 %	65 %

3. OUTLINE YOUR DISCUSSION TOPICS

List your topics on a flip chart or overhead transparency, and refer to it when you begin and end each topic. This will make it much easier for the audience to follow your presentation. It will also help you to improve the organization of your materials. Check off each topic when the audience indicates that you have adequately covered it and there are no additional questions about that subject.

4. ALWAYS PROVIDE THE JUDGES WITH A CHECKLIST OR SCRIPT

Like other professionals, judges attend continuing education programs to obtain *practical* knowledge, and particularly the "how to" judicial skills and techniques that other judges are successfully using in their everyday work. What the participants most want to take home is a procedural checklist of about 1500 words, with standard court forms and spoken words, for handling the court proceeding or courtroom problem you discussed in your presentation. The better checklists should include the 10 most common problems that judges may encounter in handling a particular court proceeding, together with practical advice on how best to resolve each problem. Adults are very task oriented. Since your objective is to equip judges for handling actual courtroom proceedings fairly, correctly, and efficiently, give them the necessary tools.

5. WALK THE JUDGES THROUGH SEVERAL SCENARIOS OR EXAMPLES USING THE CHECKLISTS

Again, knowledge becomes skill if applied by the learners. Always begin with one or more *simple* (!) examples until you are sure the judges have become comfortable with the basic procedures. Test whether they can identify the critical points and then centralize your instruction around a discussion of those points. *Limit yourself to three or four issues per hour. Focus on conduct: make the judges participate by having them do something.* Also, provide closure: confirm/validate your points or message.

6. DON'T APOLOGIZE

Apologies are always perceived as insults, particularly if the apologies are about a speaker's inexperience, inadequacies, or lack of time. Apologies make you *appear* unprepared and inexperienced, which are deadly sins that make the audience wonder why you were selected to waste their precious time, and also who selected you. Never apologize.

7. NEVER OPENLY LOOK AT YOUR WATCH

Looking at your watch makes the audience anxious and eager to leave. It also makes you seem to be off schedule and disorganized, which are other deadly sins. Simply place your watch on the lectern before your begin.

8. NEVER, NEVER READ YOUR PRESENTATION OR KEEP YOUR EYES TOTALLY ON YOUR NOTES

Maintain eye contact with the participants. Nothing else will make the audience lose interest quicker than to have you read to them. Try to vary your eye contact from side to side and forward to the middle of the audience. If you are too nervous, look right above the heads of persons in the middle. It will appear that you are looking at them.

9. ALWAYS LEAVE TIME FOR QUESTIONS

No matter how well you think you've covered a topic, someone will have a question or concern. Always leave time to answer it.

10. REPEAT ALL QUESTIONS

Audience members have different hearing levels and varying attention spans. Therefore, you should repeat all questions and rephrase them if it would help comprehension. Your answers become meaningless when the listeners have not heard the questions.

Finally, remember that judges are action-oriented. They want to know how best to perform their judicial duties. You were (or should have been) selected as a faculty member because of your expertise in handling one or more judicial tasks. Your educational objective should be to share your *practical* knowledge, skills, and techniques with the judicial audience. Your role is not that of a scholarly law professor, who can impart *theoretical* information about laws and legal errors but not the practical judicial knowledge and skills that you have developed and other judges really want (which is why continuing professional education programs primarily use practitioners, rather than professors, as teachers). Indeed, most judges in their everyday courtroom work can rely on their own research and the lawyers appearing before them for the applicable laws and legal theories; they don't need to attend continuing education programs to learn the law. So don't be satisfied with a scholarly approach. Instead, teach judges *how* to do their work. You will not only be performing a great service to your colleagues and the public, but you will also become an instant star judicial educator.

Byline

Paul M. Li is director of the California Center for Judicial Education (CJER). His practical tips are based on nearly 25 years of watching and conducting judicial education programs.

Sample Evaluation Questionnaires:

- Pre-Attendance Questionnaire
- Action Planning Guide
- Course Evaluation Form
- Post-Program Evaluation Questionnaire

SAMPLE PRE-ATTENDANCE QUESTIONNAIRE FOR PARTICIPANTS
(to be sent out with registration forms)

DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES

Thank you for your interest in attending the judicial education program entitled "Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases."

In order to ensure that the program addresses the concerns most immediate for judges when handling domestic violence cases, we ask you to complete this short questionnaire, and return it to us along with your registration. Thank you.

Please briefly describe the three most common problems you encounter when handling domestic violence cases in the criminal court.

1. _____

_____

2. _____

_____

3. _____

_____

Please list any topics in addition to the above that you would like this program to cover.

1. _____

2. _____

3. _____

DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES

ACTION PLANNING GUIDE

Based on what I have learned at this program I plan to make the following change in the way I personally handle domestic violence cases or the way in which my court handles these cases.

Please list those factors which currently exist in your court environment which will assist you in making this change.

Pleas list those factors which currently exist that may inhibit this change.

How do you think you can overcome the inhibiting factors you have identified?

What is the first action you will take when you return to your court to begin implementing this change?

What new resources will you need if any to implement this change?

How long do you estimate it will take to make this change?

What overall impact do you think this change will have on your court?

Name_____

Court_____

Address_____

_____

Phone (_____) _____

(This form was originally developed by the Michigan Judicial Institute.)

SAMPLE COURSE EVALUATION
(To be given to participants at the end of the program)

DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES

COURSE EVALUATION

We would like your comments on today's program. Your assistance in helping us to improve the program is greatly appreciated.

Please rate the following sections of the course based on the rating scale provided.

PLENARY SESSION I: THE IMPACT OF DOMESTIC VIOLENCE ON THE DEFENDANT AND THE VICTIM IN THE COURTROOM.

Faculty:

Value of the ideas presented:

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

Manner of Presentation:

Incomplete	1	2	3	4	5	Thorough and comprehensive
Unorganized	1	2	3	4	5	Very organized

Would you have liked more time, less time, or the same amount of time spent on this subject?

☐ More ☐ Less ☐ Same

Suggestions for improvement: _____

_____

_____

SMALL GROUP DELIBERATIONS

Morning Session - I was in group
- ☐ 1 Pre-Trial Release
- ☐ 2 Evidentiary Hearing/Trial Issues
- ☐ 3 Cases Dispositions

I found the small group deliberations

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

The most useful aspect of the deliberations was

_____

_____

PLENARY SESSION II: PRE-TRIAL/RELEASE CONSIDERATIONS

Faculty:

Value of the ideas presented:

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

Manner of Presentation:

Incomplete	1	2	3	4	5	Thorough and comprehensive
Unorganized	1	2	3	4	5	Very organized

Would you have liked more time, less time, or the same amount of time spent on this subject?

☐ More ☐ Less ☐ Same

Suggestions for improvement: _____

_____

_____

PLENARY SESSION III: EVIDENTIARY HEARING AND/OR TRIAL CONSIDERATIONS

Faculty:

Value of the ideas presented:

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

Manner of Presentation:

Incomplete	1	2	3	4	5	Thorough and comprehensive
Unorganized	1	2	3	4	5	Very organized

Would you have liked more time, less time, or the same amount of time spent on this subject?

☐ More ☐ Less ☐ Same

Suggestions for improvement: _____

_____

_____

PLENARY SESSION IV: CASE DISPOSITIONS

Faculty:

Value of the ideas presented:

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

Manner of Presentation:

Incomplete	1	2	3	4	5	Thorough and comprehensive
Unorganized	1	2	3	4	5	Very organized

Would you have liked more time, less time, or the same amount of time spent on this subject?

☐ More ☐ Less ☐ Same

Suggestions for improvement: _____

_____

_____

WRAP-UP AND EVALUATION SESSION: JUDICIAL ACTION PLANNING

Faculty:

Value of the ideas presented:

Not applicable to my court	1	2	3	4	5	Very applicable to my court
Nothing new	1	2	3	4	5	New information

Manner of Presentation:

Incomplete	1	2	3	4	5	Thorough and comprehensive
Unorganized	1	2	3	4	5	Very organized

Would you have liked more time, less time, or the same amount of time spent on this subject?

☐ More ☐ Less ☐ Same

Suggestions for improvement: _____

_____

_____

OVERALL EVALUATION

The most useful part of today's program was

_____

_____

_____

The least useful part of today's session was

_____

_____

_____

Overall, I would rate this program as

- ❑ Excellent
- ❑ Very Good
- ❑ Average
- ❑ Needs Improvement
- ❑ Not worth my time

Do you think the Benchguide will be a useful reference for you?

❑ Yes ❑ No Comments: _____

_____

_____

Would you recommend this course to other judges?

❑ Yes ❑ No Comments: _____

_____

_____

* * * * *

You have been given a copy of the questionnaire you completed prior to attending this program asking you to identify the three most common problems you encounter with domestic violence criminal court cases. Did this course adequately address these areas?

❑ Yes ❑ No ❑ To some extent

Comments: _____

_____

_____

SAMPLE POST-PROGRAM EVALUATION SURVEY
(To be sent to program participants three months following the program).

DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES

Thank you for attending the judicial education program on domestic violence offered three months ago. We hope you found the program to be informative, and useful to you when hearing domestic violence cases.

We are asking you to assist us in evaluating and improving the program by answering the following questions.

1. Did attending the program assist you in handling domestic violence cases?

   ❑ Very Much ❑ Somewhat ❑ Not at all

2. Do you use the Benchguide as a reference when handling these cases?

   ❑ Frequently ❑ Sometimes ❑ Never

3. Enclosed is a copy of the action plan you completed at the end of the course. Have you been able to implement the changes listed under number one of the plan?

   ❑ Yes ❑ Somewhat ❑ No

   If not, what have you not been able to implement and what obstacles prevented you from doing so?

   _____

   _____

   _____

4. What additional changes have you been able to implement in handling domestic violence cases as a result of having attended the program?

   _____

   _____

   _____

5. Do you have any suggestions on how the program could be improved?

_____

_____

_____

Please return this survey in the enclosed self-addressed, stamped envelope.
Thank you for your time.

National Directory of State Domestic Violence Coalitions

NATIONAL DIRECTORY OF STATE DOMESTIC VIOLENCE COALITIONS

June 1991

ALABAMA

Alabama Coalition Against
Domestic Violence
Carol Gundlach
P.O. Box 4762
Montgomery, AL 36101
(205) 832-4842

ALASKA

Alaska Network on Domestic
Violence and Sexual Assault
Cindy Smith, State Coordinator
130 Seward Street #301
Juneau, AK 99801
(907) 586-3650

ARIZONA

Arizona Coalition Against
Domestic Violence
Diane Post, State Coordinator
301 West Hatcher Road
Phoenix, AZ 85201
(602) 495-5429

ARKANSAS

Arkansas Coalition Against
Violence to Women and Children
P. O. Box 9443
North Little Rock, AK 72119
(501) 374-3929
1-800-332-4443 (State Hotline)

CENTRAL CALIFORNIA

Central California Coalition
Against Domestic Violence
P. O. Box 3931
Modesto, CA 95352
(209) 575-7037

SOUTHERN CALIFORNIA

Southern California Coalition
on Domestic Violence
P.O. Box 5036
Santa Monica, CA 90405
(213) 578-1442

NORTHERN CALIFORNIA

Northern California Coalition
Donna Garske, Chairman
1717 5th Avenue
San Rafael, CA 94901
(415) 457-2464

COLORADO

Colorado Coalition Against
Domestic Violence
Jan Micksh, Executive Director
P. O. Box 18902
Denver, CO 80218
(303) 573-9018

CONNECTICUT

Connecticut Coalition Against
Domestic Violence
Anne Menard, Executive Director
22 Maple Avenue
Hartford, CT 06114
(203) 524-5890

DELAWARE

Delaware Commission for Women
Department of Community Affairs
Carvel State Building
820 North French St., 4th Floor
Wilmington, Delaware 19801
(302) 571-2660

DELAWARE, (cont.)

State Contact:
Mary Davis
c/o Child, Inc.
11th and Washington Streets
Wilmington, DE 19801
(302) 762-6110 w

DISTRICT OF COLUMBIA

DC Coalition Against Domestic Violence
c/o Women's Legal Defense Fund
1875 Connecticut Ave. NW, Suite 710
Washington, DC 20036
(202) 986-2600

FLORIDA

Florida Coalition Against Domestic Violence
c/o Cheryl Phoenix
P. O. Box 532041
Orlando, FL 32853-2041
(407) 425-8648

GEORGIA

Georgia Network Against Domestic Violence
Ann Granger, Acting Director
P. O. Box 54737
Atlanta, GA 30312
(404) 524-3847

Georgia Advocates for Battered Women and Children
B.J. Bryson/Diane Winters
250 Georgia Ave. SE, Ste. 344
Atlanta, GA 30312
(404) 524-3847

HAWAII

Hawaii State Committee on Family Violence
1154 Fort Street Mall, Room 404
Honolulu, HI 96813
(808) 538-7216

IDAHO

Idaho Network to Stop Violence Against Women
Sandy Belott, Exec. Director
P. O. Box 275
Sandpoint, Idaho 83864
(208) 265-4535 w
(208) 263-6304 h

ILLINOIS

Illinois Coalition Against Domestic Violence
937 South Fourth Street
Springfield, IL 62703
(217) 789-2830

INDIANA

Indiana Coalition Against Domestic Violence
Gail Smith, Board Secretary
c/o Women's Alternatives
Box 1302
Anderson, IN 46015
(317) 643-0200
1-800-334-SAFE (State Hotline)

IOWA

Iowa Coalition Against Domestic Violence
Dianne Fagner, Director
Lucas Building, Ground Floor
Des Moines, IA 50319
(515) 281-7284 w
(515) 277-5406 h

KANSAS

Kansas Coalition Against Sexual & Domestic Violence
Alita Brown
P. O. Box 1341
Pittsburg, KA 66762
(316) 232-2757

KENTUCKY

Kentucky Domestic Violence Association
Sherry Alen Currens
P. O. Box 356
Frankford, KY 40602
(502) 875-4132

LOUISIANA

Louisiana Coalition Against Domestic Violence
Sami Babineaux, President
c/o S.N.A.P.
P.O. Box 10207
New Iberia, LA 70562
(318) 367-7627

MAINE

Maine Coalition for Family Crises Services
Kim Sherburne
c/o Caring Unlimited
P.O. Box 590
Sanford, ME 04073
(207) 324-1957

MARYLAND

Maryland Network Against Domestic Violence
Judy Feldt, President
c/o YWCA Women's Center
167 Duke of Glouchester Street
Annapolis, MD 21401
(301)974-2603

MASSACHUSETTS

Massachusetts Coalition of Battered Women's Svc. Groups
Carolyn Ramsey, Administrator
107 South Street, 5th Floor
Boston, MA 02111
(617) 426-8492

MICHIGAN

Michigan Coalition Against Domestic Violence
Joan Dauphine / Carol Sullivan
P. O. Box 7032
Huntington Wood, MI 48070
(313) 547-8888
(517) 372-4960 Resource Library
1-800-333-SAFE National Hotline
1-800-873-6363 Hearing Impaired

MINNESOTA

Minnesota Coalition for Battered Women
Physicians Plaza, Suite 201
570 Asbury Street
St. Paul, MN 55104
(612) 646-6177

MISSISSIPPI

Mississippi Coalition Against Domestic Violence
Jane Philo, Executive Director
P. O. Box 333
Biloxi, MS 39533
(601) 435-1968

MISSOURI

Missouri Coalition Against Domestic Violence
Colleen Coble
311 East McCarty, #34
Jefferson City, MO 65101
(314) 634-4161

MONTANA

Montana Coalition Against Domestic Violence
Kate McInnerny
P.O. Box 5096
Bozeman, MT 59715
(406) 586-6084

NEBRASKA

Nebraska Domestic Violence and Sexual Assault Coalition
Sarah O'Shea, Exec. Director
315 South 9th Street, #18
Lincoln, NE 68508
(402) 476-6256

NEVADA

Nevada Network Against Domestic Violence
2100 Capurro Way, Ste. 21-1
Sparks, NV 89431
(702) 358-1171
1-800-992-5757 (State Hotline)

NEW HAMPSHIRE

New Hampshire Coalition Against Domestic and Sexual Violence
P.O. Box 353
Concord, NH 03301
(603) 224-8893
1-800-852-3311 (Multi Issue State Hotline)
or

c/o Andi Lee
P. O. Box 322
Plymouth, NH 03264
(603) 536-3423

NEW JERSEY

New Jersey Coalition for Battered Women
Barbara Price, Exec. Director
2620 Whitehorse
Hamilton Square Road
Trenton, NJ 08690-2718
(609) 695-1758
1-800-572-7233 (state hotline)

NEW MEXICO

New Mexico State Coalition Against Domestic Violence
La Casa, Inc.
P. O. Box 2463
Las Cruces, NM 88004
(505) 526-2819

NEW YORK

New York State Coalition Against Domestic Violence
Gwen Wright
The Women's Bldg.
79 Central Avenue
Albany, NY 12206
(518) 432-4864

NORTH CAROLINA

North Carolina Coalition Against Domestic Violence
Rene Stephen, State Coordinator
P. O. Box 51875
Durham, NC 27717-1875
(919) 490-1467

NORTH DAKOTA

North Dakota Council on Abused Women's Services
Bonnie Palacek
State Networking Office
418 E. Rosser Avenue, Suite 310
Bismark, ND 58501
(701) 255-6240
1-800-472-2911 (State Hotline)

OHIO

Action Ohio Coalition for Battered Women
Nancy Evans
P. O. Box 15673
Columbus, OH 43215
(614) 221-1255

Action Ohio Coalition for Battered Women
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P. O. Box 5466
Cleveland, OH 44101
(216) 634-7501

ODVN
Alice Kay Hilderbrand
P.O. Box 877
Russels Point, OH 43348
(614) 382-8988

OKLAHOMA

Oklahoma Coalition On Domestic Violence and Sexual Assault
Sherry Ford
P. O. Box 5089 (Mailing Addr.)
226 East Gray (Street Address)
Norman, OK 73070
(405) 360-7125

OREGON

Oregon Coalition Against Domestic Violence
Holly Pruett, Exec. Dir.
Executive Director
2336 SE Belmont Street
Portland, OR 97214
(503) 239-4486/4487

PENNSYLVANIA

Pennsylvania Coalition Against Domestic Violence
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2505 North Front Street
Harrisburg, PA 17110-1111
(717) 234-7353

PUERTO RICO

Reverend Judith Spindt
N-11 Calle 11 San Souci
Bayamon, Puerto Rico 00619

RHODE ISLAND

Rhode Island Council on Domestic Violence
Donna Nesselbush, Exec. Dir.
324 Broad Street
Central Falls, RI 02863
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SOUTH CAROLINA

South Carolina Coalition Against Domestic Violence and Sexual Assault
Ellen Hamilton, Director
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SOUTH DAKOTA

South Dakota Coalition Against Domestic Violence and Sexual Assault
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Mission, SD 57555
(605) 856-2317

or

Diedre Shaw, Co-Chair
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TENNESSEE

Tennessee Task Force on Family Violence
Kathy England, Director
P. O. Box 120972
Nashville, TN 37212-0972
(615) 242-8288

TEXAS

Texas Council on Family Violence
Judy Reeves
3415 Greystone, Suite 220
Austin, TX 78731
(512) 794-1133

VERMONT

Vermont Network Against Domestic Violence and Sexual Assault
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(802) 223-1302

VIRGINIA

Virginians Against Domestic Violence
Sheri Canfield, Director
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Richmond, VA 23220
(804) 780-3505

WASHINGTON

Washington State Coalition
Against Domestic Violence
Mary Pontarolo, Director
200 W Street, SE, Suite B
Tumwater, WA 98501
(206) 352-4029

Washington State Domestic
Violence Hotline
c/o Pacific County Crisis
Support Network
HCR 78 Box 336
Naselle, WA 98638
(206) 484-7191
1-800-562-6025 (State Hotline)

WEST VIRGINIA

West Virginia Coalition Against
Domestic Violence
Sue Julian
P. O. Box 85
Sutton, WV 26601
(304) 765-2250

WISCONSIN

Wisconsin Coalition Against
Domestic Violence
Kathleen Krenek
1051 Williamson Street
Madison, WI 53703
(608) 255-0539

WYOMING

Wyoming Coalition Against
Domestic and Sexual Assault
Tami Stouffer
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Riverton, WY 82501
(307) 856-0942

NATIONAL COALITION

National Coalition Against
Domestic Violence (NCADV)
1012 14th Street, NW, Suite 807
Washington, DC 20005
(202) 638-6388

MAIL:STATECOL.L2

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III. ELDER ABUSE

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Order Form

DOMESTIC VIOLENCE:
THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES. A NATIONAL MODEL FOR JUDICIAL EDUCATION

This comprehensive **Model** is designed for judicial educators to:

- Develop an 8-hour judicial education program on domestic violence
- Produce a Benchguide on Criminal Court Cases specific to your state.

Domestic Violence: A Model for Judicial Education covers issues that arise during the 3 main stages of a criminal court domestic violence case:

- Pre-Trial/Release Considerations
- Evidentiary Hearing/Trial Considerations
- Case Dispositions.

Also included in this Model are:

- Leading national statutes and case law
- WESTLAW keynotes
- Hypothetical domestic violence cases designed for small group deliberation during the education program
- Tools and checklists designed to assist the court when hearing domestic violence cases.

The content of this manual is also available on ***computer disk*** to facilitate the production of a Benchguide specific to state and case law.

Also available is **DOMESTIC VIOLENCE: A Benchguide for the California Criminal Courts**, including:

- Recommended court practices for the handling of domestic violence cases
- California statutes and case law

✣ ✣ ✣ ✣ ✣

Send this form with payment to the Family Violence Prevention Fund, Bldg. One, Suite 200, 1001 Potrero Avenue, San Francisco, CA 94110 (415) 821-4553.

✂ ---

☐ YES, I want to order ____ copies of **DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES. A NATIONAL MODEL FOR JUDICIAL EDUCATION.** _____ x $45.00 = $_____

☐ YES, I want to order ____ copies of the ***computer disk*** for **DOMESTIC VIOLENCE: THE CRUCIAL ROLE OF THE JUDGE IN CRIMINAL COURT CASES. A NATIONAL MODEL FOR JUDICIAL EDUCATION** to produce a Benchguide on Domestic Violence for my state. _____ x $15.00 = $_____

☐ Macintosh—Design Studio ☐ Macintosh—Microsoft Word

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Founded in 1980, the Family Violence Prevention Fund (formerly the "Family Violence Project") has received national recognition for its work with the justice system towards developing education programs on domestic violence.